

THE HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL REVISION CASE No.1647 of 2009

O R D E R:

This Criminal Revision Case is filed aggrieved by the Orders dated 07.07.2009 in M.P.No.425 of 2008 in M.C.No.167 of 2006 passed by the learned Additional Family Judge-cum-Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-XXIII Additional Chief Judge, Hyderabad enhancing monthly maintenance from ₹5,000/- to ₹7,500/-.

02. The facts in brief are as under: the mother of the petitioner has filed M.C.No.167 of 2006 on the file of learned Additional Family Judge-cum-Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-XXIII Additional Chief Judge, Hyderabad, seeking maintenance to herself and her son the petitioner herein against the respondent who is harassing her. After full-fledged enquiry, the petition was allowed wherein the petitioner was granted a monthly maintenance of ₹5,000/-.

03. M.P.No.425 of 2008 in M.C.No.167 of 2006 was filed before the trial Court by the son of the respondent

seeking for enhancement of monthly maintenance from ₹5,000/- to ₹20,000/- under Section 127 of Cr.P.C. It is alleged that as on the date of granting of maintenance of ₹5,000/- in M.C.No.167 of 2006 the petitioner was aged about 1 ½ years and as on the date of filing of the application under Section 127 Cr.P.C., in M.P.No.425 of 2008 in M.C.No.167 of 2006 the petitioner was admitted in Castle Town High School, Rajiv Nagar, Erragadda, Hyderabad in Nursery and the petitioner's mother has spent about ₹20,000/- towards his admission. The petitioner's mother sought the petitioner to be admitted in Jubilee Hills Public School, Jubilee Hills, Hyderabad and for securing an amount of ₹1,50,000/- required the petitioner's mother has paid the said amount by raising amount from her father's friend and repaid by taking loan from the bank. She has also borrowed ₹50,000/- from her brother who is working in Abu Dabhi and she has paid ₹23,500/- towards transportation and school fee of Jubilee Public High School, Jubilee Hills, Hyderabad. As the petitioner has grown up and needs have increased the amount which was awarded to the tune of ₹5,000/- per month to the petitioner is not sufficient. It is

submitted in the petition before the trial Court that the respondent is getting ₹1,40,000/- per month and he is trying to show less amount as his income and sought for increasing the maintenance.

04. The respondent has filed detailed counter in the said petition before the trial Court and opposed the allegations in respect of income and submitted that he does not have any movable property including car, as alleged and he was having a car but has purchased by raising a loan for which he has been paying ₹20,000/- per month and he has been paying ₹14,000/- towards housing loan. The petitioner's mother is working in multinational company and earning ₹75,000/- per month and having her own house. Respondent is getting a net salary of ₹65,000/- per month and therefore sought for dismissal.

05. On considering the both rival contentions, the trial Court Judge by way of Order dated 07.07.2009 in M.P.No.425 of 2008 in M.C.No.167 of 2006 has allowed the application and enhanced monthly maintenance from ₹5,000/- to ₹7,500/-.

06. Aggrieved by the same, the present Criminal Revision Case is filed on following grounds:

- i. The trial Court should have seen that the respondent is earning ₹ 1,25,000/- per month which was a gross salary and not the net salary.*
- ii. The observation of the trial Court that second marriage performed by the respondent will not come in any way in enhancing the maintenance amount, is incorrect.*
- iii. The trial Court should have been considered that as the needs of the petitioner increased the needs of the respondent in the day-to-day life also increased and therefore, sought for setting aside the order of the trial Court.*

07. Heard Sri Ch.Ravindra Babu, learned counsel for the petitioner as well as Sri S. Ganesh, learned Assistant Public Prosecutor for the State/Respondent No.2. No representation on behalf of the respondent No.1.

08. Now the point for determination is:

Whether the Order dated 07.07.2009 in M.P.No.425 of 2008 in M.C.No.167 of 2006 passed by the learned Additional Family Judge-cum-Additional Metropolitan

Sessions Judge for trial of JHCBBC-cum-XXIII Additional Chief Judge, Hyderabad enhancing monthly maintenance from ₹5,000/- to ₹7,500/-, is liable to be set side ?

POINT:

09. The petitioner is challenging the Orders dated 07.07.2009 in M.P.No.425 of 2008 in M.C.No.167 of 2006 passed by the learned Additional Family Judge-cum-Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-XXIII Additional Chief Judge, Hyderabad enhancing monthly maintenance from ₹5,000/- to ₹7,500/-. Originally, the maintenance granted to the petitioner was ₹5,000/- and as per the Orders under the challenge the monthly maintenance was enhanced to ₹7,500/- from ₹5,000/-.

10. As already observed, the enhancement of ₹2,500/- per month was done keeping in view of the circumstances and requirements of the petitioner in the year 2009. As on that date, the petitioner was studying in Jubilee Hills Public School, Jubilee Hills, Hyderabad and though his age is not shown that he was a minor by then. When the

main case was allowed granting maintenance of ₹5,000/-, the petitioner was aged 1½ years and by this time he must be more than 18 years.

11. It is not clear that whether the respondent is able to manage himself and does not require any maintenance at all. If at all the respondent requires enhancement of maintenance this application has to be decided basing on the circumstances prevailing in the year 2009. As of now 13 years have been passed from the date of passing orders by the trial Court. There are huge changes in respect of financial situation of the petitioner who is challenging the orders passed by the trial Court and also requirements of the respondents. Even though, if this Court takes a decision basing on the facts available, it will be futile exercise as requirements of the respondent and source of income of petitioner must have changed long ago.

12. As seen from the record, this Court has not granted any stay orders in respect of implementation of orders passed by the trial Court enhancing the monthly maintenance from ₹5,000/- to ₹7,500/-. Therefore, there is

also no complaint either from the respondent in respect of implementation orders of the trial Court, that means, the petitioner has been paying the monthly maintenance of ₹7,500/-, as directed by the trial Court.

13. There is no record before this Court that mother of the respondent is working in multinational company and getting ₹75,000/- per month. The enhancement of maintenance amount was originally sought for getting the respondent admitted in a Public School. It is not the case of the respondent that he got the school out of merit. Though it is mentioned that mother of the respondent spent ₹1,50,000/- for admission. There is no clarity as to whether that amount was spent for fee etc.,. No material is filed to that extent. The petitioner shall provide some maintenance to meet the educational expenses of the respondent. However, it does not mean that the respondent can be admitted in an International School where the maintenance would be huge which cannot be afford by the petitioner. Mother also must be contributing some money for the studies

of the respondent, however, in respect of that nothing was alleged by the petitioner herein in the trial Court.

14. Further, performing a second marriage by the petitioner will not in any way affect the enhancement of maintenance amount. One of the criteria for enhancing the maintenance amount is the requirements of the respondent who is the son of the petitioner and earnings and earning capacity of the petitioner and his basic genuine requirement like food, shelter, clothing, medical and educational expenses of his family members.

15. While considering those aspects, the trial Court is also required to consider whether the petitioner was discharging any debts etc.,. Perhaps keeping all of them in view, the trial Court has enhanced the monthly maintenance by ₹2,500/-. If the needs of the respondent are taken into consideration as mentioned in the enhancement petition and amount of ₹7,500/- per month is not sufficient. However, at the same time, the source of income and the basic requirements of the petitioner and his family are also taken

into consideration, the enhancement of ₹5,000/- to ₹7,500/- appears to be justified.

16. However, these were the facts which were prevailing in the year 2009. Now, after the lapse of 13 years the requirements of the respondents must have totally changed and the financial requirements of the petitioners could have been increased. Similarly, responsibilities could have also been increased. It is not clear that whether the respondent require any maintenance on account of education, as the respondent must be on the verge of completion of his studies and by now he could have taken up some employment as well.

17. In any case, considering the facts as on record, this Court requires to take a decision as observed above, so far as enhancement of amount from ₹5,000/- to ₹7,500/- appears to be meagre to this Court. Therefore, there is no need for interference.

18. The scope of the revision against the Orders passed by the trial Court in maintenance case, has been

dealt with extensively by the Honourable Apex Court in a case between **Pyla Mutyalamma @ Satyavathi Vs. Pyla Suri Demudu and another**¹ wherein it is held that:

*“9. In fact, we also find sufficient substance in the plea that the High Court in its revisional jurisdiction ought not to have entered into a scrutiny of the finding recorded by the Magistrate that the appellant was a married wife of the respondent, before allowing an application determining maintenance as it is well-settled that the revisional court can interfere only if there is any illegality in the order or there is any material irregularity in the procedure or there is an error of jurisdiction. The High Court under its revisional jurisdiction is not required to enter into re-appreciation of evidence recorded in the order granting maintenance; at the most it could correct a patent error of jurisdiction. It has been laid down in a series of decisions including **Suresh Mondal vs. State of Jharkhand (2006 (1) AIR Jhar. R. 153)** that in a case where the learned Magistrate has granted maintenance holding that the wife had been neglected and the wife was entitled to maintenance, the scope of interference by the revisional court is very limited. The revisional court would not substitute its own finding and upset the maintenance order recorded by the Magistrate.*

10. In revision against the maintenance order passed in proceedings under Section 125, Cr.P.C.,

¹ Judgment dated 09.08.2011 in CrL.A.No.219 of 2007 of Hon'ble Apex Court

*the revisional court has no power to re-assess evidence and substitute its own findings. Under revisional jurisdiction, the questions whether the applicant is a married wife, the children are legitimate / illegitimate, being pre-eminently questions of fact, cannot be reopened and the revisional court cannot substitute its own views. The High Court, therefore, is not required in revision to interfere with the positive finding in favour of the marriage and patronage of a child. But where finding is a negative one, the High Court would entertain the revision, re-evaluate the evidence and come to a conclusion whether the findings or conclusions reached by the Magistrate are legally sustainable or not as negative finding has evil consequences on the life of both child and the woman. This was the view expressed by the Supreme Court in the matter of **Santosh (Smt.) vs. Naresh Pal (1998) 8 SCC 447 5**, as also in the case of **Parvathy Rani Sahu vs. Bishnu Sahu (2002) 10 SCC 510**. Thus, the ratio decidendi which emerges out of a catena of authorities on the efficacy and value of the order passed by the Magistrate while determining maintenance under Section 125, Cr.P.C. is that it should not be disturbed while exercising revisional jurisdiction.”*

19. Considering the above rationale and on perusal of the entire material on record, this Court finds that there is no

irregularity or illegality and thereby it is not a case where miscarriage of justice has been done. As long as there is no irregularity, or illegality in the finding of the trial Court as to whether it was justified in granting the quantum of amount and other questions cannot be taken up and heard and finding in the Revision Case.

20. In view of the above discussion, the finding of the trial Court in Orders dated 07.07.2009 in M.P.No.425 of 2008 in M.C.No.167 of 2006 passed by the learned Additional Family Judge-cum-Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-XXIII Additional Chief Judge, Hyderabad enhancing monthly maintenance from ₹5,000/- to ₹7,500/-, cannot be interfered with and this Criminal Revision case is liable to be dismissed.

21. Accordingly, this Criminal Revision Case is dismissed. There shall be no order as to costs.

As a sequel, pending Miscellaneous Applications in this matter, if any, shall stand closed.

DR. D.NAGARJUN, J

Date: 04-Nov-2022
KHRM

THE HONOURABLE DR. JUSTICE D.NAGARJUN

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