

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

**CRIMINAL PETITION No.171 of 2017**

**ORDER:**

This Criminal Petition, under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed challenging the Order dt. 21.10.2016 in CrI.M.P.No.132 of 2016 in CrI.M.P.No.1223 of 2015 in M.C.No.192 of 2015 passed by the Judge, Family Court-cum-IV Additional District and Sessions Judge at Vijayawada, allowing the application filed under Section IX Rule 9 of C.P.C., by restoring CrI.M.P.No.1223 of 2015 to its file setting aside the dismissal Order, on various grounds.

2. During hearing, Sri Sai Gangadhar Chamorthy, learned counsel for the petitioner, contended that the provisions of Code of Civil Procedure cannot be invoked in the proceedings in a petition filed under Section 125 Cr.P.C., which is purely criminal in nature. As per Section 10 of Family Court Act, there is a clear bar of application of provisions of C.P.C to the proceedings other than under Chapter No.9 of Criminal Procedure before the Family Court and the Family Court is deemed to be a civil Court and it shall have the power of such Court ,but subject to the other provisions of the Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings. But the petitioner filed a petition under Order IX Rule 9 of CPC to restore the Criminal Miscellaneous Petition in a petition filed under Section 125 of Cr.P.C. ignoring the procedure laid down under Section 10 of Family Courts Act, 1984, and the Judge, Family Court, also passed an Order in a

petition filed under Order IX Rule 9 of CPC though not applicable. Therefore, the Order passed by the learned Judge is erroneous on the face of the record and hence the same is set aside while remanding the matter to the family Court to consider the same afresh under the provisions of Cr.P.C.

3. With the above direction, this Criminal Petition is disposed of.

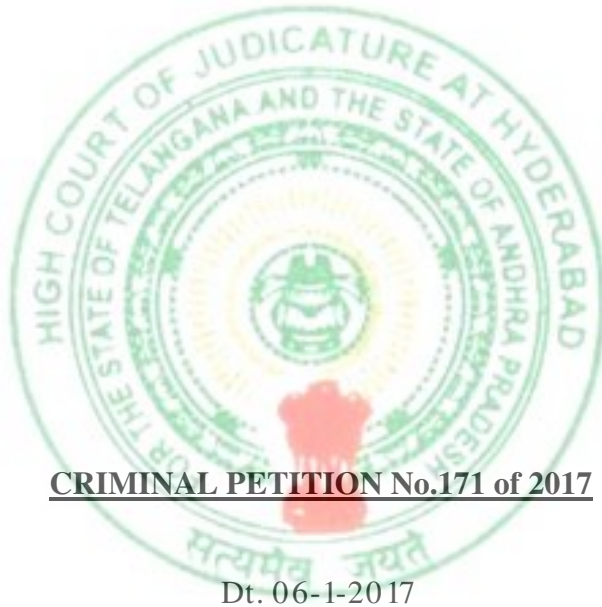
Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand dismissed.

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M. Satyanarayana Murthy, J

6<sup>th</sup> January, 2017  
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Dt. 06-1-2017

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