

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.14503 OF 2016

ORDER:

This petition is filed under Section 482 Cr.P.C. challenging the order passed by the Additional Junior Civil Judge, Chilakaluripeta in Cr.No.569 of 2016 in M.C.No.9 of 2015 dismissing the petition filed under Section 45 of the Evidence Act under Sections 254 and 293 Cr.P.C. on the ground that first respondent who is the wife of the petitioner developed illicit contact with another person and that she had talk with him over her cell phone and therefore, talk recorded in the cell phone are the voice of first respondent. Continuous adulterous life must be established as per Section 125 (4) Cr.P.C. but the trial court rejected on the ground that stray instances of departure from the virtue is not a ground to deny maintenance and it is the duty of the petitioner to prove continuous course of adultery by wife with another person to deny maintenance.

Trial court also dismissed the petition on the other ground that the respondent No.1 refused to give her voice to compare the voice in the voice recorded in the cell phone.

The main petition was filed for grant of maintenance for the wife and children of the petitioner who are respondents 1 to 3 in the petition filed under Section 125 of Cr.P.C.

The only contention before the trial court is that first respondent is not entitled to claim maintenance as she is living in adultery taking advantage of section 125 (4) Cr.P.C.

Section 125 (4) Cr.P.C. deals with exception to grant of maintenance.

According to it, no wife shall be entitled to receive {an allowance or the interim maintenance and expenses of proceeding, as the case may be} from her husband under this Section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

Though Clause 4 of 125 Cr.P.C. four different instances to deny maintenance, the only ground on which petitioner defended his case is that the respondent No.1 is living in adultery. The Judicial Magistrate of First Class observed that stray instance of intercourse with the third person by the wife is not sufficient and therefore, refused to accede to request of the petitioner.

No doubt the petitioner relied on one time telephone conversation between first respondent and other person Bukya Nageswara Rao @ Chanti, at least it is not helpful to prove and consider instance of indulging sexual intercourse with another person by first respondent continuously which is not sufficient to deny maintenance under Section 125 (4) Cr. P.C.

The language used in the Section i.e., living in adultery i.e., continuously living in adultery is a ground to deny maintenance under Section 125 (4) of Cr.P.C. and it is his case that telephone conversation would establish her continuous living with adultery with one Chanti.

But Section 125 Cr.P.C. is incorporated for speedy redressal of maintenance for deserted wife. If these practices are adopted sending the cell phones and other talk to expert, it would frustrate in very object and such single act of adultery if proved, would not form ground to deny maintenance under Section 125 (4) Cr.P.C.

A perusal of order passed by trial court, I find no error since the words of "Indulging in sexual intercourse on one occasion" is not a ground. However, if she is continuously living in adultery, it is a ground to refuse maintenance. Therefore, it is open to the petitioner to prove that first respondent is continuously living in adultery to deny maintenance and if there is any piece of evidence on record, the petitioner may review his request before the trial court for the same relief.

In view of the foregoing discussion, I find no ground to interfere with the order passed by the trial court at this stage. However, liberty is given to the petitioner to review his request at appropriate stage after completion of his evidence.

With the above observation, this Criminal Petition is dismissed.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

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JUSTICE M.SATYANARAYANA MURTHY

Dated 18-10-2016.

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 18-10-2016.

Dvs