

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.1326 OF 2007

ORDER:

The present Criminal Revision Case is preferred questioning the order of dismissal passed in Criminal M.P.No.207 of 2007 in M.C. No.41 of 2006, dated 22.08.2007, passed by the Judge, Family Court, Warangal.

2. The aforesaid Criminal M.P. was filed to condone the delay of 144 days in filing the petition to set aside the *ex parte* order dated 23.08.2006 awarding maintenance amount of Rs.1,500/- each to the wife and son, enhancing the same from Rs.200/- per month awarded in earlier Maintenance Case.

3. The learned Judge, Family Court, on examination of the entire case file, did not convince himself with the reasons shown by the revision petitioner in the direction of sufficient cause to condone the delay.

4. Heard Sri A. Prabhakar Rao, learned counsel for the revision petitioner.

5. The learned counsel for the revision petitioner would submit that in the enhancement petition no notice at all was served on the revision petitioner, and, therefore, *ex parte* order passed by the Judge, Family Court, Warangal, is liable to be set aside. He further

submits that only when the husband gained knowledge of passing of *ex parte* order, he verified and found out passing *ex parte* order enhancing the maintenance amount awarded in earlier Maintenance case from Rs.200/- to Rs.1,500/- each to the respondents 2 and 3 herein, and, therefore, sought to allow the Revision Case, and, restore the Criminal M.P. No.207 of 2017 in M.C. No.41 of 2006.

6. No representation for the respondents 2 and 3 despite affording two chances to them.

7. A perusal of the order, which is now challenged, would show that the learned Judge found from the endorsement made on registered postal cover by the postman to the effect that the revision petitioner was absent from 6.7.2006 to 12.7.2006 and the endorsement dated 13.7.2016 by the postman showing that the revision petitioner has refused to receive the notice. Explaining the same, the revision petitioner has come up with an explanation that he was on leave from 7.7.2006 to 12.7.2006 and on 13.7.2006. The learned Judge found that even as per his petition averments, the revision petitioner attended the school on the remaining dates that was on 6.7.2006 and 8.7.2006 to 11.7.2006 and the endorsement was that he was absent on those days. Thus, the learned Judge, Family Court, observed that the petitioner, in such an event, ought to step into witness-box to rebut the presumption arising out of the endorsements of the postman while returning the postal cover, but the revision petitioner has not chosen to bring the extract of the Attendance Register maintained by the school

authorities nor did he examine any official of the said school in which he was working to prove his claim.

8. The learned Judge, then, referred to the decision in **Balaka Babu Rao v. Balaka Ramanamma and others** (1997 CrL. L.J. 4324), relied on by the learned counsel for the respondent before him as to presumption of knowledge of the proceedings and that the period of limitation starts from the date of the order. The learned Judge also places reliance in **Birbal v. Bimla Devi and Another** (1993 CrL. L. J. 1124) to the effect that service of notice by registered post with acknowledgment due is valid service and limitation to file application to set aside *ex parte* order will start from the date of *ex parte* order, and also relied on a decision in **Amal Guha v. The State and Another** (1989 CrL. L.J. 488) rendered by Calcutta High Court to the effect that as per Section 126(2) of Cr.P.C., an application to set aside *ex parte* order should be filed within three months from the date of order itself and that there is no scope within the limits of language of Section for interference with such application may be filed within three months from the date of knowledge.

9. Thus, the learned Judge, disbelieving the explanation offered by the petitioner as it was not convincing, rejected the request for condonation of delay of 144 days.

10. The very same explanation was offered by the learned counsel for the revision petitioner, once again, in the present Criminal Revision Case.

11. When there are postal endorsements of the postal authorities, as referred to in the above, presumption of official act automatically arises and since it is rebuttal presumption, the revision petitioner is obligated with the duty to examine himself by placing convincing material before the Court with the explanation offered by him rebutting the said presumption. As rightly observed by the learned Judge, Family Court, the petitioner neither stepped into witness-box to substantiate the stand nor did he examine any person from his office nor did he pick up postman to examine to show that the endorsements on the postal cover were not correct by cross-examining him. When nothing is done in such direction by the revision petitioner before the Judge, Family Court, the huge delay of 144 days in the present case cannot be condoned.

12. There is absolutely no merit at all in the present Criminal Revision Case, and, accordingly, the same is dismissed.

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

A. SHANKAR NARAYANA

Dt.13.11.2017
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