

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION NO.286 OF 2018

ORDER:

This petition is filed under Section 482 Cr.P.C. seeking to quash the order dated 22.12.2017 in CrI.M.P. No.792 of 2016 in M.C. No.331 of 2011 on the file of the Additional Family Court-cum-IX Additional Metropolitan Sessions Judge, Nampally, Hyderabad.

2. Learned counsel for the petitioner would submit that the petitioner is not doing any business and he filed documents to substantiate the same; that he is aged person, and has been financed by the sons of his first wife and that he has no independent source of income; that respondent No.2, who is his daughter, attained majority and hence, she is not entitled to maintenance, and ultimately prayed to quash the impugned order.

3. On the other hand, learned counsel for the respondent No.2 would submit that respondent No.2 is unmarried; that the petitioner has sufficient source of income to maintain her; that the Court below has elaborately dealt with the contentions raised and by placing reliance on the decision in *Noor Saba Khatoon v. Mohd. Quasim*¹ dismissed the petition filed by the petitioner for cancellation of maintenance, and ultimately, prayed to dismiss the Criminal Petition.

4. In view of the contentions put forth by both sides, the point for determination is whether there are any grounds to interfere with the order dated 22.12.2017 in CrI.M.P. No.792 of 2016 in M.C. No.331 of 2011 on the file of the Additional

¹ AIR 1997 SC 3280

Family Court-cum-IX Additional Metropolitan Sessions Judge, Nampally, Hyderabad ?

5. As per the order dated 10.09.2015 in the Maintenance Case No.331 of 2011, the petitioner was directed to pay maintenance @ Rs.3,500/- per month to respondent No.2 from the date of the petition. Thereafter, the petitioner filed M.P. No.792 of 2016 in the said Maintenance Case under Section 127 (2) cr.P.C. to cancel the maintenance, contending *inter alia* that as respondent No.2 attained majority, she is not entitled to maintenance. The Court below, while dealing with the subject matter, placed reliance on the decision of the Hon'ble Apex Court in *Noor Saba Khatoon's* case (1 supra), wherein it is held that an unmarried daughter is entitled to be maintained even after attaining majority provided she has no source of income to maintain herself. As per the record, respondent No.2-daughter is a student. It is her contention that she has no means to maintain herself. There is no evidence on record to believe that respondent No.2 has got means to maintain herself. Therefore, in the light of the above decision, she is entitled for maintenance from the petitioner.

6. The other contention raised by the learned counsel for the petitioner is that in view of the old age, the petitioner closed his cloth business and has no means to pay the maintenance to respondent No.2. He filed Ex.P1, which is a certificate issued by the Labour Department on 19.12.2015 showing that the shop belonging to the petitioner was closed. Except the self-serving statement of the petitioner (PW1), there is no other evidence on record that he is not doing any other work and not making out his livelihood and that he is depending on the children of first wife. It is the duty of the father to maintain his daughter. The Court below while

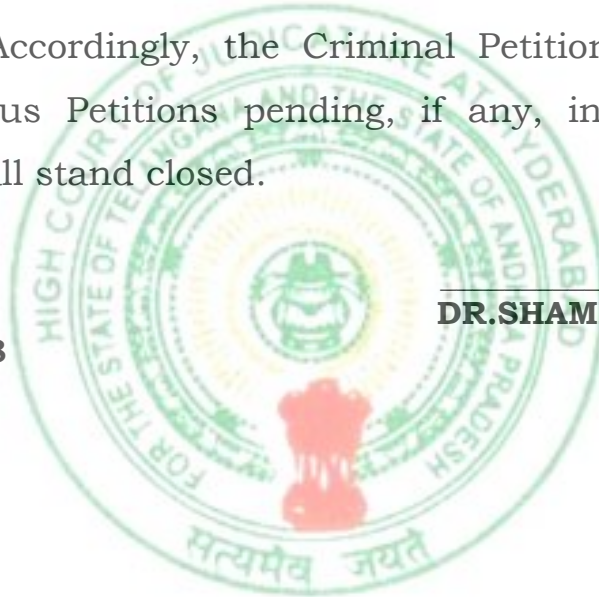
dealing with this contention, has elaborately dealt with all contentions and negated the same.

7. In the course of submissions, it is brought to the notice of this Court that though the order of maintenance was passed on 10.09.2015, arrears of maintenance are not paid to respondent No.2. While granting maintenance, the Court below has elaborately dealt with the aspect of capacity of the petitioner to maintain his daughter. There is no infirmity in the impugned order. The submissions made on behalf of the petitioner are unsustainable. The Criminal Petition is devoid of merit and liable to be dismissed.

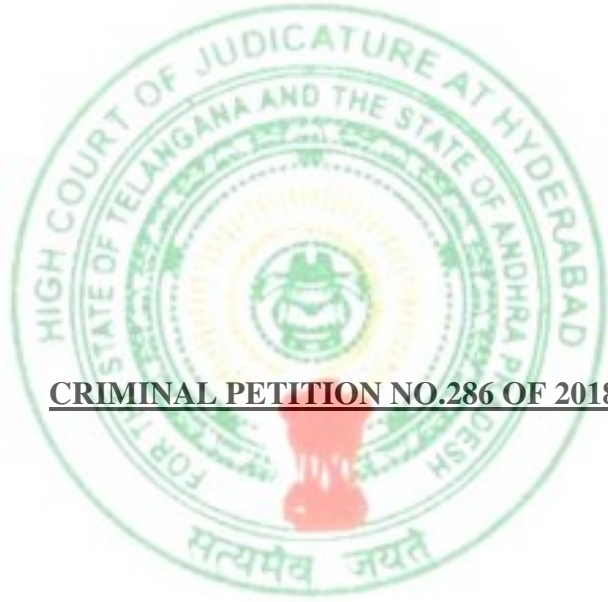
8. Accordingly, the Criminal Petition is dismissed. Miscellaneous Petitions pending, if any, in this Criminal Petition shall stand closed.

.03.2018
DRK

DR.SHAMEEM AKTHER, J



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