

THE HONOURBLE DR. JUSTICE D.NAGARJUN

CRIMINAL REVISION CASE No.246 of 2022

ORDER:

This Criminal Revision Case is filed by the revision petitioner to set aside the orders dated 22.11.2021 in CrI.M.P.No.643 of 2018 in M.C.No.104 of 2010 passed by the learned II Additional Judicial Magistrate of First Class, Kothagudem, wherein monthly maintenance granted to respondent Nos.2 and 3 was enhanced from Rs.10,000/- to Rs.25,000/- to each of the respondents.

2. The facts of the case in brief as can be seen from the material available before the Court are as under:

a) The respondents Nos.2 and 3 have filed M.C.No.104 of 2010 against the revision petitioner herein, who is the husband of respondent No.2 and father of respondent No.3. In the said case, the respondent Nos.2 and 3 were granted maintenance of Rs.10,000/- per month to each of the respondent Nos.2 and 3 on 06.05.2014.

b) The respondent Nos.2 and 3 have filed Crl.M.P.No.643 of 2018 seeking enhancement of maintenance amount from Rs.10,000/- to Rs.25,000/- on the following grounds:

i) The respondent No.2 is suffering from several health issues, as such, she is incurring huge expenditure for her treatment.

ii) The respondent No.3 has completed her SCC and admitted in intermediate at Doctor's Medical Academy and fee of Rs.1,25,000/- was also paid apart from incurring huge amount for her higher studies.

iii) There was escalation in the prices from 2010.

iv) The revision petitioner is working as Civil Assistant Surgeon in Government Hospital at Siricilla and earning an amount of Rs.1,20,000/- per month apart from other works.

v) The revision petitioner has completed Post Graduation and he also has private practice as a Chest

Physician and running a hospital at Siricilla Town in the name of Surasura Chest Care Hospital and earning more than Rs.2,00,000/- per month from his private practice.

vi) The respondent No.2 had invested his earning on various other immovable properties and living a luxurious life.

vii) The respondent No.2 is leading adulterous life and having no other responsibilities or no other dependents to maintain.

c) The revision petitioner - respondent has filed counter to the petition in CrI.M.P.No.643 of 2018 on the following grounds:

i) The revision petitioner has denied that the respondent No.2 is suffering from health issues, as the respondent No.2 has failed to file documentary evidence to show that she is suffering from various health issues and that she incurred huge expenditure.

ii) Though the revision petitioner has admitted that he is working as Civil Assistant Surgeon in the Government Hospital, he denied that he is drawing monthly salary of Rs.1,20,000/-.

iii) The revision petitioner denied that he is having private practice and earning Rs.2,00,000/- by running Surasura Chest Case Hospital at Siricilla.

iv) There are no changed circumstances from the date of order as alleged by the respondents, as such the respondents are not entitled for enhancement of maintenance amount.

v) The respondent No.2 has purchased immovable properties at Jajireddygudem Village and Mandal of Suryapet District and purchased commercial lands at Gundrathimadugu Village of Konijerla Mandal of Khammam District and in turn the respondent No.2 has made open plots and sold out to various third parties and gained Rs.2 crores. The respondent No.2 by suppressing

all these facts, has filed the petition for enhancement of the maintenance amount on baseless allegations.

vi) Respondent No.2 has invested Rs.90 lakhs in Software Company at USA, which is established by her brother – in – law and drawing Rs.1,50,000/- per month also running finance business with turnover of Rs.1,50,000/-.

vii) The respondent No.2 is working as Zoology Lecturer at Wyra and drawing Rs.40,000/- per month.

3. The respondent No.2 got examined herself as PW1 and got marked Exs. P1 to P10. On the other hand, the evidence of revision petitioner was closed on 25.10.2021 on the ground that revision petitioner did not choose to adduce his evidence inspite of giving sufficient opportunity. Though the revision petitioner has cross examined PW1, he did not choose to argue the matter and since there was no representation, the arguments on behalf of the revision petitioner were treated as heard. Learned Trial Court after considering the material available before it, has allowed

Crl.M.P.No.643 of 2018 in M.C.No.104 of 2010 by enhancing the maintenance amount awarded to respondent Nos.2 and 3 from Rs.10,000/- to Rs.25,000/-.

4. Aggrieved by the same, the petitioner herein has filed the present criminal revision case on the following grounds:

a) The trial Court erred in appreciating that the revision petitioner herein is a Civil Assistant Surgeon and Nodal Officer for Covid-19 cases in District Hospital at Siricilla and thereby he could not be present before the trial court at every date of hearing.

b) The trial Court erred in closing the evidence of the revision petitioner without appreciating the fact that the revision petitioner is a doctor and nodal officer at Siricilla.

c) The trial court erred in closing the evidence of the revision petitioner on 25.10.2021, thereby granted only one month time to the revision petitioner and whereas the trial Court has granted time to the respondent No.2 from 2018 to 2021 to lead her evidence.

d) The trial Court is absolutely biased towards the revision petitioner and the same is evident from the docket orders.

e) The trial Court passed the impugned order without even looking at the counter or the documents annexed to the counter filed by the revision petitioner, which discloses that the respondent No.2 has purchased various immovable properties in her name and also alienated most of the immovable properties and thereby enriched herself.

5. Heard Sri T. Surya Satish, learned counsel for the petitioner, Sri K. Sita Ram, learned counsel for the respondent Nos.2 and 3 and Sri S. Ganesh, learned Assistant Public Prosecutor for the respondent No.1 and perused the record.

6. Now the point for determination is:

“Whether the order dated 22.11.2021 in CrI.M.P.No.643 of 2018 in M.C.No.104 of 2010 by the learned II Additional Judicial Magistrate of First Class, Kothagudem, can be set aside?

7. The main contention of the revision petitioner herein is that he was not allowed to adduce evidence on his behalf before the trial Court and that the trial Court did not consider the documentary evidence filed by him along with the counter, wherein he has clearly mentioned that the respondent No.2 has purchased several immovable properties in her name and also alienated several immovable properties to third parties and thereby the respondent No.2 has enriched. The reason assigned by the revision petitioner for his non appearance before the trial Court to adduce his evidence is that he is working as Civil Assistant Surgeon and as a Nodal Officer for Covid-19 cases in District Hospital at Siricilla.

7. Learned counsel for the revision petitioner has vehemently contended that he had no opportunity to be present and to give evidence on his behalf and speak the contents of the counter and the trial Court has erred in closing the evidence, on account of which lot of prejudice is caused. On the other hand, the learned counsel for the respondent Nos.2 and 3 submitted that though ample

opportunity was given to the revision petitioner to be present before the Court, he failed to appear before the Court and thereby, the trial Court has rightly closed the evidence on behalf of the revision petitioner.

8. The respondent No.2 has not disputed the fact that the revision petitioner is working as Assistant Civil Surgeon in Government Hospital at Siricilla and was a Nodal Officer for Covid-19 cases in District Hospital at Siricilla. It is obvious that during the Covid-19 pandemic, Government Machinery, more particularly the hospitals and hospital related departments were fully geared up to deal with pandemic and they were directed to attend the covid patients and at times leaves to the medical staff were also rejected. Therefore, the reason assigned by the revision petitioner for not appearing before the Court appears to be reasonable. The very fact that the revision petitioner, who has come up to this Court challenging the order, indicates that he is seriously contesting the matter. Therefore, the contention of the respondents that the

revision petitioner has deliberately avoided to appear before the trial Court, is not convincing.

9. The trial Court has passed the impugned orders taking into consideration of the material produced by the respondent Nos.2 and 3, as the revision petitioner – respondent could not attend the Court and give evidence. Considering the same, this Court is of the opinion that it is a fit case, where the matter can be remanded back to the trial Court with a direction to record the evidence of revision petitioner – respondent and permit learned counsel for the respondent Nos.2 and 3 to cross examine the revision petitioner herein and after giving an opportunity to both the sides to decide the matter afresh.

10. In the result, the Criminal Revision Case is allowed by setting aside the order dated 22.11.2021 in CrI.M.P.No.643 of 2018 in M.C.No.104 of 2010 by the learned II Additional Judicial Magistrate of First Class, Kothagudem and accordingly, the matter is to be remanded back to the trial Court with a direction to record the evidence of the revision petitioner – respondent and permit

learned counsel for the respondent Nos.2 and 3 to cross examine the revision petitioner herein and after giving an opportunity to both the sides, the trial Court is directed to decide the matter afresh, as quickly as possible, within the period of (06) months from the date of receipt of the copy of this order. Further, this Court is of the opinion that until the trial Court completes the enquiry, the revision petitioner is directed to pay the enhanced amount of Rs.25,000/- each to respondent Nos. 2 and 3.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

Date: 05.12.2022
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DR. D.NAGARJUN, J