

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2291 of 2017

ORDER:

Questioning the return of the petition (CF.No.117/2017) filed under Section 125 of the Code of Criminal Procedure, 1973 (for short, 'the Code') in a pending Maintenance Case No.19 of 2015 on the file of Judge, Family Court, Vijayawada, which was subsequently transferred to the Additional Family Court-cum-XIV Additional District and Sessions Judge, Vijayawada, the present petition under Section 482 of the Code is filed by the petitioner, who is the husband of respondent No.2. The petitioner seeks a direction to the Court below to receive the petition numbered as CF No.117/2017, which was returned on 10.02.2017.

When the petition, which is numbered as CF.No.117 of 2017, was filed on 16.01.2017, the same was returned with an endorsement-“(1) How the petition is maintainable at the stage of enquiry (2) correct provision of law to be stated”. It was subsequently re-submitted on 20.01.2017 stating as under:

“(1) As per the Judgment passed in CrI.R.C.No.780/2006 by Hon'ble Madras High Court, dt: 03.02.10 relied upon various Judgments of Supreme Court, this petition is maintainable. (copy of Judgment filed).

(2) Sec. 125 of Cr.P.C. is welfare legislation and quasi Civil and quasi Criminal in nature and this petition u/Sec. 125 of Cr.P.C is maintainable.”

However, the said petition was again returned on 10.02.2017 with an endorsement “previous objections not complied”.

When learned counsel for the petitioner referred to the ruling of the Madras High Court in regard to the maintainability of the petition under Section 125 of the Code to the effect that where there is no specific provision of law under the Code for seeking a request as to the one made in the petition numbered as CF.No.117 of 2017, the Court below ought not to have returned the same making an endorsement referred to above and ought to have taken the petition on file, invited the resistance/objections from respondent No.2/wife of the petitioner and disposed of the same in accordance with law.

For the aforesaid reasons, the Criminal Petition is allowed to the extent of directing the Additional Family Court-cum-XIV Additional District and Sessions Judge, Vijayawada, to register the petition CF.No.117 of 2017 and dispose of the same in accordance with law after giving an opportunity to respondent No.2 herein.

Miscellaneous Petitions, if any, pending in this petition, shall stand closed.

A. SHANKAR NARAYANA, J

March 20, 2017

v v