

APHC010603142023



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3365]

TUESDAY ,THE SIXTEENTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR

CRIMINAL REVISION CASE NO: 1115/2023

Between:

Palaparathi Shebha and Others

...PETITIONER(S)

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner(S):

1.ARRABOLU SAI NAVEEN

Counsel for the Respondent(S):

1.PUBLIC PROSECUTOR (AP)

2.SURESH KUMAR REDDY KALAVA

The Court made the following:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR
CRIMINAL REVISION CASE No.1115 of 2023

ORDER:

1. This criminal revision filed under Sections 397 and 401 of the CrPC impugns the order passed by learned Sessions Judge, Mahila Court, Visakhapatnam on 10.08.2023 in Crl.A.No.97 of 2021. A married woman and her minor child are the revision petitioners herein. Respondent No.2 is the husband of 1st petitioner and father of 2nd petitioner. Respondent No.1 is State.

2. DVC.No.22 of 2018 on the file of learned IV Additional Chief Metropolitan Magistrate, Visakhapatnam is under section 12 seeking reliefs under sections 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005. The married woman and her minor child filed such application as against R2 herein and six others.

3. During the pendency of the said DVC, the aggrieved woman and her child filed Crl.M.P.No.1110 of 2019 under section 23 of the Act, 2005 seeking various interim measures. After due enquiry, by an order dated 20.08.2019, the learned trial court passed the order in the following terms: -

“a. The 1st respondent is directed to pay Rs.20,000/- and Rs.10,000/- P.M respectively to the 1st and 2nd petitioner

towards monthly maintenance as interim from the date of filing of petition i.e., 24.04.2019, till the disposal of the main case. The 1st respondent is also directed to pay arrears of maintenance amount within one month. The payment must be on or before 10th of every month. Otherwise, the petitioner is at liberty to take legal steps to recover the amount from 1st respondent.

b. The rest of the prayer claimed by the petitioner is hereby dismissed.”

4. Aggrieved by that order, the respondent/ husband preferred Crl.A.No.97 of 2021 before the learned Sessions Judge, Mahila Court, Visakhapatnam. After due hearing, by an order dated 10.08.2023, it partly allowed the appeal and the operative portion of the order reads as below: -

“As a result, the appeal is allowed in part confirming the interim maintenance as ordered by the learned IV Additional Chief Metropolitan Magistrate, Visakhapatnam @ Rs.20,000/- and Rs.10,000/- respectively to the Respondents 1 and 2 herein but the same is ordered be paid from 01.04.2022 instead of the date of the petition i.e., 24.04.2019.”

5. Thus, the learned appellate court agreed with the decision of the learned trial court with reference to the legal need and necessity on part of the husband in maintaining his wife and minor child and also affirmed the quantum of monthly

maintenance. However, the learned appellate court modified the trial court's order only with reference to the date from which the awarded maintenance amounts were to be paid. Learned trial court granted interim maintenance from the date of application i.e., on 24.04.2019. Whereas the appellate court set aside that part of the order and directed the interim maintenance to be paid from 01.04.2022.

6. Aggrieved by that modification, the woman and the child preferred this revision.

7. Heard Sri A.Sai Naveen, the learned counsel for revision petitioners and Sri K. Suresh Kumar Reddy, the learned counsel for respondent No.2.

8. Learned counsel for revision petitioners submits that the learned appellate court modified the trial court's order on facts which were never part of the record and the modification is not inconsonance with the law laid down in **Rajnish V. Neha**¹. The error requires immediate correction as the effect of the erroneous order would make the revision petitioners to lose Rs.9,90,000/-. Therefore, in this revision, this court may have to interfere.

9. Learned counsel for respondents submits that it is only a matter of interim measure that was granted and considering the true facts, the learned appellate court modified the order of the learned trial court and the modification ordered by the appellate

¹2021 (2) SCC 324

court cannot be considered as causing any injustice especially when the main DVC is still pending and therefore the revision powers of this court may not be exercised in this case and the revision may be dismissed.

10. The point that falls for consideration is: -

“Whether the impugned order suffers from illegality or irregularity or impropriety requiring any interference?”

POINT: -

The fact is that R2/ husband is an employee in Bank of America earning Rs.93,000/- per month. This is seen from the affidavit of assets and liabilities filed by him before the trial court. After considering the rival contentions and material placed before it, the learned trial court and also the learned appellate court affirmed and held that the husband/R2 has been earning Rs.93,000/- per month towards his salary.

11. Learned trial court granted interim maintenance to be paid from the date of filing of the petition i.e., on 24.04.2019 and the appellate court modified it and directed the said payments to be from 01.04.2022. Learned appellate court recorded that for a period of nearly three years, there was out spread of corona and salaries were not given to private employees and therefore directing such husband to pay maintenance from the date of petition is improper and hence it modified the said order and granted maintenance to be paid from 01.04.2022. During the

course of hearing of this revision, it is undisputed on both sides that as a matter of fact, it was never pleaded by the husband that because of corona pandemic, he lost his job or that he did not receive salaries. Therefore, it is clear that the facts that influenced the reasoning of the appellate court were the facts that were never available on record. Thus, deciding a case based on material that was never part of the record amounts to impropriety requiring interference from this court in terms of Section 397 and 401 of the CrPC.

12. It is relevant to notice section 125(2) CrPC, 1973 which reads as below: -

125.Order for maintenance of wives, children and parents

(1).....

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3).....

(4).....

(5).....

13. The said provision indicates that the order for payment may be from the date of the order or from the date of the application. A

bare reading of the provision allows the discretion of the deciding court to grant the maintenance from either of the dates and that discretion normally has to be exercised based on the specific facts and circumstances as were brought on record by the parties. However, after noticing the realities of life and litigation and taking a pragmatic view and after a great deal of deliberation, the Hon'ble Supreme Court of India in **Rajnesh V. Sneha's case (mentioned supra 1)** at para 109 held that: -

*"Even though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in Section 125(2) CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including section 125 CrPC, 1973. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. **It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application"***

Thus, their Lordships laid down that law stating that awarding maintenance from the date of application was in the interest of Justice and fair play. By virtue of this ruling, the revision petitioners rightly sought interference of this court to rectify the error committed by the appellate court.

14. The principle concerning maintenance of a minor child and a legally wedded wife indicate legal obligation on a husband to maintain them and when the spouse and the minor child were not receiving such allowances from the husband, they are entitled to seek relief by moving appropriate petition before the court and the

need of their maintenance as on the date of petition is what has to be addressed by the court and when once it found that the wife and the child are unable to maintain themselves and the husband is capable of maintaining himself and having sufficient means, refused or neglected to pay maintenance, ordering payment of maintenance from the date of petition filed is what normally sounds correct. The order of the learned Magistrate is in accordance with law and its interference in the appellate court by the learned sessions judge is incorrect and against the material brought before him and therefore it requires rectification in this revision. Point is answered in favour of the revision petitioners.

15. In the result, this criminal revision case is allowed. Order dated 10.08.2023 in Crl.A.No.97 of 2021 of learned Sessions Judge, Mahila Court, Visakhapatnam is set aside. Order dated 20.08.2019 of learned IV Additional Chief Metropolitan Magistrate, Visakhapatnam in Crl.M.P.No.1110 of 2019 in DVC.No.22 of 2018 stands restored.

The respondent No.2/ husband shall deposit the arrear maintenance within six weeks from the date of this order. He shall continue to pay monthly maintenance within specified time as available in the order of the learned trial court.

Dr. V.R.K.KRUPA SAGAR, J

Date: 16.07.2024

Dvs

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CRIMINAL REVISION CASE No.1115 of 2023

Date: 16.07.2024

Dvs