

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND SEVENTEEN

PRESENT

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 1487 OF 2017

Between:

Gollamudi Ramesh ... Petitioner

V/s.

Modukuri Nagamani
@ Modkuri Getha Nagamani & Anr. ... Respondents

Counsel for the Petitioner: Sri V. Roopesh Kumar Reddy

Counsel for the Respondents: Public Prosecutor [AP]

The court made the following: [order follows]

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 1487 OF 2017ORDER :

This Criminal Revision Case is filed under section 397 and 401 of Cr.P.C., questioning the propriety and legality of the order passed by the Judge, Additional Family Court, Visakhapatnam in FCOP.No. 865 of 2015, dated 18/11/2016, granting maintenance @ Rs. 15,000/- per month in favour of the petitioner therein payable on or before tenth of succeeding month, while granting time till 10/12/2015 for payment of arrears of maintenance.

2. The respondent filed maintenance case under section 125 of Cr.P.C., against the petitioner herein to grant maintenance @ Rs.25,000/- per month alleging that the petitioner herein refused and neglected to maintain her, being the legally wedded wife and that she has no source of income to maintain herself.

3. The learned Judge, Family Court ordered notice to the respondent and notice was served on the petitioner but he remained ex-parte.

4. The ex-parte order is now under challenge before this Court in this criminal revision on the sole ground that the procedure adopted by the court below is contrary to section 126 [2] of Cr.P.C., and thereby the order is liable to be set aside. The learned counsel for the petitioner relied upon judgment of this Court in **V.D. SOLOMON V/s. V. SOLOMON MARY AND ORS**¹.

5. During hearing the learned counsel for the revision petitioner reiterated the same contention whereas the counsel for the respondent vehemently contended that when the petitioner failed to appear before the court below, he is not entitled to question the order passed by the Judge, Additional Family Court, and therefore, the trial court based on the affidavit filed by the respondent ordered maintenance and prayed for the dismissal of this criminal revision.

6. Undoubtedly the proceedings before the court below are under section 125 Cr.P.C., though it is registered as FCOP the petition is only under section 125 Cr.P.C., and the procedure followed by the Judge is only under section 126 Cr.P.C. clause [2] the Court shall take

¹) 2003 - SCJ Online [AP] 1440

evidence in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases; therefore, taking advantage of 126 [2] of Cr.P.C., the learned counsel for the petitioner contended that the affidavit of the respondent cannot be permitted to be taken as evidence, like summons cases, this question no more res integra. In V.D. Solomon's case, supra-1, the learned single Judge after elaborately dealing with section 10 of the Family Courts Act and other provisions held that in maintenance cases the proceedings under section 125 Cr.P.C., the Court has to record the evidence as contemplated under section 126 [2] Cr.P.C., and affidavits cannot be received. In view of the law declared by this Court the procedure adopted by the Judge, Additional Family Court is irregular and contrary to law. This Court in exercise of the powers conferred under section 397 and 401 of Cr.P.C., can set aside the same. Accordingly, the order passed by the court below is set aside.

7. In the result, the Criminal Revision Case is allowed, setting aside the order in FCOP.No. 865 of 2015, dated 18/11/2016 and remitting the matter to the Judge, Family Court, Visakhapatnam with a direction to follow the procedure contemplated under section 126 Cr.P.C., for recording evidence and pass appropriate orders on merits in accordance with law, within a period of six months, from the date of receipt of a copy of this order.

8. As a sequel, miscellaneous petitions if any, pending in this Criminal Revision Case shall stand closed.

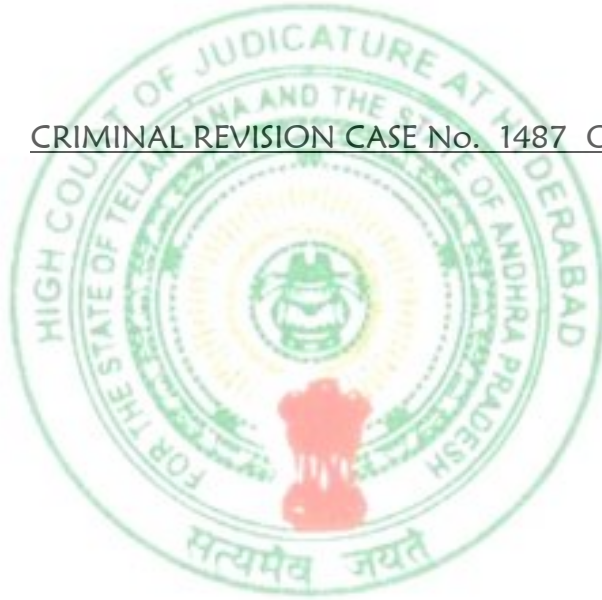


JUSTICE SATYANARAYANA MURTHY.

30/08/2017
I s L

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No. 1487 OF 2017



Date: 30/08/2017
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Court Master : I s L