

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE Nos.3483 of 2018 & 3505 of 2018

COMMON ORDER :

Heard both sides and perused the grounds of the respective revisions and the impugned orders in CrI.M.P.No.185 of 2018 in M.C.No.344 of 2016, docket order, dated 14.08.2018, under Section 125 (3) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), in ordering attachment of salary of the respondent, husband of the 1st petitioner and father of the 2nd minor petitioner of the said M.C. and the CrI.R.C.No.3505 of 2018 maintained impugning the maintenance order in said M.C. on 28.10.2017 passed by the learned Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-IX Additional Metropolitan Sessions Judge, Hyderabad.

2. A perusal of the order shows the respondent having been served initially appeared before the Court in the proceedings under Sections 125 & 126 Cr.P.C., later failed to file counter and failed to attend despite several adjournments and thereby, the right to file counter also forfeited and from the evidence adduced by the 1st petitioner as P.W.1 with reference to Exs.P-1 to P-6 and from the no cross-examination of her by the respondent having been called absent with no representation, awarded maintenance @ Rs.20,000/- per month to the 1st petitioner and Rs.10,000/- per month to the 2nd petitioner from the date of filing of the M.C.No.344 of 2016 supra from 08.09.2016 with a direction to pay arrears within three (03) months and future maintenance every month by remitting to the bank account being opened by the 1st petitioner, else to execute. It is pursuant to the said maintenance

order, when execution petition filed in Crl.M.P.No.185 of 2018, salary attachment ordered supra. In fact from the very wording of sub-section 2 of Section 126 Cr.P.C., it is not only the initial non-appearance by honouring summons or avoiding summons, but also subsequent non-participation is also a ground, if it is a just to consider to set aside any order passed practically *ex parte* from the very proviso of Sub-section 2 of Section 126 Cr.P.C., leave about any personal difficulty to attend the Court can ask for dispensing with from the very sub-section 2 of Section 126 Cr.P.C. without need of filing any special vakalath under Section 205 Cr.P.C., once representing through Advocate for even evidence recorded when representing through Advocate is valid evidence under Section 273 Cr.P.C.

3. Having regard to the enabling provision, the revision petition and the execution petition are disposed of by giving liberty to the revision petitioner to file application under Section 126 (2) Cr.P.C. within one (01) week from the date of receipt of a copy of this order to set aside the impugned order and any such application filed, the learned Judge, Family Court, shall entertain without reference to limitation by virtue of this order. Sofar as the maintenance order now in force @ Rs.30,000/- per month concerned, same also not now chosen to interfere, but for to urge before the learned Magistrate to consider as interim maintenance, if the sum is otherwise excessive to show reasonable material to re-fix by reducing.

4. Subject to the above observations, both the Criminal Revision Cases are disposed of with a direction to Disbursing

Officer to deduct 50% of the gross salary towards arrears every month so that the revision petitioner/maintenance claim respondent claimed to be suffering from cancer and other ailments with other loans.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 2nd April, 2019

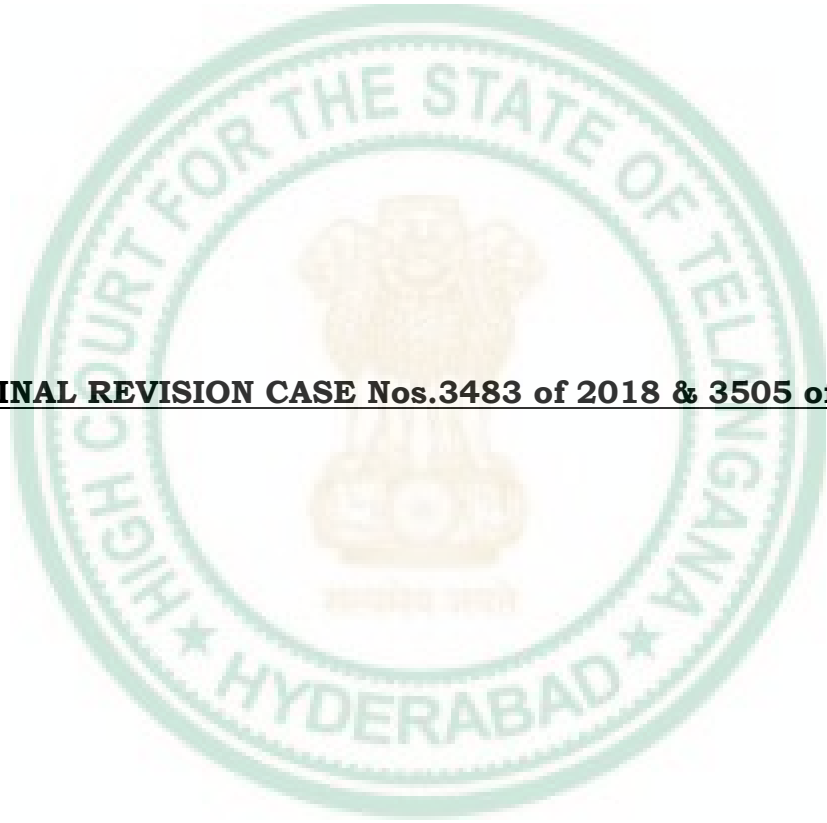
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