

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.6509 of 2018

ORDER

This petition is filed under Section 482 Cr.P.C., challenging the order dated 07.10.2017 in Crl.R.P.No.37 of 2017 passed by the VI Additional Sessions Judge, Ananthapuramu at Gooty confirming the order dated 27.01.2017 in Crl.M.P.No.1733 of 2016 in M.C.No.21 of 2016 passed by the Judicial Magistrate of First Class, Gooty, whereby the Magistrate granted interim maintenance @ Rs.6,000/- per month to the 2nd respondent from the date of petition during pendency of the main petition..

The 2nd respondent filed petition under Section 125 Cr.P.C., which was registered as M.C.No.21 of 2016 alleging that she is legally wedded wife of the petitioner and that the petitioner neglected her to maintain and that she has no independent source of income to maintain herself. Whereas the petitioner is working as software engineer at Chennai and earning Rs.5 lakhs per month and now the petitioner getting Rs.1,00,000/- per month. The petitioner did not provide anything towards maintenance. Along with the maintenance case, the 2nd respondent filed miscellaneous petition for grant of interim maintenance on the same ground and the same was ordered.

The contention of the petitioner is that he is software engineer and he was removed from service, as such he is not getting any income and thereby grant of Rs.6,000/- per month by the Magistrate is erroneous.

Aggrieved by the said order, the petitioner preferred Crl.R.P.No.37 of 2017 before the VI Additional Sessions Judge, Gooty, which was ended in dismissal confirming the order passed by the Magistrate.

Assailing the order of the Sessions Judge, the present criminal petition is filed mainly on the ground that the petitioner was removed from service as software engineer and expressed his readiness and willingness

to restore his family and that he never neglected and refused to maintain the 2nd respondent.

At the stage of admission, learned counsel for the petitioner would contend that when the 2nd respondent asserted that the petitioner is earning Rs.5 lakhs per month as software engineer, it is for the 2nd respondent to prove the income of the petitioner by placing necessary evidence and that the Magistrate also made a clear objection in para 11 that both the parties did not adduce any evidence and that too the petitioner maintained silence with regard to the annual income etc. hence, granting maintenance @ Rs.6,000/- per month is an illegality committed by the Magistrate and that the same was illegally confirmed by the Sessions Judge and prayed to set aside the same.

As seen from the material on record and even according to the argument of counsel for the petitioner, the petitioner was software employee and he was removed from service, whereas the 2nd respondent contended before the Magistrate and revisional Court that still the petitioner is working as software engineer and earning substantial amount of Rs.5 lakhs as salary per month. When the petitioner contended that he was removed from service, it is for him to produce the order copy of the removal proceedings issued by the employer. But obviously, for reasons best known to the petitioner that he has not produced any such proceedings. In the absence of any document to establish that the petitioner was removed from service, it is difficult to sustain the said contention at this stage. Therefore, on this ground alone, the Magistrate and Revisional Court concluded that the petitioner is working as software engineer and earning sufficient means. Even assuming that the petitioner still continuing as software engineer, it is for him to produce his income certificate that he was not earning Rs.5 lakhs per month since it is within his knowledge, in view of Section 106 of the Evidence Act, but he did not

produce at least the salary certificate to substantiate his contention. Therefore, the Magistrate and the revisional Court accepted the contention of the 2nd respondent and awarded maintenance of Rs.6,000/- per month.

When the 2nd respondent married the petitioner, who is software engineer, she is expected to lead same standard of life, which the petitioner is leading. Therefore, granting maintenance @ Rs.6,000/- per month as interim relief is not excessive taking into consideration of the present price index and cost of living. Even otherwise, the 2nd respondent being wife is entitled to claim maintenance at 20% of the salary of the husband in view of the judgment of the Apex Court in ***Dr.Kulbhushan Kumar v. Raj Kumari***¹. In view of the law declared by the Apex Court in the above judgment, I find no illegality in the order of the Courts below and consequently, the criminal petition is liable to be dismissed.

Accordingly, the criminal petition is dismissed. However, the Judicial Magistrate of First Class, Gooty Magistrate is directed to dispose of M.C.No.21 of 2016 independently uninfluenced by the observations made hereinabove as expeditiously as possible, not later than six months from the date of receipt of copy of this order.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

22.06.2018
kvrm

M. SATYANARAYANA MURTHY, J

¹ (1970) 3 SCC 129