

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.2018 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code', for brevity), is filed by the petitioner, having been aggrieved of the return endorsement, dated 08.07.2017, of the office of the Court of the learned Judge, Family Court, Kadapa, passed in an un-numbered miscellaneous petition in C.F.R.No.427 of 2017 in M.C.No.10 of 2015.

2. I have heard the submissions of *Sri N.V.R.Amarnath*, learned counsel for the petitioner, at the stage of admission. I have perused the material record.

3. As per the submissions made and the facts borne out by the record, the petitioner filed the aforementioned un-numbered miscellaneous petition under Sections 5 and 17 of the Limitation Act, 1963, before the Court below, requesting to condone the delay of 564 days in seeking to set aside the *ex parte* order, dated 21.09.2015, passed in M.C.No.10 of 2015; however, the office of the Family Court returned the said petition with the following endorsement:

"How this petition is entitle to set aside the *ex parte* order as per the Sec. 126(2) of Cr.P.C., the statutory period of 3 months was already completed."

(Reproduced verbatim)

4. In this backdrop, the learned counsel for the petitioner would submit as follows:- 'The trial Court erroneously failed to entertain the petition filed under Sections 5 and 17 of the Limitation Act, 1963. The

said application is maintainable in view of the ratio in the decision rendered by the High Court of Kerala in *Balan Nair Vs. Bhavani Amma*¹. Therefore, the petitioner is constrained to file the present Criminal Revision Case before this Court.'

5. I have bestowed my attention to the facts and submissions.

6. In the considered view of this Court, when the application is returned by the office of the Family Court, the petitioner herein ought to have re-presented the same with necessary submissions and ought to have made a request for an opportunity of hearing on the maintainability of the petition and ought to have invited an order from the Court below on the aspect of the maintainability or otherwise of the petition, which is returned. Without doing so, the petitioner approached this Court. In the considered view of this Court, this Criminal Revision Case, therefore, is not maintainable, as the petitioner did not follow the procedure envisaged under the law before approaching this Court. Further, in this case, there are no special circumstances to entertain the revision.

7. In that view of the matter, this Criminal Revision Case is disposed of at the admission stage, reserving liberty to the petitioner to re-present the above un-numbered miscellaneous petition in C.F.R.No.427 of 2017 in M.C.No.10 of 2015, to the Family Court, Kadapa, with necessary submissions. It is needless to state that on the petitioner re-presenting the said petition with necessary submissions in reply to the objections taken by the office of the Court below, the Court below shall give an opportunity of hearing to the learned counsel for the petitioner and pass

¹ 1987 CrL.L.J. 399

appropriate orders, in accordance with the procedure established by law, on the maintainability or otherwise of the petition and shall entertain the petition, if it finds on merits that the petition is entertainable or reject the same, if it finds to the contra. The said course enables the petitioner to take further appropriate course of action, which the law permits.

Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

M.Seetharama Murti, J

18th July, 2017

Note:-

The Registry is directed to return the petition in C.F.R.No.427 of 2017 in M.C.No.10 of 2015 to the petitioner herein to enable him to re-present the same before the Court below as per the orders of this Court.

(B/O)
Bvv

