

THE HON'BLE SRI JUSTICE RAJA ELANGO

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CRIMINAL REVISION CASE No.2629 OF 2015

ORDER:

The present criminal revision case is filed by the petitioner challenging the order, dated 28.10.2015, passed in CrI.M.P.No.988 of 2015 in M.C.No.165 of 2015 by the Family Court-cum-IV Additional District and Sessions Judge's Court at Vijayawada, whereby the Court below dismissed the petition filed by the petitioner to set aside the *ex parte* order, dated 16.09.2015.

Heard and perused the records.

Learned counsel for the petitioner submitted that when the trial Court passed *ex parte* order, dated 16.09.2015, the petitioner was present. The petitioner filed an application before the lower appellate Court seeking to set aside the *ex parte* order. He further submits that the lower appellate Court erroneously observed that the petitioner was returned from Doha to Hyderabad on 31.08.2010, whereas the petitioner has filed Xerox copy of his flight ticket showing that he returned from Doha to Hyderabad on 31.08.2015. Further, the Court below observed in its order that the petitioner was called absent on 28.09.2015, whereas the petitioner was present along with his counter affidavit on that date. Hence, he prays this Court to set aside the order of the lower appellate Court in dismissing the application seeking to set aside the *ex parte* order, dated 16.09.2015.

Considering the facts and circumstances of the case, this Court is of the view that when the parties are intended to contest the case and when they expressed genuineness in their absence and also when they are ready to proceed with the case, they shall be given an opportunity to lead their evidence. Hence, the order, dated 28.10.2015 passed in CrI.M.P.No.988 of 2015 in M.C.No.165 of 2015 is hereby set aside. The Court below is directed to record the evidence of respondents herein on 20.11.2015 and also allow the petitioner herein to file his counter and also permit him to cross-examine the respondents, and also lead his evidence. The Court below is further directed to conduct full-fledged trial and pass appropriate orders in

accordance with law.

With the above directions, the Criminal Revision Case is disposed of. Consequently, the miscellaneous petitions filed in this revision, if any, shall stand closed.

JUSTICE RAJA ELANGO

05.11.2015

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