

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CRIMINAL PETITION No.8255 of 2017****ORDER:**

This Criminal Petition under Section 482 Cr.P.C. is filed to quash the Order dated 28.07.2017 in M.P.No.1373 of 2017 in M.C.No.224 of 2015 pending on the file of XV Additional District Judge-cum-II Additional Family Judge, Ranga Reddy District, Kukatpally at Miyapur, dismissing the application filed under proviso to Sub Section 2 of Section 126 Cr.P.C. to set aside the *ex parte* Order of maintenance passed in the proceedings under Section 125 of Cr.P.C.

The specific reason assigned before the trial Court is that the petitioner was falsely implicated in Cr.No.1096 of KPHB Police Station and remanded to judicial custody from 22.01.2016 and released from judicial custody in the first week of May, 2016, therefore, he could not appear before the Court within time and sought to set aside the *ex parte* order dt. 28.06.2017 passed in MP No.137 of 2017. He also filed Counter in the main petition raising serious contentions.

The trial Court accepted the contention of the petitioner that he was in judicial custody from 22.01.2016 till first week of May, 2016 while noting that the petitioner had engaged Sri A. Reshwar Reddy, who filed Vakalat on 17.08.2016, but filed this petition in the month of January, 2017 without any petition to condone delay though the petitioner is supposed to file a petition within three months of the knowledge as envisaged under proviso to Sub Section 2 of Section 126 Cr.P.C.

Undisputedly, the petitioner engaged counsel, who filed Vakalat on 17.08.2016. Therefore, he had knowledge about passing an Order in maintenance case No.224 of 2015, but filed this petition in the

month of January, 2017 i.e., five months from the date of engaging the said counsel, who filed Vakalat in the maintenance case. Thus, the petition was filed beyond three months, as permitted under proviso to Sub Section 2 of Section 126 Cr.P.C. and no explanation was offered by the petitioner for delay in filing the petition either by separate application or in the present petition itself. In the absence of any explanation and since the petition was filed beyond three months from the date of knowledge as envisaged under proviso to Section 2 of Section 126 Cr.P.C, this Court cannot set aside the Order passed against the petitioner in the proceedings under Section 125 of Cr.P.C.

At the end, learned counsel for the petitioner requested this Court to remand the matter to the trial court to enable him to file appropriate application to condone delay, but in the absence of any provision in the Code of Criminal Procedure, except to order re-trial, this Court cannot accede to the request of learned counsel for the petitioner. However, it is left open to the petitioner to file appropriate application, if law permits.

With the above observations, this Criminal Petition is dismissed as I find no ground to set aside the Order dt.28.07.2017 while exercising power under Section 482 Cr.P.C.

Accordingly, this Criminal Petition is dismissed as it lacks merit.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 05.12.2017
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HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY



CrI.P. No.8255 of 2017

Dt. 05.12.2017

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