

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2889 of 2017

JUDGMENT:

The revision petitioner, who is also the revision petitioner in Criminal Revision Case No.41 of 2012, questioning the order dated 16.08.2017, in M.C. No.423 of 2015, passed by the learned Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Judge, Hyderabad, whereby and whereunder monthly maintenance of Rs.4,000/- to the 1st respondent and Rs.3,000/- each to the respondents 2 and 3 was granted, filed the Criminal Revision Case under Sections 397 and 401 of the Criminal Procedure Code, 1973 (for short, 'Cr.P.C.').

2. Heard Sri D. Krishna, learned counsel for the revision petitioner.

3. The present Criminal Revision Case is disposed of at the admission stage itself having opined that no notice need be addressed to the respondents 1 to 3.

4. Learned counsel for the petitioner would submit that the Court below was not right in overlooking the interim monetary relief awarded in CrI. M.P.No.1414 of 2011 in D.V.C. No.35 of 2011 on the file of IV-Metropolitan Magistrate, Hyderabad, which was modified to that of Rs.5,000/- from Rs.7,000/- in Criminal Revision Case No.41 of 2012. His submission is that in view of the direction given by this Court by way of interim order in Criminal R.C. No.41 of

2012, dated 19.1.2017, Disbursing Officer has been deducting Rs.5,000/- towards interim monetary relief regularly, and, therefore, ought not to have granted any amount towards maintenance of respondents 1 to 3.

5. It is necessary to mention that the Criminal Revision Case No.41 of 2012 is disposed of today separately, since the said Revision case was preferred only against the interim order and direction was given to the learned Magistrate to dispose of D.V.C. within two months from the date of receipt of a copy of the order by reducing interim monetary relief from Rs.7,000/- to Rs.5,000/-, and also directing him keeping in view the order passed by the learned Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Judge, Hyderabad, which is under challenge herein and also considering the provisions of the Protection of Women from Domestic Violence Act, 2005.

6. As could be seen from the order under challenge, the revision petitioner has not participated at all in the enquiry. The evidence recorded by the learned Additional Family Judge, is that the 1st respondent-wife as P.W.1 and documentary evidence marked under Exs.P-1 to P-9. On behalf of the revision petitioner, none was examined. The preamble in M.C.No.423 of 2015 would show that none represented the revision petitioner and that that was the reason the order under challenge was passed by the lower Court. Perhaps as there was no other alternative left to it.

7. The main submission of the learned counsel for the petitioner is that the Court below failed to take note of Rs.5,000/- awarded by way of interim order passed by this Court in Criminal R.C. No.41 of 2012 and despite the same, granted monthly maintenance to the respondents 1 to 3 is concerned.

8. But, the findings recorded by the learned Judge, Family Court show that in paragraph-7 has assigned convincing reasons. In paragraph-7.2, he referred to the interim order passed by the learned IV-Metropolitan Magistrate, Hyderabad in CrI. M.P. No.1414 of 2011 in D.V.C.No.35 of 2011 granting interim monetary relief at Rs.7,000/- which was taken note of by this Court and while granting stay directing the revision petitioner to pay Rs.5,000/- instead of Rs.7,000/-, postponing adjudication in the said Revision Case. Therefore, it cannot be said that the Judge of Family Court totally ignored these events. What all the learned Additional Family Judge failed to show that the revision petitioner has been drawing gross salary of Rs.38,836/- and after deductions he was getting Rs.15,711/-. Admittedly, statutory deductions alone be taken into consideration, but not all other deductions. In fact, even in making statutory deductions, the husband cannot opt for maximum deductions from the salary towards GPF contribution so as to evade payment of maintenance amount to the wife and children. The learned Additional Family Court Judge, Hyderabad, also referred to the expenditure being incurred by the 1st respondent towards education as could be gathered from Exs.P-8 and P-9, which are Fee cards showing that for

the academic year 2007-08 a sum of Rs.18,900/- towards education of the 2nd respondent and Rs.17,550/- towards education of the 3rd respondent, whereas the maintenance awarded in D.V.C. was only Rs.5,000/- referring to the interim order passed by this Court. The learned Judge, Additional Family Court, Hyderabad, opined that the respondent has come forward to prevent his liability or his ability or inability to pay maintenance and pleadings put forth by him is without any value. These findings recorded by the learned Judge, Additional Family Court, Hyderabad, cannot be faulted at all. The revision petitioner failed to participate in the proceedings and the evidence of P.W.1 stands unchallenged and un-rebutted. There is no prohibition to award more than the maintenance amount claimed under Section 125 of Cr.P.C. and even the provisions of Protection of Women from Domestic Violence Act, 2005 do not prohibit granting monetary relief towards maintenance of wife and children despite the order awarding maintenance under Section 125 of Cr.P.C. The relevant provision would commence with non-obstante clause.

9. Therefore, the submission of the learned counsel for the revision petitioner is unworthy of acceptance. However, a direction is given to the D.V.C. Court as aforementioned in Criminal Revision Case No.41 of 2012.

10. When the respondent-husband is drawing gross salary of Rs.38,836/- and even excluding statutory deductions he must be getting two-third thereof.

11. For the reasons aforementioned, the amount of Rs.4,000/- towards monthly maintenance to the 1st respondent and Rs.3,000/- each to the respondents 2 and 3, in addition to the amount of Rs.5,000/- towards interim Monetary relief awarded in D.V.C. cannot be construed as arbitrary or excessive.

12. There is no merit in the present Criminal Revision Case, and, accordingly, the same is dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Revision Case shall stand closed.

Dt. 03.01.2018
gbs

A. SHANKAR NARAYANA, J

