

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 9179 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') by the petitioner-husband to quash the order dated 11-07-2018 in Criminal M.P.No. 566 of 2017 in M.C.No. 97 of 2017 on the file of the Court of learned Judge, Family Court – cum – VI Additional Sessions Judge at Khammam (for short, 'the Court below').

2. Respondent Nos. 1 and 2, who are wife and daughter of the petitioner respectively, filed the above M.P. before the Court below under Section 125 (1) of Cr.P.C. seeking *interim* maintenance of Rs.7,500/- p.m. to each from the petitioner till disposal of the main case. The petitioner filed counter affidavit denying all the material allegations except the marriage between him and respondent No. 1 and birth of respondent No. 2. By the impugned order, the Court below partly allowed the petition by granting *interim* maintenance of Rs.3,000/- p.m. to each of the respondents from the date of the order till disposal of the main case. Feeling aggrieved, the present petition is filed.

3. At the hearing, learned counsel for the petitioner has submitted that the petitioner is ready and willing to restore the family tie with respondent No. 1 and that he filed a petition under Section 9 of Hindu Marriage Act, 1955 (for short, 'the Act'), for restitution of conjugal rights. Learned counsel has also contended that the petitioner is earning only Rs.15,000/- p.m. and if Rs.6,000/- p.m. is awarded to respondent Nos. 1 and 2, nothing will be left to the petitioner and prayed to set aside the order.

4. The marriage between the petitioner and respondent No. 1 is not in dispute and similarly the relationship of respondent No. 2 with the petitioner is also equally not in dispute. The only grievance of the petitioner is that respondent No. 1 left the company of the petitioner without any reasonable cause. From a perusal of the petition averments, respondent No. 1 made certain allegations against the petitioner about harassing her and in such case, she is not supposed to lead marital life with the petitioner on account of such harassment and thereby there is a justifiable cause for her separate living. This observation is however limited only for the purpose of deciding the present petition.

5. The other contention urged before this Court is that the petitioner is receiving only Rs.15,000/- p.m. towards his salary and therefore the amount awarded at Rs.3,000/- p.m. to each of the respondents is excessive. Respondent No. 1, being wife, is entitled to claim 1/4th of the salary of the petitioner as *interim* maintenance under Section 24 of the Act in view of the law declared by the Apex Court in ***Dr. Kulbhushan Kumar Vs. Raj Kumari***¹ and the same principle is reaffirmed by the Apex Court in ***Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy***². If the principle laid down in the above judgments is applied to the present facts of the case, the *interim* maintenance for which respondent No.1 is entitled would be Rs.3,750/- p.m. but the Court below awarded only Rs.3,000/- p.m. which is just and reasonable. So far as respondent No. 2 is concerned, she is the daughter born to the petitioner and respondent No. 1 during their wedlock and the petitioner apparently did not take any steps to take custody of respondent No. 2 till date and therefore he is under legal obligation to provide maintenance to respondent No. 2 and thereby

¹ (1970) 3 SCC 129

² AIR 2017 SC 2383

awarding Rs.3,000/- p.m. towards *interim* maintenance to respondent No. 2 is just and reasonable and commensurate with the present cost of living and price index including the standard of living of the petitioner.

6. For the aforementioned reasons, I find no ground to interfere with the order of the Court below and the petition deserves to be dismissed as it is devoid of any merit.

7. The criminal petition is accordingly dismissed at the stage of admission. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 29-08-2018.

JSK

M.SATYANARAYANA MURTHY, J.

