

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.891 of 2005

ORDER:

The present Criminal Revision Case is filed aggrieved by the order dated 24.03.2005 in CrI.M.P.No.3129 of 2004 in M.C.No.18 of 1995 on the file of the Additional Judicial First Class Magistrate, Amalapuram, dismissing the petition under Section 127 (2) of the Code of Criminal Procedure (for short, 'the Code'), filed by the petitioner - respondent in M.C.No.18 of 1995.

Heard Sri K.V.L. Narasimha Murthy, learned counsel for the revision petitioner.

Respondent No.1 is the legally wedded wife of the revision petitioner. Precisely, on the ground that he obtained decree for restitution of conjugal rights and thereafter, filed a petition for grant of decree of divorce, the revision petitioner filed the aforesaid CrI.M.P, under Section 127 (2) of the Code, seeking annulment of the order, dated 09.08.1996, passed in the aforesaid M.C., whereby and whereunder, monthly maintenance of Rs.400/- was awarded to respondent No.1 and Rs.300/- to their daughter.

Learned counsel for the revision petitioner would submit that since the revision petitioner subsequently obtained decree of divorce, he seeks to set aside the order of granting maintenance amounts as mentioned in the above.

Though, notice sent to respondent No.1 was not returned, since the present revision case relates to the year 2005 and has been pending since a long time, it is desirable to dispose of the same even in the absence of respondent No.1.

In paragraph '15' of the order under challenge, the learned Magistrate made an observation that the decree for maintenance passed by the civil court does not bar the proceedings under Section 125 of the Code and that it is settled law that the order of maintenance is not automatically ignored by subsequent civil court decree for maintenance. Even otherwise, the revision petitioner now seeks to cancel the order of maintenance, basing on the subsequent event of his obtaining decree of divorce from the concerned court. The changed circumstances subsequent to passing of the maintenance order cannot be a ground to set aside the order under challenge. There is no merit in the present revision case.

Hence, the present Criminal Revision Case is dismissed. It is open to the revision petitioner to move an appropriate application taking aid of the changed circumstances. In case really he obtained decree of divorce and if any order is passed therein in regard to permanent alimony, he can take advantage of the same. It is made clear that in case the daughter of the parties has attained majority, the revision petitioner is not under obligation to pay the maintenance amount to her from the date on which she attained majority as per Section 125 of the Code.

Miscellaneous applications, if any pending in these revision cases, stand closed.

JUSTICE A.SHANKAR NARAYANA

10.11.2017
v v

