

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2470 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of Code of Criminal Procedure, 1973 (Cr.P.C.), seeking to set aside the order dated 10.02.2017 in Criminal M.P. No.1772 of 2016 in D.V.C. No.155 of 2015, passed by the learned IV Metropolitan Magistrate (Traffic Mobile Court) at Erramanzil, Hyderabad.

2. The petitioner viz., Syed Faheem is husband of respondent No.1 herein Dr. Asiya Begum, the aggrieved person in the aforesaid D.V.C.

3. The learned Magistrate allowed Criminal M.P. No.1772 of 2016 filed by the wife of the petitioner herein requesting for medical examination of the petitioner for 'erectile dysfunction'. It was resisted by the petitioner.

4. The learned Magistrate, while referring to the contentions raised by the parties in paragraph No.6, concluded the result in paragraph No.7, stating thus:

“6. The marriage between the petitioner and R1 is not in dispute. It is the main contention of the petitioner in the present petition that the respondent is suffering from Erectile Dysfunction problem, therefore she prays this court to send the

respondent for medical examination to know the same, on the other hand the respondent vehemently contends that he is not suffering from any such problem, in fact the petitioner was not able to find out the alleged impotency of the respondent even after staying with him for over a year is unimaginable and blatantly if the said allegation was said true the petitioner would have mentioned the same in her private complaint under 498-A, vide CC NO.282/2014 On the file of XIII ACMM at Nampally. Hence the respondent contends that the present petition is filed with an intention to defame the respondent.

7. Admittedly the respondent did not file any proof to show that he is not suffering from the said problem. In these circumstances this court has no other option except to send the respondent for medical examination to know his capability in matrimonial life. Unless and until send the respondent for medical examination the fact will not come out, therefore to meet ends of justice this court is inclined to send the respondent for medical examination to know his capability in matrimonial life, accordingly the petitioner is directed to take steps and to bear the costs of the medical examination of the respondent accordingly this point is answered.”

5. In paragraph No.8, the learned Magistrate while allowing the petition, directed the wife of the petitioner to take steps to send the petitioner for medical examination to know the ‘erectile dysfunction’ directing her to bear the costs therefor.

6. It is now under challenge by the petitioner by raising various pleas, more particularly, the submission that the petitioner had already undergone a comprehensive examination by the Doctors of the Medical Board of Osmania General Hospital, Hyderabad, and the report is also available with the police and the parties, and, therefore, sending the petitioner again for the very same examination, will not serve any purpose, and, on the other hand, it is humiliation and harassment to the petitioner.

7. In paragraph No.3 of the order, the learned Magistrate while advertent to the counter averments, has not projected the petitioner having undergone such a test in Osmania General Hospital. Copy of counter is not filed in the material papers in the present petition. Perhaps, such a plea was not taken by the petitioner. However, he has filed medical report dated 19.01.2017, in the material papers. The order under challenge was passed on 10.02.2017. Since there is no reference to the said report in the order under challenge and since it is not clear whether the petitioner has agitated the said aspect before the learned Magistrate, and when such a report is preceding the order passed by the learned Magistrate, it is desirable to set aside the order under challenge and remit the matter for consideration afresh. Hence, the same is accordingly set aside directing the learned Magistrate to dispose of the matter afresh taking the medical report dated 19.01.2017, into consideration by affording an opportunity of hearing

to both sides. In case, the medical report is not filed before the Court below, the petitioner herein is directed to file the aforesaid medical report and relevant papers.

8. Accordingly, the Criminal Petition is allowed, at the admission stage itself, setting aside the order under challenge, and remitting the matter to the trial Court for disposal afresh with the aforesaid observations.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

April 4, 2017.

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