

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE Nos.2623 AND 3015 OF 2017

COMMON JUDGMENT:

Both these Criminal Revision Cases are directed against the order, dated 09.08.2017, in M.C. No.176 of 2012, passed by the learned Additional Metropolitan Sessions Judge for trial of Jubilee Hills Car Bomb Blast Case - cum - Additional Family Court - cum - XXIII Additional Chief Judge, Hyderabad by the husband as well as wife and minor son.

2. The husband, who is respondent in the aforesaid M.C., preferred the former Criminal Revision Case, while the wife and minor son, who are petitioners in the said M.C., preferred the latter Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code').

3. For the sake of convenience, the parties are hereinafter referred to as 'husband' 'wife' and 'son'.

4. By the aforesaid order, the learned Judge awarded monthly maintenance of Rs.5,000/- and Rs.3,000/- to the wife and minor son respectively, directing the husband to pay the arrears of maintenance within three months from the date of the petition, i.e., 30.05.2012, and to deposit regular maintenance amounts in a Nationalized Bank or Post-office where the wife would open account.

5. The husband filed the former Criminal Revision Case contending that the learned Judge failed to take note that he was working as daily wager, earning Rs.150/- per day and not doing any business in Kirana and General Stores; that the learned Judge failed to take note that his wife herself left the company voluntarily without informing him; that even the learned Judge failed to take note that he has approached the Qazi to settle the dispute and the Qazi sent a letter to the wife with a request to appear for counseling, but she failed to appear; that he has contracted second marriage and blessed with children, which the learned Judge did not take note of; and that the learned Judge failed to consider the fact of awarding interim maintenance of Rs.750/- each to the wife and son during the pendency of MC and, therefore, sought to set aside the order.

6. On the other hand, the wife and minor son preferred the latter Criminal Revision Case contending that though, they sought Rs.8,000/- to each of them towards monthly maintenance, awarding Rs.5,000/- and Rs.3,000/- to them respectively, by the learned Judge is not in accordance with the evidence on record, since the husband is earning Rs.30,000/- to Rs.40,000/- per month on his business and deriving rents of Rs.5,000/- to Rs.8,000/- per month, and the learned Judge, thus, failed to award adequate maintenance proportionately for their sustenance, therefore, sought to enhance the maintenance awarding Rs.8,000/- to each of them as claimed.

7. Heard Sri A. Ravi Shankar, learned counsel for the husband and Sri Mavidi Rama Rao, learned counsel for the wife and minor son.

8. The only comprehensive point that involved in both the Criminal Revision Cases is,

Whether the wife and minor son are entitled to separate living and whether the monthly maintenance awarded to them by the learned Judge is just and reasonable, or inadequate as contended by the wife, or whether they are not entitled to any maintenance at all as contended by the husband?

9. Perused the order under challenge and the material on record and considered the submissions made by the learned counsel respectively.

10. Now, coming to the Criminal Revision Case No.2623 of 2017 filed by the husband, nothing more is required except to look at the answer given by the husband in his cross-examination. They are sufficiently detailed in paragraph No.8.5 of the order of the learned Judge. The learned Judge opined basing on the answers given by the husband in his cross-examination that he is not a man to live on daily wages. According to the learned Judge, a house bearing door No.18-12-419/C/1614, situated at Hafeez Baba Nagar, according to the husband, stands in the name of his father. But, the learned Judge refers to the admission made by the husband that 'Basheer Kirana and General Store' is in existence in the house bearing No.18-12-

419/M/73, and observed the conduct of the husband in immediately again denying the version stating that there is no such Kirana shop in the said door number. Then, the learned Judge observes that the husband admitted that his mobile number is '9885772816', and when the learned counsel for the wife cross-examined the husband, has shown a photograph wherein the shop namely 'Basheer Kirana and General Stores, Wholesale and Retail, depicting mobile numbers '9247208152', '7396883412' and '9885772816', the husband then stated that the shop belongs to him. Basing on these answers, the learned Judge arrived at the finding that he must be deriving around Rs.30,000/- to Rs.40,000/- per month from the said Kirana Store business, which was also the case of the wife and minor son. Then the learned Judge refers to the interim maintenance awarded by the learned Magistrate in DVC at Rs.500/- per month each, and the factum of husband marrying another woman and begetting a child introduced by the husband stating that he has to maintain them as well and also observing that interim maintenance awarded in DVC case is too meager for the sustenance of wife and son, opined that Rs.5,000/- per month to the wife and Rs.3,000/- per month to the son towards their monthly maintenance would be reasonable, and accordingly awarded it.

i) When such categorical admissions are to be found in the cross-examination of the husband, the mere fact that he has contracted

second marriage and begotten a child that he is obligated with the duty to maintain them and that he is the only breadwinner is no ground to award inadequate monthly maintenance to the wife and son. These admissions, would in fact, completely belie his stand that he is a daily wage, earning Rs.150/- per day and it appears that he invented it for the purpose of evading the maintenance sought for by the wife and son feebly contending that his wife and son left his society on their own volition, without placing anything on record to substantiate that stand. Therefore, there is no merit in the Criminal Revision Case filed by the husband and, accordingly, the same deserves to be dismissed.

11. Turning to the Criminal Revision Case No.3015 of 2017 filed by the wife and son, the maintenance case relates to the year 2012 and the earnings as on that date were required to be kept in view and the amounts awarded by the learned Judge towards monthly maintenance to the wife and son cannot be viewed as totally inadequate, as besides the said amounts, they have been getting Rs.500/- per month by way of interim relief in DVC case. Thus, there is no merit in the present Criminal Case also. However, it is open to the wife and minor son if they so choose to seek enhancement as sufficient period elapsed from the date of filing the maintenance case.

12. Accordingly, both the Criminal Revision Cases are dismissed, confirming the order passed by the learned Judge, Additional Family Court, Hyderabad, in the aforesaid M.C.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the criminal revision case, stand closed.

A. SHANKAR NARAYANA, J

January 02, 2018.
Mgr

