

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

CRIMINAL REVISION CASE No.1306 of 2019

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of Cr.P.C., is filed by the petitioner/father, challenging the order, dated 21.08.2019, passed in M.C.No.206 of 2018 by the learned Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, whereby, the subject Maintenance Case filed by the respondent No.1 herein/minor son of the petitioner herein being represented by his mother, seeking monthly maintenance of Rs.20,000/- from the date of petition, was allowed directing the petitioner/father to pay monthly maintenance of Rs.10,000/- to the respondent No.1 herein/minor son from the date of petition till the date of his attaining majority and thereafter, the same amount towards his educational expenses till his attaining the age of 23 years or securing job, whichever is earlier, and further directing to pay the arrears of maintenance within five months from the date of the said order and continue to pay the maintenance on or before 05th of every succeeding month from the month of August, 2019.

2. I have heard the submissions of Sri Pawan Kumar Agarwal, learned counsel for the petitioner/father, Sri Maniklal Yadav, learned counsel for the respondent No.1/minor son and perused the record.

3. Learned counsel for the petitioner/father would contend that the impugned order, dated 21.08.2019, is an *ex parte* order passed without hearing the petitioner/father. The petitioner/father was set *ex parte* by the Court below on 15.11.2018. In fact, the petitioner/father did not receive any notice or summons from the Court below. Subsequently, after coming to know about setting him *ex parte*, the petitioner filed a petition before the Court below under Section 126(2) of Cr.P.C. to set aside the *ex parte* order dated 15.11.2018, but the same was returned by the Court below on the ground that the said petition was barred by limitation. Thereafter, the petitioner/father resubmitted the said petition, but however, the same was not accepted by the Court below and hence, the petitioner/father could not challenge the *ex parte* order, dated 15.11.2018, passed by the Court below. The petitioner/father was deprived of his legal right to contest the subject case and putforth his defence and bring the real facts to the notice of the Court below. The subject Maintenance Case was

filed by suppressing the material facts. The mother of the respondent No.1 herein/minor son (wife of the petitioner) had filed various cases against the petitioner/father with false allegations. The mother of the respondent No.1 herein/minor son is a working woman and she is also doing modelling work and earning sufficiently. Though no case of grant of maintenance is made out against the petitioner/father, the Court below granted exorbitant amount towards maintenance apart from other directions, which is erroneous and ultimately prayed to allow the Criminal Revision Case as prayed for.

4. On the other hand, learned counsel for the respondent No.1/minor son would submit that though reasonable opportunity was provided to the petitioner/father to putforth his defence, he did not come forward to do so and hence he was set *ex parte* by the Court below. Further, the Court below, after adverting to the facts of the case in great detail and after considering the oral and documentary evidence on record, rightly granted monthly maintenance of Rs.10,000/- to the respondent No.1/minor son and rightly ordered the petitioner/father to pay the same amount towards educational expenses of respondent No.1/minor son till his attaining the age of 23 years or securing the job whichever is

earlier, apart from, directing the petitioner to pay arrears of maintenance. The respondent No.1 is the legitimate son of the petitioner herein and it is the bounden duty of every father to maintain his son. The order under challenge does not warrant any interference by this Court in exercise of revisional jurisdiction under Sections 397 and 401 of Cr.P.C. and ultimately prayed to confirm the order under challenge and dismiss the criminal revision case.

5. In view of the above rival contentions, the point that arises for determination in this Criminal Revision Case is as follows:

“Whether the order dated 21.08.2019 passed in M.C.No.206 of 2018 by the learned Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, is legally sustainable?”

POINT:

6. The material placed on record reveals that the respondent No.1 herein/minor son of the petitioner, being represented by his mother, had filed the subject M.C.No.206 of 2018 under Section 125 of Cr.P.C. seeking maintenance from the petitioner/father. The subject M.C.No.206 of 2018 was disposed of by the Court below vide order, dated 21.08.2019, by setting the petitioner/father *ex parte*. The petitioner/father filed a petition

under Section 126(2) Cr.P.C. seeking to set aside the *ex parte* order dated 15.11.2018, on 07.05.2019. However, the said petition was returned by the office of the Court below with the following objection:

“How this petition is within time under Section 126(2) Cr.P.C. Hence, returned as not maintainable”

The petitioner/father resubmitted the petition on 19.07.2019 along with a delay condone petition. It is the case of the petitioner/father that though he resubmitted the petition along with the application for condonation of delay, the same was not accepted by the Court below and while so, the impugned order, dated 21.08.2019, came to be passed by setting him *ex parte*.

7. Be that as it is. Admittedly, the impugned order, dated 21.08.2019, is an *ex parte* order. In catena of decisions, the Hon'ble Apex Court held that litigation should not be terminated by default, either of the petitioner or the respondent, and that adjudication of litigation is to be done on merits as far as possible. In the instant case, there is record to show that the petitioner/father filed a petition to set aside the *ex parte* order, dated 15.11.2018, on 07.05.2019. The matter arises from a maintenance case. It may be true, that the respondent No.1/minor son has got a strong case in his favour, but however,

that does not mean that the relief sought by him can be straight away granted without affording an opportunity to the petitioner/father to putforth his defence. In my considered view, justice demands that an opportunity should be given to the petitioner/father to contest the case and putforth his defence. As noticed above, the cause of justice requires that as far as possible, adjudication of a matter should be done on merits. An obligation is cast on the Court to follow the cardinal principle of *audi alteram partem* and give an opportunity to the parties of being heard before making an order referring the dispute.

8. For the foregoing reasons, this Court deems it appropriate to set aside the order under challenge and remit the matter to the Court below for disposal of the subject M.C.No.206 of 2018 afresh, after affording opportunity to both the parties, which course, in the considered opinion of this Court, would meet the ends of justice.

9. Accordingly, without expressing any opinion on the merits of the matter, the impugned order, dated 21.08.2019, passed in M.C.No.206 of 2018 by the learned Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, is set

aside. Consequently, M.C.No.206 of 2018 stands restored to the file of the Court below. The Court below is directed to dispose of the subject M.C.No.206 of 2018 afresh, after affording opportunity to both the parties. Since the subject Maintenance Case is sufficiently old, the Court below shall dispose of the same as expeditiously as possible, at any rate not later than four (4) months from the date of receipt of a copy of this order.

10. With the above observations/directions, the Criminal Revision Case is disposed of.

Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

JUVVADI SRIDEVI, J

Date: 23.01.2023
SSP / BVV