

HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No. 8845 OF 2011

ORDER:

1. This petition under Section 482 Cr.P.C. is filed seeking to quash the order dated 23.02.2011 passed in C.R.P. No. 72 of 2009 by the learned VII Additional Sessions Judge, Kakinada , confirming the order dated 14.09.2009 in M.C.No. 60 of 2007 passed by the learned III Additional Judicial First Class Magistrate, Kakinada.

2. The contention of the petitioner is that the lower revisional Court-VII Additional Sessions Judge, Kakinada failed to observe that the second respondent was working as Sweeper in Kakinada Municipal Corporation and earning a sum of Rs.13,000/- per month; that the second respondent has got the said appointment on compassionate grounds on account of demise of her father and tha the Municipal Corporation gave appointment to the second respondent after her mother eloped with one S. Satyanarayana.

3. On the other hand, the second respondent contended that no proceedings are pending and this petition is not maintainable. The order of the lower revisional Court is legal, valid and do not warrant interference by this Court.

4. A perusal of the record goes to suggest that the second respondent herein filed M.C.No.60 of 2007 claiming maintenance at Rs.8,000/- per month. After full fledged trial, the trial Court by order dated 14.09.2009 allowed the said petition granting maintenance at Rs.1,000/- per month towards her maintenance from the date of petition. Against the said order, the petitioner herein preferred C.R.P. No. 72 of 2009 before the lower revisional Court—VII Additional Sessions Judge, Kakinada, which was dismissed by order dated 23.02.2011 confirming the order of the trial Court in MC.No.60 of 2007, dated 14.09.2009.

5. The argument of the petitioner is that the facts that the S.R.—Ex.X.1 reveals the date of birth of the second respondent as 18.04.1959 which established that the second respondent was working in Kakinada Municipal Corporation and that the mother of the second respondent was 70 years, are not considered by the lower revisional Court.

6. R.W.2, who is the elder son of R.W.1/petitioner herein stated that there is no document to show that P.W.1/respondent was working in Municipality. Though Sri OPM Subba Rao, Junior Assistant, Municipal Corporation was examined as R.W.4, he could not state whether the respondent herein was working in Municipal Corporation of Kakinada or not, except deposing that

Mangalagiri China Polamma was working in Municipal Corporation of Kakinada.

7. R.W.5, who is the elder of Ragampeta village deposed that in the year 1976 the Municipal Corporation provided a job to P.W.1/respondent herein on compassionate grounds. However, a perusal of Ex. P.3 Identity card discloses that the name of the employee is M.Chinapolamma, sanitary worker, who is not P.W.1.

8. On a consideration of oral and documentary evidence on record, the trial Court found that the petitioner herein failed to establish that P.W.1/respondent herein was working in Municipal Corporation, Kakinada on compensatory grounds after the death of her father, but not P.W.2—mother of P.W.1/respondent. The said finding is strengthened by the evidence of P.W.2-mother of P.W.1, who clearly says that she was working in Municipality as Sweeper, and, not P.W.1/respondent. In support of the same, she filed Ex.A.3-Identity card.

9. The lower revisional Court held that no doubt P.W.1/respondent herein admitted that China Polamma is her name and surname is Mangalagiri and Polamma is her mother and her date of birth is 18.4.1959. The evidence of P.W.2 -mother of P.W.1 reveals that as per Ex. X.1 her date of birth is 18.4.1959

and she was aged about 70 years and her parents sur-name is Akula. Though she deposed that her name is China Polamma, as there is dispute regarding identity, it is for the petitioner herein to prove the identity of the person and that he (petitioner herein) did not adduce required evidence or confronted Ex. P.3 by summoning concerned employer under whom she was working. Ultimately the lower revisional Court found that the evidence adduced by the petitioner herein was not sufficient to prove that P.W.1/respondent herein was working in Kakinada Municipal Corporation and not P.W.2—mother of P.W.1. Holding so, the lower revisional Court dismissed the revision petition.

10. The facts and circumstances discussed herein above clearly go to suggest that the grounds which have been taken by the petitioner herein have already been discussed by the lower revisional Court and came to the right conclusion. There is no illegality or irregularity in passing the impugned order by the lower revisional Court.

11. For the foregoing discussion, this Court is of the considered opinion that the order passed by the lower revisional Court-VII Additional Sessions Judge, Kakinada, in C.R.P. No.72 of 2009 dated 23.2.2011 confirming the order passed by the trial Court in M.C.No. 60 of 2007 dated 14.9.2009 is legal, valid and do not suffer from any legal infirmities warranting interference by this Court.

12. In the result, the Criminal Petition is dismissed.

Advocate fee is Rs.1,000/-.

13. Miscellaneous petitions pending consideration if any in the Criminal Petition shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 13th October, 2017.
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