

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No.7158 OF 2019

ORDER:

1) The present Criminal Petition is filed under Section 482 of Cr.P.C., seeking to quash the order dated 07.01.2019 passed in CrI.M.P.No.1223 of 2016 in M.C.No.29 of 2007 on the file of the Judicial Magistrate of First Class, Parigi, wherein and where under the learned Magistrate enhanced the maintenance from Rs.3,000/- to Rs.10,000/- per month.

2) The facts in brief are that; the 2nd respondent is the wife of the petitioner. The 2nd respondent herein filed M.C.No.29 of 2007 seeking maintenance. By an order, dated 30.10.2009, the learned Junior Civil Judge, Parigi, granted monthly maintenance of Rs.1500/-, which was modified by the Senior Civil Judge at Vikarabad in CrI.M.P.No.659 of 2008 in O.P.No.33 of 2007. While so, the 2nd respondent-wife filed CrI.M.P.No.1223 of 2016, under Section 127 (2) of Cr.P.C. seeking to enhance the maintenance from Rs.3,000/- to Rs.20,000/- stating that she is unable to maintain herself with the meager amount of Rs.3,000/- and the petitioner-husband is getting Rs.69,354/- per month. By an order, dated 07.01.2019, the learned Magistrate enhanced the maintenance from Rs.3,000/- to Rs.10,000/-. Challenging the said order, the present Criminal Petition is filed by the petitioner-husband.

3) As seen from the record, there is no dispute with regard to the relationship of the petitioner with the respondent. Learned counsel for the petitioner only submits that the quantum of maintenance enhanced by the learned Magistrate is on higher side and hence seeking reduction of the same. He submits that the petitioner has to bear the educational expenses of his two daughters and also the medical expenses of his mother. The same is opposed by the counsel for the 2nd respondent and he submits that the petitioner is working as F.S.O. in Forest Department and he is getting Rs.69,354/- per month. He further submits that the deductions cannot be taken into consideration while awarding maintenance.

4) In view of the fact that there is no dispute with regard to relationship, the question would be whether the 2nd respondent is entitled for any enhancement of the maintenance?

5) A perusal of the material on record would show that the petitioner is getting gross salary of Rs.69,355/- as he is working as F.S.O. in Forest Department. After deductions the net pay which the petitioner gets is Rs.41,125/-.

6) The issue as to whether the deductions are taken into consideration or not is came up for consideration before the Apex Court in *Bhushan Kumar Meen v. Mansi Meen @ Harpreet Kaur*¹, it was a case where the trial Court granted a sum of Rs.10,000/- per month as interim maintenance, which was confirmed by the

¹ (2010) 15 SCC 372

Sessions Court as well as the High Court. The argument advanced by the learned counsel for the husband before the Apex Court was that he was receiving a sum of Rs.9,000/- after deductions. In the said case, monthly salary of the husband was Rs.34,900/- out of which Rs.21,329/- was deducted towards home loan. After deductions, his carrying home salary was Rs.9,000/-. Having regard to the said circumstances and since the wife in the said case was educated lady who will be in a position to maintain herself in future, the Apex Court reduced the interim maintenance from Rs.10,000/- to Rs.5,000/-.

7) From the judgment of the Apex Court referred to above, though the take home salary of the husband therein was Rs.9,000/- the Apex Court awarded a sum of Rs.5,000/- instead of Rs.10,000/- which is almost just less than above half of his carry home salary. In the instant case, take home salary of the petitioner was Rs.41,125/-.

8) In view of the escalation of the cost of living, the expenditure which is incurred in day to day life and having regard to the facts and circumstances of the case, the quantum of monthly maintenance awarded to the 2nd respondent is reduced from Rs.10,000/- to Rs.7,000/-.

9) Accordingly, the Criminal Petition is disposed of reducing the monthly maintenance from Rs.10,000/- to Rs.7,000/- to the 2nd respondent-wife. The petitioner is directed to pay the arrears of maintenance calculating at Rs.7,000/- per month to the 2nd

respondent, from the date of order 07.01.2019, within a period of two months from today and shall continue to pay the said maintenance on or before 10th of every succeeding month.

10) Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE G. SRI DEVI

10.12.2019
gkv



