

THE HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE NO.2274 OF 2014

ORDER:

Heard the learned counsel for the petitioner.

2. Pursuant to the order dated 17.9.2018 of this Court, the personal notice taken out on respondent No.1 is returned unserved with an endorsement, "no such addressee in the same house number". The said returned unserved cover is filed through a memo dated 28.9.2018 vide USR.No.77414 of 2018. The same is made part of the record.

3. The address mentioned in the cause title and on the returned unserved cover is one and the same. When the notice addressed to the same address as mentioned in the cause title by respondent No.1 herself, is returned unserved with an endorsement, "no such address in this same H.No.", it is presumed to be a deemed service. In fact, Section 114 of the Indian Evidence Act contemplates presumption that communications sent by post will be deemed to have been delivered at the address of the addressee. However, the presumption that is laid under Section 27 of the General Clauses Act is on a higher pedestal. While Section 114 of the Indian Evidence Act refers to a general presumption, Section 27 of the General Clauses Act refers to a specific presumption.

4. In the case of C.C. ALAVI HAJI vs. PALAPETTY MUHAMMED AND ANOTHER¹, the Hon'ble Apex Court had an occasion to consider with regard to service of notice, wherein it has been held as under:

“When Section 114 of the Evidence Act, 1872 is applied to communications sent by post, it enables the court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the General Clauses Act, 1897 is a far stronger presumption. While Section 114 of the Evidence Act refers to a general presumption, Section 27 of the 1897 Act refers to a specific presumption.

Section 27 of the 1897 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. The Supreme Court has already held that when a notice is sent by registered post and is returned with a postal

¹ (2007) 6 scc 555

endorsement “refused” or “not available in the house” or “house locked” or “shop closed” or addressee not in station”, due service has to be presumed.”

5. Therefore, this Court presumes that the notice is served on respondent No.1.

6. The present Criminal Revision Case is filed challenging the orders passed in CrI.M.P.No.164 of 2013 in F.C.M.C.No.21 of 2010 dated 21.8.2014 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar, enhancing the maintenance from Rs.1,000/- to 2,500/- p.m. to respondent No.1 from the date of the petition.

7. The facts in brief are that the petitioner herein and the mother of respondent No.1 are husband and wife respectively. On 23.11.2009, they obtained decree of divorce by mutual consent in F.C.O.P.No.34 of 2009. As per the said decree, a sum of Rs.2,50,000/- was paid to the mother of respondent No.1 towards permanent alimony and the petitioner agreed to pay a sum of Rs.750/- p.m. towards maintenance to respondent No.1. Subsequently, respondent No.1 filed F.C.M.C.No.21 of 2010 claiming a sum of Rs.5,000/- p.m. On 14.6.2011, the learned Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar, after enquiry, allowed the said maintenance case in part directing the petitioner to

pay a sum of Rs.1,000/- p.m. towards maintenance to respondent No.1. Thereafter, respondent No.1 filed Crl.M.P.No.164 of 2013 seeking enhancement of maintenance to Rs.8,000/- p.m. from Rs.1,000/-. Learned Judge, Family Court, after recording the evidence of the respective parties and on appreciation of the documentary evidence brought on record, allowed the said petition in part by orders dated 21.8.2014 enhancing the maintenance to Rs.2,500/- p.m. Aggrieved by the same, the present Criminal Revision Case is filed.

8. Learned counsel for the petitioner would contend that the petitioner himself voluntarily accepted to pay maintenance to respondent No.1 in F.C.O.P.No.34 of 2009 and accordingly, he is paying the maintenance. Subsequently, respondent No.1 filed F.C.M.C.No.21 of 2010 where under the maintenance was enhanced to Rs.1,000/- p.m. Not satisfying with the same, respondent No.1 sought further enhancement to Rs.8,000/- p.m. towards maintenance and the maintenance was enhanced to Rs.2,500/- p.m. Learned counsel specifically contends that after he obtained divorce by mutual consent from the mother of respondent No.1 on 23.11.2009, he contracted a second marriage. Out of the wedlock, he was blessed with a daughter and a son. His children are studying. That apart, he is also

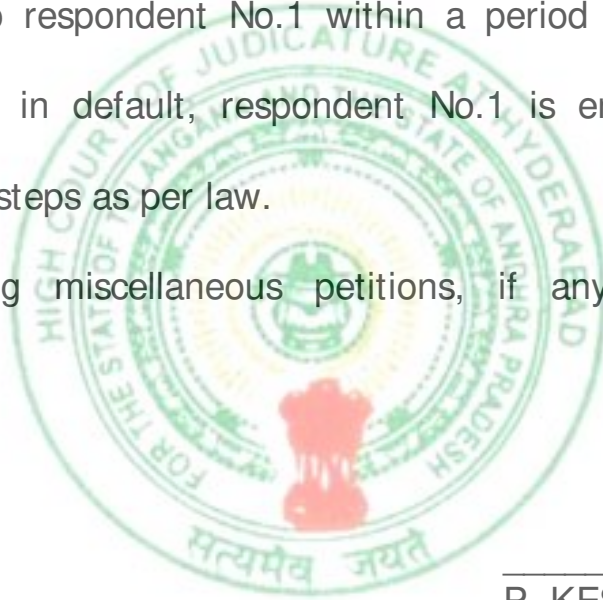
maintaining his aged parents. Thus, in all, he is maintaining six persons. As far as the financial capacity of the petitioner is concerned, he is working as a Supervisor in Naresh Kumar & Co., Pvt., Ltd., and drawing a salary of Rs.7,195/- p.m. To prove the same, he has produced the salary certificate marked as Ex.B1. As such, learned counsel contends that enhancement of maintenance to respondent No.1 at Rs.2,500/- p.m. is excessive compared to the salary which the petitioner is receiving. He further contends that it is settled law that the petitioner is obligated to pay maintenance to his daughter i.e., respondent No.1 and she is expected to lead the same standard of life in which her father is living. When the petitioner is drawing a salary of Rs.7,195/- p.m. and is maintaining a family of six persons including his children for whom he is incurring expenditure for their education, awarding of Rs.2,500/- p.m. to respondent No.1 is excessive.

9. Be that as it may, the petitioner is under an obligation to meet the educational expenses and day to day maintenance of respondent No.1, being his daughter. Therefore, to meet the ends of justice, this Court is of the opinion that the maintenance as enhanced by the learned Judge, Family Court has to be reduced to Rs.2,000/- p.m.

10. Accordingly, the Criminal Revision Case is disposed of modifying the orders passed in CrI.M.P.No.164 of 2013 in F.C.M.C.No.21 of 2010 dated 21.8.2014 on the file of the Court of the Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar, by reducing the amount of maintenance from Rs.2,500/- p.m. to Rs.2,000/- p.m. to respondent No.1.

11. It is needless to observe that arrears of maintenance, if any, accrued as on today at the above rate, shall be paid by the petitioner to respondent No.1 within a period of four weeks from today, in default, respondent No.1 is entitled to take appropriate steps as per law.

Pending miscellaneous petitions, if any, shall stand closed.



P. KESHAVA RAO,J

Date: 5.10.2018

KPM