

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.10964 of 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") questioning the order dated 29.08.2018 passed in CrI.R.C.No.16 of 2018 by the Principal Sessions Judge, Nalgonda, whereby the order passed in CrI.M.P.No.465 of 2017 in M.C.No.03 of 2017 by the Judicial First Class Magistrate, Nalgonda was confirmed.

The petitioner herein is the husband and the respondent No.2 herein is the petitioner in the petition filed under Section 125 of Cr.P.C. claiming maintenance alleging that the petitioner herein refused and neglected to maintain her and she was subjected to harassment etc. She further contended that she has no independent source of income to maintain herself, whereas the petitioner herein is working as software engineer; earning substantial amount and requested to grant maintenance at the rate of Rs.25,000/- per month.

The wife/respondent No.2 filed miscellaneous petition for grant of interim maintenance at the rate of Rs.25,000/- per month while contending that she has no independent source of income and prayed to grant interim maintenance while reiterating the allegations made in the petition more particularly about the income of the petitioner herein.

The contention of the petitioner is that the matter was settled before the elders and the petitioner paid Rs.3,00,000/- towards permanent alimony and towards full and final settlement of all claims, thereby, the petitioner is not liable to pay any

maintenance and that the petitioner, at present, is not working anywhere and he lost his job due to harassment of respondent No.2 by filing cases one after another and requested to dismiss the petition.

The trial Court, upon hearing, awarded interim maintenance at the rate of Rs.10,000/- per month. Aggrieved by the same, the petitioner preferred Criminal Revision Petition No.16 of 2018 under Section 397 of Cr.P.C. questioning the propriety, legality and correctness of the order passed in CrI.M.P.No.465 of 2017 in M.C.No.03 of 2017 by the Magistrate. But the Sessions Judge affirmed the order of the Magistrate finding no ground to interfere with the order passed by the Magistrate.

In the present petition, the petitioner contended that the trial Court having observed that the petitioner is not working anywhere, ordered payment of maintenance at the rate of Rs.10,000/- per month and it is not based on any material and there is no data as to the income of the petitioner to award maintenance during pendency of the main case, apart from that the trial Court and the revisional Court failed to consider the amount paid by the petitioner herein towards permanent alimony in the presence of elders and committed grave error in awarding interim maintenance.

Learned counsel for the petitioner reiterated the same contentions during arguments at the stage of admission.

It is an undisputed fact that the marriage of the respondent No.2 and petitioner was performed as per Hindu customs, they lived happily for sometime and the petitioner joined in service as software engineer, whereas the respondent No.2 is un-employee

without any independent source of income. It is not the case of the petitioner that the respondent No.2 possessed independent source of income to maintain herself, but the contention raised before this Court is that he paid Rs.3,00,000/- towards full and final settlement of claims before the elders, but that fact is not supported by any material and no document is produced before the Magistrate to substantiate this contention.

Therefore, in the absence of any document to show that the petitioner paid Rs.3,00,000/- towards full and final settlement, the contention urged before this Court regarding payment cannot be accepted. Therefore, the trial Court and the revisional Court rightly disbelieved the contention of the petitioner for the purpose of deciding the petition filed under Section 125 of Cr.P.C.

The other contention raised before this Court is that after filing the petition, the petitioner lost his employment and not earning any income. But as per the material including the grounds raised in the counter the petitioner was able to work as software engineer and earned Rs.75,000/- per month during his employment, but after filing petition under Section 125 of Cr.P.C. before the Magistrate, he lost his employment. Therefore, the earning capacity of the petitioner can be inferred based on the qualification and the amount he earned while working as software engineer.

When the petitioner is able to earn Rs.75,000/- per month, granting maintenance at the rate of Rs.10,000/- per month is inconsonance with the law laid down by the Apex Court in “**Dr.Kulbhushan Kumar v. Raj Kumari**”¹. As per the principle

¹ (1970) 3 SCC 129

laid down in the said judgment, the respondent No.2 is entitled to claim 1/4th of the net salary of her husband as maintenance.

The Apex Court in its later judgment rendered in “**Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy**”² held as follows:

“Section 25 of the Hindu Marriage Act, 1955 confers power upon the court to grant a permanent alimony to either spouse who claims the same by making an application. Sub-section (2) of Section 25 of Hindu Marriage Act confers ample power on the court to vary, modify or discharge any order for permanent alimony or permanent maintenance that may have been made in any proceeding under the Act under the provisions contained in Sub-section (1) of Section 25. In exercising the power Under Section 25 (2), the court would have regard to the "change in the circumstances of the parties". There must be some change in the circumstances of either party which may have to be taken into account when an application is made under Sub-section (2) of Section 25 for variation, modification or rescission of the order as the court may deem just.”

If the principle laid down in “**Dr.Kulbhushan Kumar v. Raj Kumari**” and “**Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy**” (referred supra) is applied to the present facts of the case, the respondent No.2/wife is entitled to 1/4th of the salary of the petitioner and if the principle is applied to the present facts of the case, the maintenance awarded at the rate of Rs.10,000/- per month is in accordance with law.

Therefore, I find no ground to interfere with the order passed by the trial Court by exercising power under Section 482 of Cr.P.C. Consequently, the petition is liable to be dismissed.

² AIR 2017 SC 2383

In the result, the petition is dismissed. No costs. However, the Magistrate is directed to decide the main case uninfluenced by the observations recorded hereinabove.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

12.10.2018
Ksp

