

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Civil Revision Petition No.2546 of 2015

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the Judge, Additional Family Court, Visakhapatnam in I.A.No.135 of 2015 in FCOP No.1245 of 2010 dated 06.05.2015.

The petitioner's wife committed suicide. Consequently, Sessions Case No.135 of 2009 was filed wherein the petitioner was the accused. Smt. S.A.V. Ratnam, Learned Counsel for the petitioner, states that the petitioner was acquitted therein. The petitioner's children are staying with the parents of the deceased (petitioner's wife). FCOP No.1245 of 2009 was filed by the petitioner claiming custody of his children and O.P.No.275 of 2010 was filed by his mother-in-law, under Section 27 of the Hindu Marriage Act, for return of the dowry items and to represent the children as their guardian.

When both the O.Ps. were coming up for arguments, the petitioner sought time contending that he had to examine the proposed witness for marking some important points deposed by him in Sessions Case No.135 of 2009. I.A.No.135 of 2015 was filed by him, under Order 16 Rule 1 CPC, to issue summons to Sri M.Venkata Rao, on behalf of the petitioner, for marking some relevant portions in his deposition in Sessions case No.135 of 2009. It is the petitioner's case that, in as much as the proposed witness (father-in-law of the petitioner, and maternal grandfather of the children whose custody was sought by the petitioner) made some statements in Sessions Case No.134 of 2009, it was necessary to have him examined to enable the petitioner to confront him with those statements.

In the order under challenge in this revision, the Court below held that the petitioner had previously filed I.A.Nos.41 to 43 of 2015 to mark the deposition of the proposed witness through PW1; the Court below had held that it could not be marked through PW1, there were no *bona fides* in the petition, marking of such type of documents amounted to filling up gaps and lacunas, and those petitions were dismissed; after its dismissal, the present petition was filed by the petitioner to summon the witness for the purpose of marking some portion of his deposition; if really the petitioner wanted to examine the witness earlier, he should have examined him as his witness; it was evident that the witness was being summoned only to fill up the lacuna and gaps in the evidence let in by the petitioner; in **Mr.Lalit Bagai v. M/s.Gupta Building Material Store** (judgment in Civil Appeal No.1787 of 2013 dated 22.02.2013) the Supreme Court had held that the provisions of Order 18 Rule 17 CPC should be sparingly used in appropriate cases and not in a casual manner; and there were no *bona fides* in the petition. The I.A. was dismissed.

Before this Court Smt.S.A.V.Ratnam, Learned Counsel for the petitioner, would submit that, in as much as the proposed witness (maternal grandfather of the children and father-in-law of the petitioner) had made some statements against him in the criminal case, it was necessary that he be summoned to enable the petitioner to confront him with those statements; such a testimony was necessary to establish the credibility of the petitioner; and the Court below erred in refusing to summon the said witness.

As has been rightly observed by the Court below, an application filed to reopen the matter for examining a third party, more so when the matter was coming up for arguments, must be viewed cautiously, and not in a casual manner. The petitioner is required to adduce evidence to establish his case. He cannot, after

the respondent had let in evidence and at the stage of arguments, file an application to examine the proposed witness merely to confront him with certain statements which he made in the criminal case. The findings of the Court below, that petitioner was seeking to cover up the gaps in his evidence, by examining the grandfather of the children, does not suffer from any patent illegality necessitating interference by this Court under Article 227 of the Constitution of India. I see no reason, therefore, to exercise discretion, under Article 227 of the Constitution, to interfere with the order of the Court below.

The Civil Revision Petition fails and is, accordingly, dismissed. The Miscellaneous Petitions, if any pending, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date:10.07.2015.

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