

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL PETITION No.590 OF 2017

ORDER:

The present petition is filed by the petitioner/respondent challenging the order dated 11.11.2016 passed in CrI.M.P.No.159 of 2016 in M.C.No.160 of 2011 by the Judge, Family Court, Ranga Reddy District Courts at L.B.Nagar under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.').

2. In fact, the petitioner makes a request in the main relief portion to stay the execution of warrant pending against him issued by the Judge, Family Court, Ranga Reddy District Courts at L.B.Nagar in CrI.M.P.No.159 of 2016 in M.C.No.160 of 2011 on 11.11.2016, and seeks a further direction to dispose of the petition in CrI.M.P.No.467 of 2015, which is filed to set aside the *ex parte* order passed in M.C.No.160 of 2011, pursuant to which only the present order, which is under challenge, was passed.

3. Sri T.Khasim Basha Vali, learned counsel for the petitioner, would submit that the 1st respondent herein also filed Domestic Violence Case No.9 of 2009 and obtained order of maintenance of Rs.2,000/- each to herself and the children and thus, a consolidated amount of Rs.6,000/- per month was ordered to be paid to the three petitioners therein. It is his submission that subsequently, both the children have attained majority and became majors. While the things thus stood, in the aforesaid M.C., the respondent-husband

was set *ex parte* and the learned Judge, Family Court, has passed orders granting maintenance of Rs.6,000/- per month and when it was sought to be enforced, the present order, which is under challenge, was passed. It is also his submission that challenging the order in DVC, the petitioner approached this Court by filing Criminal Revision Case No.1131 of 2015 and this Court while granting stay, has directed to deposit 50% of the maintenance amount granted by the Court below. It is also his submission that in the counter filed in CrI.M.P.No.467 of 2015 in M.C.No.160 of 2011, the 1st respondent herein admitted that the petitioner has complied with the order passed by this Court in CrI.R.C.No.1131 of 2015 and also depositing Rs.3,000/- per month and therefore, requests to set aside the order dated 11.11.2016 in CrI.M.P.No.159 of 2016 and also to direct the Judge, Family Court, Ranga Reddy District Courts at L.B.Nagar to dispose of CrI.M.P.No.467 of 2015.

4. In fact, learned counsel for the petitioner sticks to the second relief in the main prayer requesting this Court to direct the Court below to dispose of CrI.M.P.No.467 of 2015, which is filed for setting aside the *ex parte* order passed in M.C.No.160 of 2011.

5. A perusal of the material papers would show that the order in M.C., was passed on 17.12.2012, whereas CrI.M.P.No.467 of 2015 appears to have been filed subsequently, but no date is referred to on which the said application was filed. Proviso to sub-Section (2) of Section 126 envisages, in case an *ex parte* order was passed

granting maintenance, the same may be set aside for good cause shown on an application made within a period of three (03) months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

6. Learned counsel for the petitioner is unable to give the details as to whether any delay condonation petition was filed, whether delay was condoned or whether the application in CrI.M.P.No.467 of 2015 was filed within time, but it was numbered only in the year, 2015.

7. Be that as it may, in case such an application in CrI.M.P.No.467 of 2015 is pending on the file of the Judge, Family Court, Ranga Reddy District Courts at L.B.Nagar, the same is directed to be disposed of within one month from the date of receipt of a copy of this order.

8. So far as other relief to stay of execution of warrant is concerned, the same cannot be ordered. It is open to the petitioner to make his submissions when he is brought before the Court in execution of the warrant or if he makes appearance on his own before the Court below and submit before the Court as to the payment of maintenance as ordered by this Court in CrI.R.C.No.1131 of 2015. In case he is really depositing the amount as directed by this Court, proper proof is filed to that effect, then it is open to the

Court below to pass orders, in accordance with law, when the petitioner makes his appearance.

9. Accordingly, the Criminal Petition is disposed of at the admission stage.

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

JUSTICE A.SHANKAR NARAYANA

Date:27.01.2017
INL

