

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.2305 OF 2010

ORDER:

Heard the learned counsel for the petitioners and first respondent.

The present Criminal Revision Case is filed challenging the orders passed in CrI.R.P.No.34 of 2010, dated 29.10.2010 on the file of the Court of III Additional Sessions Judge, Tirupati, in setting aside the order of granting interim maintenance at Rs.4,000/- per month to the petitioners payable by each of the respondent Nos.1 to 3 herein, in CrI.M.P.No.1119 of 2010 in M.C.No.6 of 2010, dated 08.04.2010 on the file of the Additional Judicial Magistrate of First Class, Srikalahasti.

The facts, in brief, are that the respondents 1 to 3 herein are the sons of the petitioners herein. The petitioners though acquired the properties on their own, settled the same in the names of the respondents 1 to 3 herein. The petitioners have sold their gold ornaments to meet their medical expenditure, food and shelter. In fact, the petitioners were having land to an extent of Ac.4.86 cents. Out of the same, they settled Ac.1.70 cents of land in favour of the second respondent herein by way of direct registration. Similarly, Ac.1.79 cents of land was gifted in favour of the first respondent herein through registered gift deed dated 13.06.2001 and the petitioners kept the remaining land i.e. Ac.1.08 cents in the name of the first petitioner and Ac.0.69 cents in the name of the second petitioner for their maintenance. After settling the above said properties in the names of respondents 1 to

3 and as they are neglected, M.C.No.6 of 2010 came to be filed against the respondents 1 to 3. Pending the M.C., they filed CrI.M.P.No.1119 of 2010 for grant of interim maintenance. The learned Magistrate, after considering the matter, passed orders on 08.04.2010 granting a sum of Rs.4,000/- per month to the petitioners from each of the respondent Nos.1 to 3 towards interim maintenance. It is relevant here to mention that the said interim maintenance was awarded as a temporary measure to the petitioners to sustain during the pendency of the main M.C. Aggrieved by the said orders, the first respondent herein filed CrI.R.P.No.34 of 2010 on the file of the Court of III Additional Sessions Judge, Tirupati. The learned Additional Sessions Judge, after hearing, was pleased to allow the said CrI.R.P. by setting aside the order of interim maintenance granted against him, by orders dated 29.10.2010. Aggrieved by the same, the present Criminal Revision Case is filed.

The learned counsel for the petitioners would contend that the learned Additional Sessions Judge committed material irregularity in allowing CrI.R.P.No.34 of 2010 without considering the facts brought on record in proper perspective. It is also contended that the learned Sessions Judge ought to have considered that the first petitioner underwent by-pass surgery and he is a chronic diabetic patient and whereas the second petitioner is suffering from Neurological problem and she is also chronic diabetic patient and they are incurring a sum of Rs.10,000/- per month for their medical expenses. In fact, the petitioners adequately gave their properties to the respondents 1 to 3 herein. In fact, the properties given to the respondents would fetch Rs.3.00

crores at the present market value. However, after receiving the properties, the respondents 1 to 3 have neglected them. Therefore, they are entitled for the maintenance.

Per contra, the learned counsel appearing for the contesting first respondent supported the impugned orders stating that the petitioners are harassing the first respondent one way or the other by initiating various proceedings, which include filing of a suit in O.S.No.79 of 2008 on the file of the Principal Junior Civil Judge, Srikalahasti. It is also informed to the Court during the course of hearing that the wife of the first respondent herein also filed a complaint under Section 354 I.P.C. against the first petitioner.

Having heard both the counsel and from the perusal of the material on record, particularly, the impugned order, it is evident that the learned Additional Sessions Judge proceeded with the matter on the premise that the petitioners herein did not produce any material to show that they are not having capacity to maintain themselves. Admittedly, they have got house and further they are having landed property. As far as the above said aspect is concerned, it is settled law that the burden cannot be placed negatively and it is not for the petitioners to prove that they do not have any properties and they cannot maintain themselves. In fact, it is for the first respondent to prove that the petitioners are having substantial properties and sufficient income whereby they can maintain themselves. On that count itself, the impugned order is liable to be set aside. That apart, the interim orders passed by the learned Magistrate in CrI.M.P.No.1119 of 2010 granting interim maintenance is only a temporary measure

adopted to give sustenance to the petitioners during the pendency of the M.C. That itself will not decide the rights of the parties nor it has got any binding nature on the final orders to be passed after full-fledged trial. That being so, this Court is not inclined to interfere with the said order. Therefore, this Court is of the opinion that the impugned order passed by the learned Sessions Judge in setting aside the interim maintenance granted to the petitioners against the first respondent is liable to be set aside.

Accordingly, the Criminal Revision Case is allowed setting aside the orders passed in CrI.R.P.No.34 of 2010 dated 29.10.2010 on the file of the Court of III Additional Sessions Judge, Tirupati. In the peculiar facts and circumstances of the case, the learned Additional Judicial First Class Magistrate, Srikalahasti is directed to dispose of M.C.No.6 of 2010 itself as expeditiously as possible within a period of four months from the date of receipt of a copy of the order.

Pending miscellaneous petitions, if any, shall stand closed.

P.KESHAVA RAO,J

24th SEPTEMBER 2018.
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