

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.16399 OF 2014

ORDER:

This Criminal Petition, under Section 482 of Cr.P.C., is filed by the petitioners seeking to set aside the order dated 05.07.2013 passed in CrI.R.P. No.59 of 2012 on the file of the Court of Session, Sessions Division, Nellore, wherein the learned Sessions Judge was pleased to modify the order dated 25.07.2013 passed in M.C. No.35 of 2010 on the file of the Additional Judicial Magistrate of First Class, Kovur.

2. Heard the learned counsel for the petitioners, the learned Additional Public Prosecutor appearing for the 1st respondent-State and the learned counsel for the 2nd respondent, apart from perusing the material available on record.

3. Learned counsel for the petitioners would submit that the learned Magistrate was pleased to grant maintenance of Rs.5,000/- to each petitioner, who are the wife and children of the 2nd respondent; the Court of Session has modified the same and granted Rs.3,000/- to the 1st petitioner and Rs.2,500/- each to the petitioners 2 and 3, contrary to the finding of the learned Magistrate; the 2nd respondent is working as Government Teacher and his salary is Rs.25,000/- per month; now-a-days, the cost of living is very high and the petitioners 2 and 3 need money for their education also; and ultimately, prayed to restore the order dated 25.07.2013 passed by the learned Magistrate in M.C. No.35 of 2010.

4. The learned counsel for the 2nd respondent would submit that the maintenance granted by the Court of Session is quite reasonable;

there is no infirmity in the order passed by the Court of Session; and ultimately, prayed to dismiss the criminal petition.

5. In view of the contentions putforth by both sides, the point for determination is, whether the impugned order dated 05.07.2014 passed by the Court of Session in Crl.R.P. No.59 of 2012 is liable to be set aside?

6. As seen from the material on record, there is justification for the 1st petitioner to live separately from 2nd respondent. There are no means to 1st petitioner to maintain herself and the petitioners 2 and 3, who are school going children. There is only contest with regard to the quantum of maintenance granted. As per the evidence of the 2nd respondent-R.W.1, he admitted clearly that his gross salary is Rs.25,185/- per month and he contends that he has parents to maintain. Learned Sessions Judge while dealing with the matter held that the 2nd respondent is a Government Teacher, his gross salary is Rs.25,185/-, the petitioners 2 and 3 are school going children and they require money for educational necessities. The learned Sessions also Judge held that the learned Magistrate seems to have granted excessive maintenance in favour of the petitioners and ultimately reduced the same as indicated above. Learned Magistrate while dealing with the grant of quantum of maintenance in favour of the petitioners, had elaborately dealt all the aspects and fixed the monthly maintenance at Rs.5,000/- to each petitioner. In view of the cost of living, educational necessities and the status of the parties and also in view of the finding of the learned Magistrate that the petitioners have no means to maintain themselves, no infirmity is found in the order dated 25.07.2013 passed by the learned Magistrate in M.C. No.35 of 2010. Therefore, the said order is liable to be restored.

7. In the result, the order dated 05.07.2014 passed in CrI.R.P. No.59 of 2012 on the file of the Court of Session, Sessions Division, Nellore, is set aside, and consequently, the order dated 25.07.2013 passed in M.C. No.35 of 2010 on the file of the Additional Judicial Magistrate of First Class, Kovur, is restored.

8. Accordingly, the Criminal Petition is allowed. Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 19-03-2018

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