

THE HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE NO.1599 OF 2018

ORDER:

Heard the learned counsel for the petitioner. In spite of sending notice to respondent Nos. 2 to 6, respondent No.2 has not chosen to receive the same and the registered cover has been returned unserved with postal endorsement, "unclaimed".

2. The facts in brief are that the respondent Nos. 2 to 6 herein filed M.C.No.114 of 2016 against the petitioner claiming a sum of Rs.60,000/- p.m. towards maintenance for the respondent Nos. 2 to 6 on the file of the Court of Additional Metropolitan Sessions Judge for the trial of JHCBBG-cum-Additional Family Court-cum-IX Additional Metropolitan Sessions Judge, Hyderabad. It is their case that the marriage of respondent No.2 with the petitioner was performed on 29.10.2000 at Hyderabad as per Muslim Rites and customs. At the time of marriage, the parents of respondent No.2 gave 25 tulas of gold, 25 tulas of silver, furniture and other household articles. After marriage, respondent No.2 joined the petitioner at Khazipet. At the time of marriage, the petitioner was doing a job in Dubai. After marriage, he left for Dubai and three months thereafter, respondent No.2 joined him at Dubai where she conceived. She returned to India in December, 2001 and

started residing with her in-laws. The parents of the petitioner started harassing respondent No.2 and subjected her to cruelty. On 7.3.2012, respondent No.2 was necked out of the house along with children. After mediation, when respondent No.2 joined the petitioner, even thereafter, they continued to repeat the ill-treatment, whereby she was forced to lodge a complaint for the offence under Section 498-A IPC read with Section 4 of D.P. Act vide Cr.No.63 of 2015. On 13.10.2014, the petitioner started beating respondent No.2 mercilessly and when she called her parents, the petitioner pushed her father and fled away from the house resulting in filing another complaint for the offence under Section 406, 420, 498-A, 323, 506 IPC read with Section 4 and 6 of D.P. Act. At that stage, they have filed the above said M.C. claiming Rs.60,000/- p.m. However, there was no representation on behalf of the petitioner herein in the above said Maintenance Case. Even after publication of notice in the newspaper, the petitioner did not appear, thereby invited an ex-parte order dated 9.12.2017 in M.C.No.114 of 2016. In the said M.C., the learned Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, awarded maintenance @ Rs.10,000/- p.m. to respondent No.2 and @ Rs.5,000/- p.m. each to respondent Nos. 3 to 6 payable from

the date of the petition i.e., 9.3.2016. The petitioner was also directed to pay the arrears of maintenance within three months. Aggrieved by the same, the present Criminal Revision Case is filed.

3. Learned counsel for the petitioner would contend that the award of maintenance of Rs.30,000/- p.m. is excessive and untenable. Respondent Nos. 2 to 6 have not produced any documentary evidence to show the source of monthly income of the petitioner. Learned Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, erred in passing an ex-parte order without giving an opportunity to the petitioner. He also contended that the Court below failed to appreciate that the notices were sent to a wrong address knowing fully well that the petitioner is not residing there. The petitioner could not see the newspaper publication as it was published in Siyasath Urdu daily newspaper which is not a widely circulated newspaper and with a limited publication in and around Hyderabad.

4. Having heard the learned counsel for the petitioner and from the perusal of the material on record, it is revealed that respondent Nos. 2 to 6 filed M.C.No.114 of 2016 on the file of the Court of the Additional Metropolitan Sessions Judge for the

trial of JHCBBC-cum-Additional Family Court-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, claiming a sum of Rs.60,000/- p.m. towards maintenance against the petitioner. In the said Maintenance Case, the petitioner was set ex-parte and orders were passed on 9.12.2017 directing the petitioner to pay a sum of Rs.30,000/- p.m. towards maintenance. A perusal of the order would indicate that respondent Nos. 2 to 6 have not produced any iota of evidence with regard to the financial status of the petitioner as well as the source of income. Learned counsel for the petitioner has brought to the notice of this Court that the petitioner is working as a Taxi driver and his income is approximately Rs.25,000/- p.m.. In such a case, the petitioner cannot be saddled with maintenance @ Rs.30,000/- p.m.

5. Keeping the said submissions in view and the award of maintenance, without there being any finding with regard to the income of the petitioner, the same appears to be excessive. Therefore, this Court is inclined to interfere with the orders passed by the learned Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, in awarding Rs.30,000/- p.m. towards maintenance. However, the petitioner, being the husband of respondent No.2 and

father of respondent Nos. 3 to 6, has got a moral and legal obligation to maintain them. Merely because an ex-parte order has been passed, it cannot be said that the petitioner is not liable to pay maintenance.

6. In the above circumstances, Criminal Revision Case is allowed by setting aside the orders passed in M.C.No.114 of 2016 dated 9.12.2017 on the file of Court of the Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, subject to the petitioner paying a sum of Rs.17,500/- p.m. towards maintenance to the respondent Nos. 2 to 6 from the date of the petition i.e., 9.3.2016 till the disposal of the maintenance case in the Court below.

7. It is needless to observe that the arrears of maintenance as awarded to be calculated at the above said rate and the petitioner is directed to pay the same in four equal monthly instalments commencing from September, 2018 on wards.

8. Learned Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, is directed to dispose of M.C.No.114 of 2016 within a period of four months from the date of receipt of a copy of this order. Any default of the



above said condition would entail cancellation of the above said order automatically.

Pending miscellaneous petitions, if any, shall also stand dismissed.

P. KESHA RAO,J

Date: 8.8.2018

KPM

