

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.6344 OF 2016

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order dated 20.01.2016 passed in CrI.R.P.No.37 of 2015 by the Judge, Family Court – cum – VIII Additional Sessions Judge, Mahabubnagar, in which the order passed in CrI.M.P.No.41 of 2015 in M.C.No.1 of 2014 by the Judicial Magistrate of First Class, Mahabubnagar was confirmed.

Respondent Nos.2 and 3 are the wife and son of the petitioner. The marriage between the petitioner and respondent No.2 was performed on 27.04.2009 as per Hindu rites and rituals. They lead marital life for eight months at Tandoor. Thereafter, the petitioner along with his parents started ill-treating the respondent No.2 demanding additional dowry. On 26.01.2010 the petitioner and his parents necked out the respondent No.2 from their house, later the respondent No.2 gave birth to the respondent No.3. The petitioner neglected and refused to maintain the respondent Nos.2 and 3. Hence, the respondent Nos.2 and 3 filed a petition before the trial Court for maintenance.

The petitioner herein (respondent) filed counter before the trial Court while admitting his marriage with the respondent No.2 herein denied the demand for additional dowry and contended that the respondent No.2 was not subjected to any cruelty and she did not lead marital life with him even for one day. The respondent had suffered from ill health and when the petitioner questioned about the same, she kept quite and went to her parents' house and filed

a false case against him and his parents.

Upon hearing, the trial Court passed the order on 23.06.2015 granting interim maintenance of Rs.2,000/- per month to the respondent No.2 herein and Rs.1,000/- per month to the respondent No.3 herein.

Aggrieved by the same, the petitioner herein preferred a revision Crl.R.P.No.37 of 2015, which ended in dismissal by order dated 20.01.2016 passed by the Judge, Family Court – cum – VIII Additional Sessions Judge, Mahabubnagar confirming the order passed by the Judicial First Class Magistrate, Mahabubnagar.

Learned counsel for the petitioner contended that there was no scope for conceiving and giving birth to a child by the respondent No.2 and that the petitioner intends to file necessary application before the trial Court for DNA test in the main case and when the paternity of the respondent No.3 is in dispute, the respondent Nos.2 and 3 are not entitled to claim any maintenance and prayed to set aside the order passed in Crl.M.P.No.41 of 2015 in M.C.No.1 of 2014.

Undisputedly, the marriage between the petitioner and respondent No.2 was performed, but the respondent No.2 contended that she lead marital life with the petitioner for eight months, thereafter she was necked out by the petitioner and his parents, whereas the petitioner contended that the respondent No.2 was with him only for '16' days and did not lead marital life. But all these questions cannot be decided in the present application and this is not a ground to set aside the order passed by the Judicial First Class Magistrate, Mahabubnagar. As long as

relationship of husband, wife and son is subsisting, the petitioner is bound to provide maintenance to his wife and son.

At this stage, it is impossible for this Court to decide the relationship between the petitioner and respondents. In view of the presumption under Section 112 of Indian Evidence Act, it shall be presumed that the respondent No.3 – son was born during wedlock of the petitioner and respondent No.2. But such presumption is rebuttal presumption and that can be rebutted by adducing evidence and such question cannot be gone into while deciding a petition under Section 482 of Cr.P.C. and when a similar question came up before the Apex Court regarding presumption under Section 139 of Negotiable Instruments Act in “**Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.**”¹, the Apex Court placed reliance on its earlier judgment rendered in “**Rangappa v. Sri Mohan**”² held as follows:

“Once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can rely upon the material submitted by the complainant. However, mere statement of the accused may not be sufficient.....”

Therefore, when there is a presumption under law, till it is rebutted by any evidence, the Court shall presume that the respondent No.3 was born during wedlock under Section 112 of Indian Evidence Act. Same principle provided in Section 139 of Negotiable Instruments Act regarding presumption can be applied to the present facts of the Case. Therefore, until the presumption is

¹ AIR 2016 Supreme Court 4363

² (2010) 11 SCC 441

rebutted, it is difficult to hold that the respondent No.3 born to the respondent No.2 was not the son born through the petitioner. However, it is open to the petitioner to raise all such contentions in the main case subject to pleadings and on raising such contentions; the Court concerned is bound to answer such questions.

With the above directions, the petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

Date:25.11.2016
Ksp

JUSTICE M. SATYANARAYANA MURTHY

