

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE NO.3210 OF 2018

ORDER:

This revision is arising out of order, dated 12.10.2018, passed in CrI.M.P.No.588 of 2018 in M.C.No.13 of 2017 by the Addl. Judl. Magistrate of I Class, Gudur.

2. The petitioners (respondents 1 and 2 herein) filed the application under Section 125 (2) Cr.P.C. for grant of interim maintenance at the rate of Rs.9,000/- per month to the 1st petitioner and Rs.11,000/- per month to the 2nd petitioner.

3. The case of the petitioners (respondents 1 and 2 herein) is that the 1st petitioner is the wife and the 2nd petitioner is the son of the respondent. They filed the above maintenance case against the respondent. The petitioners have no movable or immovable properties. The respondent in spite of having sufficient means, neglected to maintain them. The respondent has got movable and immovable properties, own auto rickshaw and earning Rs.20,000/- per month and having landed properties at Gunapadu village, Chittamuru and getting yield of Rs.1,80,000/- per year for one crop.

4. The case of the respondent (petitioner herein) is that the 1st petitioner is doing tailoring work and earning Rs.15,000/- per month, but the 1st petitioner without any reasonable cause, she is living away from the respondent. Hence, the petitioners are not entitled for maintenance as they are having sufficient means.

5. The trial Court on consideration of material on record, partly allowed the petition directing the respondent to pay interim maintenance of Rs.5,000/- to the 1st

petitioner only every month till disposal of the main application. Aggrieved by the impugned order, the present revision is preferred.

6. The points that arise for consideration in this revision are:

1. Whether the revision is maintainable under Section 397 (2) Cr.P.C.?

2. Whether the order passed by the trial Court is illegal?

7. Heard the learned counsel for the petitioner and the perused the material on record.

8. Learned counsel for the petitioner submits that the order passed by the trial Court is erroneous as it is passed without considering the material on record.

9. As far as this contention is concerned, the very order passed by the trial Court is an interlocutory order in M.C.No.13 of 2017. The interim order cannot be challenged by way of a revision. As far as merits of the case are concerned, the order of the trial Court reveals that no evidence was adduced either by the petitioner or by the respondents and no documents were marked. The trial Court based on the pleading of the parties, granted interim maintenance as referred above. There are no grounds to interfere with the order passed by the trial Court; firstly, it is an interlocutory order of maintenance and secondly, no merits as no documents are filed by either of the parties.

10. Learned counsel for the petitioner submits that the petition filed by the respondents claiming maintenance to her and her son is not maintainable as her son is residing with the petitioner. The said fact can be proved only after

adducing the evidence by both parties. Therefore, the parties may lead their evidence before the trial Court and the trial Court may consider that aspect basing on the evidence.

11. Accordingly, the Criminal Revision Case is dismissed directing the petitioner to approach the trial Court and adduce evidence to prove the means of the respondents in the main case and the trial Court is directed to dispose of M.C.No.13 of 2017 as expeditiously as possible. Miscellaneous petitions, if any pending in this revision shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 27-11-2018
Hsd

