

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Petition No.233 of 2019

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C'), is filed by the petitioner/husband to set aside the order of maintenance granted in M.C.No.10 of 2012, dated 05.12.2016, by the Judicial First Class Magistrate, Bhadrachalam, as confirmed in Criminal Revision Petition No.84 of 2016, dated 04.09.2018, by the V Addl. Sessions Judge, Kothagudem, wherein the respondents 2 and 3/wife and son, respectively, were granted maintenance of Rs.4,000/- and Rs.2,000/- per month, from the date of filing of petition.

2. Heard the learned counsel for the petitioner/husband, the learned Additional Public Prosecutor representing the respondent No.1/State and the learned counsel for the respondents 2 and 3/wife and son and perused the record.

3. Learned counsel for the petitioner/husband vehemently contended that the learned Magistrate granted maintenance from the date of application without assigning any reasons which is mandatory under Section 125 (2) of Cr.P.C. In support of his submission, he relied on the decision in *JAIMINBEN HIRENBHAI VYAS AND ANOTHER v. HIRENBHAI RAMESHCHANDARA VYAS AND ANOTHER*¹.

¹ (2015) 2 SCC 385

4. On the other hand, learned counsel for the respondents 2 and 3/wife and son, would contend that both the Courts below justified in passing the orders and there is no unreasonable circumstance to interfere with the orders impugned and ultimately prayed to dismiss the petition.

5. The only question that falls for adjudication is “Whether the Courts below are justified in granting the maintenance from the date of application?”

6. Under these circumstances, it is appropriate to refer to the provision under Section 125 (2) Cr.P.C, which is as under:

“125. Order for maintenance of wives, children and parents.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.”

7. At this juncture, it is also apt and appropriate to refer to the decision of the Hon’ble Apex Court in *JAIMIN BEN HIRENBHAI VYAS AND ANOTHER (supra)*, wherein at paragraph No.6, it was held as follows:

“6. In *Shail Kumari Devi v. Krishan Bhagwan Pathak*² this Court dealt with the question as to from which date a Magistrate may order payment of maintenance to wife, children or parents. In *Shail Kumar Devi*, this Court considered a catena of decisions by the various High Courts, before arriving at the conclusion that it was incorrect to hold that, as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. It is, therefore, open to the Magistrate to award

² (2008) 9 SCC 632, paras 39-41; (2008) 3 SCC (CrI) 839

maintenance from the date of application. The Court held, and we agree, that if the Magistrate intends to pass such an order, he is required to record reasons in support of such Order. Thus, such maintenance can be awarded from the date of the Order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary.?

8. As seen from the above provision of Section 125 (2) Cr.P.C and the decision of the Hon'ble Apex Court in *JAIMINBEN HIRENBHAI VYAS AND ANOTHER (supra)*, reasons are expressly required to be recorded when maintenance is granted from the date of filing of application. A perusal of the order passed by the learned Magistrate in M.C.No.10 of 2012, dated 05.12.2016, would disclose that no reasons are assigned by the learned Magistrate for granting maintenance from the date of application. The learned Magistrate in the conclusion para of the order granted maintenance from the date of filing of application. Therefore, it can safely be concluded that the learned Magistrate granted maintenance from the date of filing of application without assigning any reasons, which is mandatory in view of the language envisaged under Section 125 (2) of the Cr.P.C and the above referred judgment.

9. Under these circumstances, the impugned order of maintenance granted in M.C.No.10 of 2012, dated 05.12.2016, by the Judicial First Class Magistrate, Bhadrachalam, as confirmed in Crl. Revision Petition No.84 of 2015, dated

04.09.2018, by the V Addl. Sessions Judge, Kothagudem, is set aside to the extent of granting maintenance from the date of filing of application in M.C.No.10 of 2012 and the said M.C. is restored to the file of the Judicial First Class Magistrate, Bhadrachalam, to pass orders with regard to the entitlement of maintenance of wife and son from the date of filing of application. The petitioner herein shall continue to pay the maintenance as awarded by both the Courts below from the date of order passed in M.C.No.10 of 2012 i.e., 05.12.2016 since grant of such maintenance is not faulted by this Court.

10. With the above observations, the Criminal Petition is allowed in part. Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

08th April, 2019
grk