

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL PETITION No.3211 OF 2016

ORDER:

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This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 by the petitioner/R-1 seeking to quash the order, dated 30.11.2015, in CrI.M.P.No.4037 of 2015 in D.V.C.No.15 of 2010 on the file of the I Additional Chief Metropolitan Magistrate, Visakhapatnam.

2. Heard and perused the material available on record.

3. Petitioner is respondent No.1 in D.V.C.No.15 of 2010 on the file of the I Additional Chief Metropolitan Magistrate, Visakhapatnam, which was filed by respondent Nos.2 to 4. By order, dated 20.6.2014, the learned Magistrate granted monthly maintenance of Rs.5,000/- apart from Rs.2,000/- towards alternative accommodation. The learned Magistrate also awarded compensation of Rs.1.00 lakh to be paid within three months from the date of the order. Aggrieved by the said order, the petitioner herein preferred an appeal vide CrI.A.No.130 of 2014 before the II Additional Metropolitan Sessions Judge, Visakhapatnam. After issuing notice, when the matter came up for hearing, the petitioner herein filed CrI.M.P.No.774 of 2015 praying for stay of the order passed in D.V.C. proceedings. By order, dated 19.2.2016, the appellate Court granted stay in the D.V.C. case only for a period of one week subject to condition that the petitioner herein shall pay the arrears of maintenance failing which, the stay shall stand vacated.

While the appeal is pending, respondent No.2 filed CrI.M.P.No.4037 of 2015 under Section 127(4) Cr.P.C. praying to direct the petitioner herein to pay the arrears of maintenance which is due from 2014 onwards and in the event of his failure to pay the said arrears, to punish him. By order, dated 30.11.2015, the learned

Magistrate sentenced the petitioner to undergo simple imprisonment for one month or until payment if sooner made. It is further ordered to issue warrant against the petitioner herein on payment of process. Hence, the petitioner is apprehending arrest.

4. Learned counsel for the petitioner submitted that against the order passed by the trial Court in connection with maintenance, already an appeal was filed and the same is pending. He further submitted that the petitioner is ready to pay 40% of the arrears before the trial Court till the disposal of the appeal before the appellate Court and hence, he prays to quash the impugned order.

5. Learned counsel for the petitioner fairly conceded that no interim order was granted in favour of the petitioner. Considering the facts and circumstances of the case, the petitioner is directed to deposit 40% of the arrears as a part payment and on such deposit, the trial Court is directed not to execute the order of remand till the disposal of the appeal.

6. With the above directions, the Criminal Petition is disposed of. Miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

JUSTICE RAJA ELANGO

11.3.2016
AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

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