

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRL.R.C.No.2005 OF 2017

ORDER:

This revision case is filed under Sections 397 and 401 of Cr.P.C challenging the order dated 08.05.2017 in Crl.M.P.No.909 of 2016 in M.C.No.121 of 2016, passed by the Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad awarding maintenance of Rs.10,000/- as interim maintenance from the date of petition i.e. 10.03.2016 till disposal of the maintenance case.

The only contention before this Court is that the trial Court did not consider the counter filed by the petitioner. On the other hand, in para 6 of the impugned order, the trial Court observed that the petitioner herein has not filed counter disputing the allegations leveled against him by the petitioner. But the petitioner allegedly filed counter on 13.04.2017 and that the impugned order was passed on 08.05.2017. Therefore, the impugned order passed by the Court below is on the basis of allegations made in the petition of the respondent herein only, without considering the counter filed by the petitioner. As such the same is illegal and irregular, hence requested this Court to set aside the impugned order by exercising power under Sections 391 and 401 of Cr.P.C.

During hearing, learned counsel for the petitioner reiterated the same and filed certified copy of counter in Crl.M.P.No.909 of 2016 in M.C.No.121 of 2016.

As seen from the certified copy of the counter produced before this Court along with main revision case, the said counter was filed

on 13.04.2017 itself i.e. on the day when the matter was heard. But it is not known whether the counter was filed subsequent to the hearing of the matter. It is the contention of the learned counsel for the respondent that the said counter was filed subsequent to hearing the matter.

Non consideration of counter filed by the petitioner herein and passing impugned order is an irregularity and consequently, the impugned order is liable to be set aside by exercising power under Sections 397 and 401 of Cr.P.C., remanding the matter to the trial Court to pass reasoned order considering the allegations made in the counter, after affording reasonable opportunity to both parties.

Accordingly, the Criminal Revision Case is allowed setting aside the order dated 08.05.2017 in CrI.M.P.No.909 of 2016 in M.C.No.121 of 2016, passed by the Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad and remanded the matter to its file. The trial Court is directed to decide CrI.M.P. within 15 days from the date of receipt of a copy of this order after affording opportunity to both parties.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 25.10.2017

Note: Issue c.c. by 27.10.2017

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