

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.3322 of 2018

ORDER :

The petitioner is the respondent in DVC.No.142 of 2016, maintained by the 1st respondent herein, no other than his wife. For the interim protection order also claimed, in CrI.M.P.No.1457 of 2017, towards interim maintenance and the same was ordered in the claim of Rs.20,000/- per month, by the impugned order, dated 06.02.2018, by the learned IV Metropolitan Magistrate, Hyderabad, pending the disposal of the DVC @ Rs.12,000/- per month and the lower appellate Court where appeal maintained by him unsuccessfully under Section 29 of the Protection of Women from Domestic Violence Act, 2005, confirmed the same by dismissal order, dated 14.08.2018, which is the subject matter of the present revision impugment.

2. Heard both sides and perused the impugned orders and the grounds of revision.

3. Before the learned Magistrate, the counter of the respondent while denying liability and disputing what she alleged about his avocation and income stated particularly at para 9, last but second para that respondent No.1 has no source of income and his only source of income is from his job as Assistant Doctor and presently he is earning Rs.37,000/- and odd incurring expenses of Rs.29,000/- towards loan payment and house rent, etc. He did not file any proof regarding what are the loans, when he incurred and what is the house rent, under what document. No doubt in FIR of Crime No.114 of 2018, dated 11.05.2018, filed by the

revision respondent/DVC petitioner against the DVC respondent/revision petitioner supra among others for the offences punishable under Sections 420, 506 & 120-B of Indian Penal Code, 1860, averred that though he pretended as a doctor, he is not but an assistant to a physician for Rs.16,000/- salary. A statement for purpose of FIR cannot be taken as unrebutted admission or unexplained admission, as subsequent to that in the maintenance case, she claimed that he is a doctor and earning about Rs.50,000/- per month as Assistant Doctor at Citizen Hospital, Lingampally, whereas he claims as Assistant Doctor earning only Rs.37,000/- per month gross. Under Section 106 of the Indian Evidence Act, 1872, the burden is on him by producing his salary certificate, which he did not, so also, what are the permissible deductions and what are the loans, if at all to claim.

4. No doubt as laid down by the Apex Court in **Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy**¹, following the expression in **Kulbhushan Kumar v. Raj Kumari**² and among other, observed that 25% of the husband's net salary would be just amount to be awarded as maintenance to the wife and further observed the quantum of maintenance is always depending upon factual situation of each case and Courts would be justified in moulding the claim for maintenance by considering various factors. Thus, it is only a guiding and not a strict yardstick to apply in all cases only as if a permanent yardstick of 1/4th. In the factual scenario, his own admission shows as Assistant Doctor and getting Rs.37,000/- per month and when no proof regarding any

¹ (2017) 14 Supreme Court Cases 200

² (1970) 3 SCC 129

loans and salary certificate not even filed, it is just to consider 1/4th of the said amount mentioned by him or reasonably with little increase to it by reducing from Rs.12,000/- per month of what was awarded of 1/3rd of the gross salary is on high side, thereby reduced to Rs.10,000/- per month, which is without prejudice to the main case of DVC for ultimate final determination from evidence being adduced with reference to the said quantum and the expenses or loans, etc., to be incurred out of the earnings.

5. Accordingly and in the result, the Criminal Revision Case is partly allowed by reducing from Rs.12,000/- to Rs.10,000/- per month. In other respects, the order no way requires interference. Time for payment of arrears granted six (06) weeks from the date of receipt of a copy of this order. If not paid, without further reference to this Court, the entire order may be executed and recovered as supra. The lower Court shall make every endeavour for disposal of the DVC within three (03) months from the date of receipt of a copy of this order.

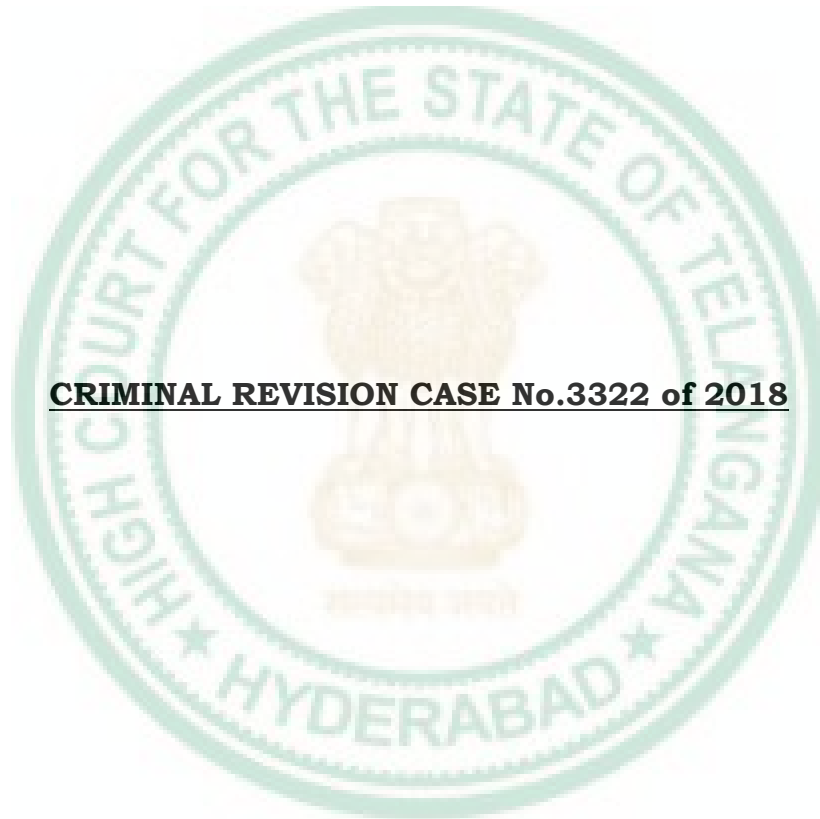
Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 2nd April, 2019

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