

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7130 of 2017

ORDER:

The petitioner in CrI.M.P.No.195 of 2017 in C.R.P.No.31 of 2017 before the III Additional District Judge, Kakinada, filed this petition seeking to suspend the operation of order dt.27.07.2017 in the CrI.M.P.No.195 of 2017.

The petitioner is the husband of the 1st respondent and father of the 2nd respondent-minor being represented by mother. The 1st respondent herein filed M.C.No.17 of 2013 against the petitioner herein seeking monthly maintenance and the same is allowed by granting maintenance of Rs.5,000/- p.m. to the 1st petitioner and Rs.2,500/-p.m. to the 2nd petitioner from the date of petition by order dt.10.08.2015 by the Addl.Judl.Magistrate of First Class, Prathipadu. Impugning the same, the petitioner filed revision vide CrI.R.P.No.31 of 2017 which admittedly pending before the III Addl.District Judge, Kakinada. Pending revision, he filed petition vide CrI.M.P.No.195 of 2017 u/sec.399 of CrPC to stay the order dt.10.08.2015 of maintenance granted to the petitioners, pending revision, and the learned Sessions Judge, ordered to pay half of the amount i.e. Rs.2,500/- p.m. to the wife and Rs.1,250/- p.m. to the child pending disposal of the main revision and further observed that so far as the arrears of maintenance, to pay Rs.7,500/- p.m. in addition to the modified monthly maintenance amount to the petitioners.

The main contention of the learned counsel for the petitioner/husband is that the paternity of the 2nd respondent is in dispute and in this regard he filed an application vide CrI.M.P.No.1134 of 2017, in the pending revision u/sec.45 of the

Indian Evidence Act, for D.N.A. examination which is pending. The above contention of the petitioner is to be decided on own merits therein but for this Court nothing more to discuss herein.

Now coming to the other contention of arrears concerned, he also stated paid more than Rs.70,000/- that is required to be taken into consideration. Whatever he paid is once borne by record, the same definitely to be considered by the learned Magistrate. Thus to clear the cloud the order is modified saying to pay monthly maintenance at Rs.3,750/- p.m. from the date of M.C. petition till disposal of the revision and pay arrears, after adjusting whatever the amounts paid by the petitioner, at such rate within four (4) equal monthly installments from now.

Accordingly and in the result, the Criminal Petition is disposed of by modifying the order in CrI.M.P.No.195 of 2017 impugned herein as stated supra. The learned Sessions Judge is directed to give early disposal. No doubt, if there are other preferential matters by consider the same to the revision.

Consequently, miscellaneous petitions, if any shall stand closed.

Dr.JUSTICE B.SIVA SANKARA RAO

Date: 19.09.2017
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