

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2113 OF 2017

ORDER:

The present Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed requesting to set aside the order, dated 08.02.2017, in CrI.M.P.No.6121 of 2016 and Memo in C.C.No.278 of 2010 on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam.

2. Heard Sri V. Brahmaiah Chowdary, learned counsel for the petitioner – accused No.1 in the aforesaid Calendar Case.

3. The submission of the learned counsel for petitioner has been that when the Court below has already ordered CrI.M.P.No.1898 of 2014, wherein one Joseph Kochuchiria, the then father/pastor of St. Anthony Church, Maharani Peta, Visakhapatnam, was sought to be produced as a witness along with the records of the said Church, to prove the solemnisation of marriage between petitioner and respondent No.3, and when the said witness also turned up for examining him, again filing the present CrI.M.P.No.6121 of 2016 and Memo, dated 16.12.2016, requesting the Court to summon the present father/pastor of the said Church is nothing but a grave illegality, and, therefore, the order under challenge is unsustainable.

4. Since, it is opined that the order under challenge does not suffer from any patent illegality, no notice is ordered to respondent No.1 – *de facto* complainant.

5. As could be seen from the order under challenge and the arguments advanced by the learned counsel for petitioner, the main relief, which was sought in Crl.MP.No.1898 of 2014, was already granted. In fact, there was no opposition for the same. No doubt, one Joseph Kochuchiria was sought to be produced as a witness along with the records of the church, but by the time the said petition was ordered, the matter was not ripe for trial. Thereafter, the prosecution filed Crl.M.P.No.6132 of 2016 to issue summons to the pastor of the said Church, in view of the order passed in Crl.M.P.No.1898 of 2014 and since, the petitioner reported no objection, the Court below allowed the said petition and when the witness i.e., present father/pastor of the said Church appeared before the Court, it appears that the learned counsel appearing for the petitioner herein, before the Court below took objection that he was not the person to whom summons were issued in the earlier petition i.e., Crl.M.P.No.1898 of 2014. Hence, respondent No.1 was constrained to file the present Memo as well as Crl.M.P.No.6121 of 2016 to issue summons to the present father/pastor of the said Church in his official capacity, but not by name.

6. The learned I Additional Chief Metropolitan Magistrate, Visakhapatnam, having elaborately discussed in the light of the decisions cited before him by the respective parties, opined that issuance of summons to the present father/pastor of the said church cannot be viewed as either reviewing or revising the earlier order in

Crl.M.P.No.1898 of 2014 and such review or revision arises only when the relief sought earlier was declined. In paragraph No.11 of the order under challenge, observing that both, on factual and legal aspects, especially, keeping in view, the law declared by the Honourable Apex Court in **Madhu Limaye v. State of Maharashtra**¹, issue of summons to the present father/pastor of the said Church is just and proper and passing such an order is neither reviewing nor revising the earlier order, allowed the present petition as well as Memo by the order under challenge.

7. When the very same relief was already granted in the earlier petition, merely because name of the father/pastor, who was summoned earlier, was wrongly mentioned and since he was not available, as he was transferred, would not prevent the Court to pass an order acceding to the relief in the present petition to get the records of the church to the Court by marking them through the present father/pastor. Thus, no patent illegality is viewed in the order under challenge, warranting interference.

8. Accordingly, the Criminal Petition is dismissed. Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

A. SHANKAR NARAYANA, J

March 15, 2017.
MD

¹ 1978 AIR (SC) 47