

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.11223 OF 2017

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) seeking to quash the docket order dated 23.10.2017 passed in CrI.M.P.No.233 of 2017 in D.V.C.No.102 of 2016 on the file of the Judicial Magistrate of First Class, Special Mobile Court, Guntur, Guntur District.

It is the contention of the petitioner-husband that the respondent-wife obtained an order granting maintenance in DVC.No.102 of 2016 dated 04.04.2017. Aggrieved by the said order, the petitioner-husband preferred an appeal in CrI.A.No.189 of 2017 on the file of the IV Additional Sessions Judge, Guntur and also filed a miscellaneous petition in CrI.M.P.No.461 of 2017 along with the appeal on 03.05.2017 to stay all further proceedings in DVC.No.102 of 2016 but the complaint before this Court is that the IV Additional Sessions Judge, Guntur, did not take up the matter and pass any order in CrI.M.P.No.461 of 2017. Therefore, the respondent-wife resorted to execute the order dated 04.04.2017 in DVC.No.102 of 2016 for recovery of arrears of maintenance.

No doubt, there is no error in the order passed by the Judicial Magistrate of First Class, Special Mobile Court, Guntur. Since the execution of the order dated 04.04.2017 is not stayed by the IV Additional Sessions Judge, Guntur, learned Judicial Magistrate cannot be prevented from passing any order in execution of the order dated 04.04.2017 for realisation of the

maintenance arrears. However, the lower appellate Court is not supposed to keep the miscellaneous petition pending, filed for grant of stay of execution of the order in DVC, pending for months together without disposing of the same. In view of these circumstances, it is appropriate to direct the IV Additional Sessions Judge, Guntur to dispose of CrI.MP.No.461 of 2017 in CrI.A.No.189 of 2017 within a week from the date of receipt of a copy of this order but this Court cannot disturb the order passed by the learned Judicial Magistrate, which is now under challenge under Section 482 Cr.P.C. In case the Sessions Court disposed of CrI.MP.No.461 of 2017 and passed order in favour of the petitioner-husband, the order passed by the learned Judicial Magistrate would become infructuous.

With the above observation, the Criminal Petition is disposed of. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

21st November 2017

NOTE: Issue CC by Friday
B/O
RRB