

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.7214 OF 2017

ORDER:

Heard learned counsel for the petitioner, who is respondent in M.C.No.70 of 2016, pending on the file of I Additional Judicial Magistrate of First Class at Kothagudem, it is impugning the dismissal order of the learned Magistrate dated 21.07.2017 of CrI.M.P.No.877 of 2017 to call for the three documents from the employer of the petitioner (M.C.respondent), the petition is filed.

2. M.C.No.70 of 2016 is filed for maintenance. He disputes as husband of the M.C. petitioner including paternity of the child Ganesh. As can be seen from the order, there was criminal petition filed by the M.C. Petitioners to determine the paternity of the child and the petition was allowed by the lower court and against which, he unsuccessfully maintained criminal petition No.1243 of 2014 before this Court, where the lower court order was confirmed and he went almost unsuccessful, the Apex Court by Criminal Petition for Special Leave No.10083 of 2014, that was disposed of, that he got a liberty either to submit to the DNA examination by giving samples or left open to the court to draw adverse inference under Section 114 of the Indian Evidence Act as per illustration (h) of the section and it is therefrom in the course of trial, he did not submit by expressing unwillingness to the DNA examination and he sought for summoning of the original service record. The learned Magistrate observed that the certified copies obtained from the employer were already exhibited by him and was cross-examined with reference to it and he deposed as R.W.1. Even the deposition of him, particularly with reference to Exhs.R1

to R12 on 08.11.2012 or subsequent to that shows though he initially stated as 'it is true. I did not mention the name of my wife Shanthi in my service particulars so far'. He added saying she was by then minor and after her attaining majority, he cause entered her name in the year 1988 and initially because she was minor, he did not mention her name and after attaining majority he cause entered her name. Even therefrom by calling for the original record, no purpose that could be served is the observation of the learned Magistrate rightly for the authenticity of the record is not even disputed in the cross-examination. So far as the other document out of the three documents sought for concerned, it is the submission of the counsel for the quash petitioner – M.C. respondent herein that the two other documents later obtained are going to be filed as original record, summoning sought for in CrI.M.P.No.677 of 2017, there ended in dismissal by impugned order dated 30.06.2017. It is left open to him to file the certified copies for the court to consider on own merits. It is needless to observe that if at all any original record is required, the court is not powerless because of its power under Section 311 part II of Cr.P.C. and Section 165 of the Indian Evidence Act.

3. With the above observations, this criminal petition is disposed of, for nothing to admit or keep pending including by ordering notice to the 2nd respondent or pass any order prejudice to the 2nd respondent and in favour of the petitioner. Pending miscellaneous petitions, if any, shall stand closed.

DR.B.SIVA SANKARA RAO, J

22.08.2017
SS