

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.R.C.No.2358 of 2017

ORDER:

This criminal revision case under Sections 397 and 401 of Cr.P.C. questioning the propriety, legality and regularity of the order, dated 27.07.2017 in Crl.M.P.No.1227 of 2015 in M.C.No.68 of 2014 passed by the Family Court-cum-IV Addl.District and Sessions Judge, Vijayawada dismissing the application filed under Section 5 of Limitation Act in filing a petition to condone delay of 562 days in filing petition under Section 126(2) Cr.P.C.

2. The only reason as stated by the petitioner to set aside the ex parte order is that no notice was served on him. On 18.06.2015 the police executed a warrant in Crl.M.P.No.108 of 2015 and produced him before the court and he paid Rs.50,000/- towards arrears of maintenance, that he lost his job and now he is an un-employee and thereby he has no capacity to pay the amount and requested the court below to condone delay of 562 days in filing the petition under Section 126(2) Cr.P.C.

3. The second respondent filed counter contending that the petitioner suppressed the real facts, that when he was arrested on 18.06.2015 in Crl.M.P.No.108 of 2015, nothing prevented him to file an application as he gained knowledge about passing such an ex parte order and having waited for such a long time, he filed petition

leisurely and the same cannot be allowed and prayed for dismissal of the petition.

4. The court below upon hearing argument of both the counsel concluded that the petitioner failed to give reasons satisfactorily explaining the delay that caused in filing application under Section 126(2) Cr.P.C. and dismissed the petition.

5. Aggrieved by the order, the present revision is filed on various grounds mainly on the ground that no notice was served and ex parte order was passed without considering the income and requirements of the respondents 2 and 3 and as such the order is non-est in the eye of law and apart from that, the respondents 2 and 3 made the petitioner as accused in various other criminal proceedings including for the offence under Section 498-A IPC and D.V.C. Act etc. But, the court failed to consider these aspects and committed an error in dismissing the petition.

6. Learned counsel for the revision petitioner reiterated the contentions urged before the trial Court during hearing at the stage of admission.

7. As seen from the material on record, ex parte order granting maintenance was passed by the court below and the respondents 2 and 3 filed application to enforce the maintenance order in Crl.M.P.No.108 of 2015 and the petitioner was produced before the court after his arrest for realisation of the maintenance and accordingly he paid Rs.50,000/-. Thus, the petitioner came to know about the proceedings of ex parte order passed by the court below

on 18.06.2015, but he filed the application on 21.12.2015 leisurely at his convenience and no explanation was offered for the delay at least after his arrest and production before the court on 18.06.2015, but sought to condone delay of 562 days in filing the petition. This cause can be accepted if he was not arrested and brought before the court below for realisation of arrears of maintenance. But, when he was produced before the court in connection with enforcement of maintenance order, he gained knowledge about the said ex parte order, but still he kept quiet for six months and filed petition for condonation of delay without any explanation much less sufficient cause which prevented him from filing application under Section 126(2) Cr.P.C. Hence, the trial Court rightly concluded that the petitioner failed to prove that he was prevented by sufficient cause, that means, the cause which is beyond his reasonable control and this court cannot exercise its power under Sections 397 and 401 Cr.P.C. to interfere with such an order. Therefore, I find no ground to set aside the impugned order. Consequently, the revision case is liable to be dismissed.

8. In the result, the criminal revision case is dismissed at the stage of admission.

Miscellaneous petitions, if any, pending in this case shall stand closed.

M.SATYANARAYANA MURTHY,J

DATE:28-08-2017
ccm

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