

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE NO.1801 OF 2018

ORDER:

This revision is arising out of order, dated 24.04.2018 passed in CrI.M.P.No.712 of 2016 in M.C.No.92 of 2016 by the Addl. Metropolitan Sessions Judge for the trial of JHCBBC-cum-Addl. Family Court, Hyderabad.

2. The revision petitioners are respondents in M.C.No.92 of 2016, filed by their father, B.Ramesh, aged about 64 years, claiming maintenance under Section 125 Cr.P.C. The 2nd respondent has also filed CrI.M.P.No.712 of 2016 claiming interim maintenance and the trial Court on consideration of the material, awarded interim maintenance of Rs.9,000/- per month payable by the petitioners 1 to 3 herein each at Rs.3,000/- per month from the date of petition. Aggrieved thereby, the revision petitioners are before this Court.

3. Heard the arguments of the learned counsel for the petitioners, learned counsel for the 2nd respondent and perused the material on record.

4. Learned counsel for the petitioners submits that the petitioners have not neglected the 2nd respondent at any point of time. The 2nd respondent himself left them voluntarily and married four times and now he is living with his wife and children and educating his children by spending huge amount. He is having sufficient source of income to maintain himself and therefore, he is not entitled to claim interim maintenance.

5. The second contention of the learned counsel for the petitioners is that the petitioners are residing in Ranga

Reddy, whereas the 2nd respondent is residing at Hyderabad and the Courts at Hyderabad have no jurisdiction to entertain the application. The third contention raised by the learned counsel for the petitioners is that the trial Court has no jurisdiction to entertain the petition and granting of interim maintenance is illegal and therefore, sought to set aside the order passed by the trial Court.

6. On the other hand, learned counsel for the 2nd respondent submits that the revision is not maintainable against the interim order as the trial Court granted interim maintenance in CrI.M.P.No.712 of 2016. He further submits that there is no illegality or impropriety in the order passed by the trial Court in granting interim maintenance. The 2nd respondent has no source of income to maintain himself and therefore, he filed a petition claiming maintenance against his three sons. Out of them, two are practicing as Advocates and other person is earning sufficient income.

7. On consideration of the rival contentions of the learned counsel for the petitioners and the learned counsel for the 2nd respondent, this Court is of the considered view that the point of jurisdiction was not raised by the petitioners before the trial Court. It is submitted by the learned counsel for the 2nd respondent that the point of jurisdiction is a mixed question of fact and law and that can be decided by the trial Court.

8. As far as the income of the 2nd respondent is concerned, the petitioners have not filed any proof to show the income of the 2nd respondent and it is also a question of fact, which has to be decided by the trial Court.

9. The other contention whether the petitioners have neglected the 2nd respondent is also a question of fact, which has to be decided only after receiving the evidence.

10 In fact, the trial Court granted interim maintenance to the 2nd respondent. As per the provision under Section 397 (2) Cr.P.C., no interim order is revisable.

11. In view of the foregoing reasons, the revision petitioners raised point of jurisdiction to entertain this matter. The point of jurisdiction is a mixed question of fact and law. The trial Court may consider them and dispose of the matter within two months from the date of receipt of a copy of this order. The case may be sent to the Court having competent jurisdiction for consideration, if the trial Court comes to a conclusion that it lacks jurisdiction.

12. With the above observations, the Criminal Revision Case is disposed of. Miscellaneous petitions, if any pending in this revision shall stand closed.

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GUDISEVA SHYAM PRASAD, J

DATED: 17-12-2018

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