

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.6783 of 2018

ORDER

This petition is filed under Section 482 Cr.P.C., challenging the order dated 08.05.2018 passed in Crl.M.P.No.884 of 2017 in M.C.No.166 of 2017 by the Judge, Additional Family Court, Nampally, Hyderabad, awarding interim maintenance @ Rs.10,000/- per month during pendency of the main petition filed under Section 125 of Cr.P.C.

2. The second respondent herein is the wife of petitioner. She filed an application under Section 125 of Cr.P.C., claiming maintenance alleging that she is the legally wedded wife of petitioner, but he refused and neglected to maintain her without any reasonable cause and that her husband is earning a sum of Rs.5,00,000/- per month being a Director of NI Industry and also running other factories and that she has no means to maintain herself from any independent source of income and requested to grant maintenance.

3. During pendency of the main petition, the second respondent filed application under Section 125(1) of Cr.P.C. claiming interim maintenance. The trial Court, upon hearing the arguments of both sides and based on the income tax returns for the assessment years 2015-16 and 2016-17 showing the income of petitioner @ Rs.4 lakhs and odd per year, granted interim maintenance @ Rs.10,000/-per month.

4. The present petition is filed challenging the quantum of maintenance on the ground that in the absence of any documentary proof in support of the income being earned by the petitioner, who is now advised to undergo bypass surgery, awarding maintenance @ Rs.10,000/-per month is excessive and not commensurate with the standard of living of petitioner and prayed to set aside the order.

5. During hearing, learned counsel for petitioner Sri R. Ashok Goud, would contend that the petitioner has no means to maintain himself and he is under obligation to maintain his old aged parents. But the income being earned by petitioner is not even sufficient to maintain himself and his parents as he is not carrying on any business on account of the harassment meted in the hands of the second respondent and there was a shortfall in his income and therefore, he requested to set aside the order impugned by reducing the maintenance awarded by the trial Court.

6. There is no dispute regarding the relationship between the petitioner and the second respondent. But the income of the petitioner was at Rs.4 lakhs and odd for the assessment years 2015-16 and 2016-17. Though the second respondent contended that the petitioner is earning Rs.5 lakhs per month being a Director of NI Industry and other purpose, the same was not substantiated by her. However, she has established that the petitioner was earning more than Rs.4 lakhs per annum as per the income tax returns for the assessment years 2015-16 and 2016-17. Though the counsel for petitioner contended that there is a shortfall in the income of petitioner after 2016-17 assessment year, he did not produce any

piece of paper to substantiate his contention. When the second respondent is able to prove that the petitioner was earning a sum of Rs.4 lakhs and odd as per the income tax returns for the assessment years 2015-16 and 2016-17, she being the legally wedded wife is entitled to claim 20% of the income of the husband as maintenance in view of the judgment of the Apex Court in **Dr.Kulbhushan Kumar v. Raj Kumari**¹ and the same was affirmed in its later judgment rendered in **Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy**². Though the said order was under Section 24 of Hindu Marriage Act, the same principle can be applied. If said principle is applied to the present facts of the case, the maintenance awarded by the trial Court is just and reasonable as the trial Court, after taking into consideration the present price index, cost of living and standard of living of petitioner, awarded maintenance @ Rs.10,000/-per month. Therefore, I am not inclined to interfere with the order passed by the trial Court. However, the trial Court is directed to dispose of M.C.No.166 of 2017 as expeditiously as possible, in any event, not later than six months from the date of receipt of a copy of this order.

7. With the above direction, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this criminal petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

2nd July, 2018

sj

¹ (1970) 3 SCC 129

² AIR 2017 SC 2383