

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.16346 of 2016

ORDER

This petition under Section 482 Cr.P.C. is filed to quash the order dated 04.03.2016 passed by the learned Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court, Hyderabad in M.C.No.195 of 2015, wherein the learned Sessions Judge awarded maintenance at the rate of Rs.7,500/- and Rs.6,000/-per month to the second and third respondents respectively, from the date of petition i.e., 24.06.2015.

2. The main ground urged by petitioner in the present petition is that the order itself is illegal as it was passed on presumption that he neglected and refused to maintain the second and third respondents, which is a prime consideration to pass the order under Section 125 Cr.P.C., though he did not contest the matter as per the appendix of evidence annexed to the order.

3. During hearing, Sri Mohammed Abdul Qader, learned counsel for petitioner, would draw the attention of this Court to paragraph No.12 of the impugned order with regard to means of respondent i.e., petitioner herein. In the said paragraph, while discussing the means of petitioner, the trial Court presumed that the petitioner is getting handsome income and granted maintenance though the petitioner did not contest the matter to put forth his evidence either oral or documentary to prove his means, capacity to maintain etc. Learned counsel for petitioner would draw the attention of this Court to the inherent powers of this Court under Section 482 Cr.P.C.

4. This Court can exercise inherent power under Section 482 Cr.P.C., to give effect to any of the orders under the Code of Criminal Procedure to prevent abuse of process of the Court or to secure the ends of justice. In the case on hand, petitioner having received notice remained *ex parte* before the trial Court, but the counsel for petitioner contended that no notice was served on petitioner. All these questions cannot be interfered with by this Court in a petition under Section 482 Cr.P.C. since it is a disputed question of fact to be decided by the competent Court. However, the Apex Court in **State of Haryana v. Bhajan Lal**¹ laid down 7 guidelines to exercise the jurisdiction of this Court under Section 482 Cr.P.C., out of which guideline No.6 is relevant to decide the present petition, which is extracted hereunder:

“Where there is an express legal bar engrafted in any of the provision of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party”.

Thus, it means, if the petitioner is entitled to his claim under any of the provision of Cr.P.C., this Court cannot exercise inherent jurisdiction under Section 482 Cr.P.C. Against an order passed under Section 125 Cr.P.C., a revision can be maintained before this Court. Since the order under challenge was passed by the Judge, Family Court under Section 125 Cr.P.C., this Court cannot exercise its jurisdiction under Section 482 Cr.P.C., as efficacious remedy is available to the petitioner.

¹ 1992 Supp.(1) SCC 335

5. At this stage, learned counsel for petitioner relied upon the judgment of the Apex Court in **Mohd. Naim Siddiqui Vs. Smt. Sultana Khatoon**². But in the entire judgment, the Apex Court did not discuss the scope of Section 482 Cr.P.C. with reference to the judgment in **Bhajan Lal**, more particularly guideline No.6. Therefore, no law has been laid down in the above judgment to apply the same to this case. Hence, I find no ground to quash the proceedings in exercise of powers under Section 482 Cr.P.C. However, liberty is given to petitioner to file appropriate proceedings before the competent Court against the order impugned.

6. Giving liberty to petitioner as mentioned above, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this criminal petition shall stand dismissed.



M. SATYANARAYANA MURTHY, J

28th November, 2016
sj

² (1982) 3 SCC 369