

HON'BLE SRI JUSTICE P. KESHA RAO

I.A.No. 2 of 2018

AND

CRIMINAL REVISION CASE No.152 of 2018

COMMON ORDER:

Heard the counsel for the petitioners as well as the learned counsel for first respondent and learned Public Prosecutor for second respondent-State.

The present revision case is filed against the orders dated 15.04.2015 passed in M.C.No.214 of 2012 on the file of the Court of the Judge, Family Court, Ranga Reddy District at L.B.Nagar, in dismissing the maintenance case for default.

The brief facts of the case are that the petitioners herein filed M.C.No.214 of 2012 on the file of the Court of the Judge, Family Court, Ranga Reddy District at L.B.Nagar claiming a sum of Rs.20,000/- and Rs.15000/- per month to them towards maintenance. Pending the maintenance case, they have filed a petition in CrI.M.P.No.889 of 2012 for interim maintenance. After hearing, the said petition was allowed on 01.09.2014 granting maintenance of Rs.20,000/- p.m. and Rs.5,000/- p.m. to the petitioners towards interim maintenance and directed the first respondent herein to pay the same on or before 10th of every month. Apart from the same, they were also awarded a sum of Rs.5,000/- towards costs. Since the first respondent failed to pay the interim maintenance in compliance with the orders dated 01.09.2014,

the petitioners filed petition in CrI.M.P.No.586 of 2014 for execution. The said petition is dismissed.

As far as the main maintenance case is concerned, the first respondent filed his counter and the case was posted for trial. However, on 15.4.2015 the learned Family Judge was pleased to dismiss the maintenance case for not paying the costs of Rs.100/- and also for not getting ready for trial. In spite of the dismissal of the maintenance case, the learned Family Judge was taking up the CrI.M.P.No.586 of 2014 filed for execution of the orders dated 1.09.2014 passed in CrI.M.P.No.889 of 2012. Though the maintenance case was dismissed, it was not brought to the notice of the petitioners by their counsel and they were under the bona fide impression that the case is coming up for hearing. However, on the advise of their counsel, they filed M.C.No. 214 of 2012 for restoration of CrI.M.P.No.586 of 2014, the said application was dismissed on 23.11.2017 observing that the learned Family Judge has no power to recall its order. The petitioners were also informed that against the dismissal of the maintenance case, revision lies to this Court. Therefore, the petitioners filed the present criminal revision case against the dismissal of the maintenance case for default on 15.04.2015. However, by the time, the present revision case is filed in this Court, there is a delay of 925 days. As such, a separate application in I.A.No.2 of 2018 is filed to condone the delay of

925 days in preferring the revision against the orders dated 15.04.2015.

The first respondent filed counter in I.A.No.2 of 2018 denying the averments made in the affidavit filed in support of the delay application and contended *inter alia* that the contention of the petitioners that the first petitioner was under the bona fide impression that the case was coming up for hearing in CrI.M.P.No.586 of 2014, is not supported by any evidence because the petitioners are well aware that M.C.No.214 of 2012 was taken up. The petitioners also have knowledge about the fact that M.C.No.214 of 2012 was taken up and costs of proceedings were also directed. Therefore, the question of petitioners were under *bona fide* impression that M.C.No. 214 of 2012 is pending, is false and an afterthought. It is also stated in the counter that the petitioners failed to produce any evidence. However, the learned counsel is being blamed. There is no affidavit to that effect by the counsel that he failed to inform the petitioners about leading of evidence in the main case and imposition of costs of Rs.100/- for not getting ready for trial.

Learned counsel appearing for the petitioners contended that the Court below cannot dismiss the application for maintenance for default. If the same is dismissed for default, the only recourse left open to the aggrieved party is to file a revision before this Court. He also contended that they were under the bona fide impression that the case is coming up for

hearing and their counsel has not informed about the dismissal of the maintenance case. In fact, on the date of dismissal of the maintenance case for default, the petitioners were very much present in the Court.

Per contra, the learned counsel appearing for the respondents argued that there is no proof for the contention taken by the petitioners herein and therefore, the abnormal delay of 925 days cannot be condoned.

Having heard both the counsel and perusal of the material on record, it discloses that the maintenance case filed by the petitioners herein, was dismissed for default for the reason that in spite of giving several adjournments and imposition of the costs, the costs were not paid and the petitioners were not ready on 15.04.2015. Therefore, the main maintenance case was dismissed for default.

The point that arises for consideration in this revision is:

Whether the impugned order challenged in the present revision is sustainable in law?

In fact, there is no provision in the Code of Criminal Procedure to restore the application filed under Section 125 Cr.P.C. which is dismissed for default. In the absence of a specific provision to restore the same, the Court becomes functus officio and is disentitled to entertain a prayer with the same relief unless the final order of disposal is set aside by the Court of competent jurisdiction as prescribed by law.

In the case on hand, the learned Family Judge, has dismissed the maintenance case for default. Therefore, the only course left open to the petitioners is to invoke the revisional jurisdiction of this Court.

From a perusal of the facts, it is evident that in spite of the petitioners being present in the Court, the maintenance case was dismissed for default. In fact, the magistrate has no power to dismiss a petition under Section 125 Cr.P.C. for default. The specific plea taken by the petitioners is that their counsel has not informed them that the maintenance case is dismissed for default. The petitioners have their substantial rights and interest in the maintenance case filed against the respondents herein. Therefore, the magistrate without any power cannot dismiss the maintenance case for default and he has no power to rectify the said mistake. If the illegal order passed by him is allowed to continue, it would result in miscarriage of justice and the petitioners will be left remediless. However, keeping in view the peculiar facts and circumstances available in the case on hand, this Court deems it fit and appropriate to condone the delay of 925 days subject to payment of costs.

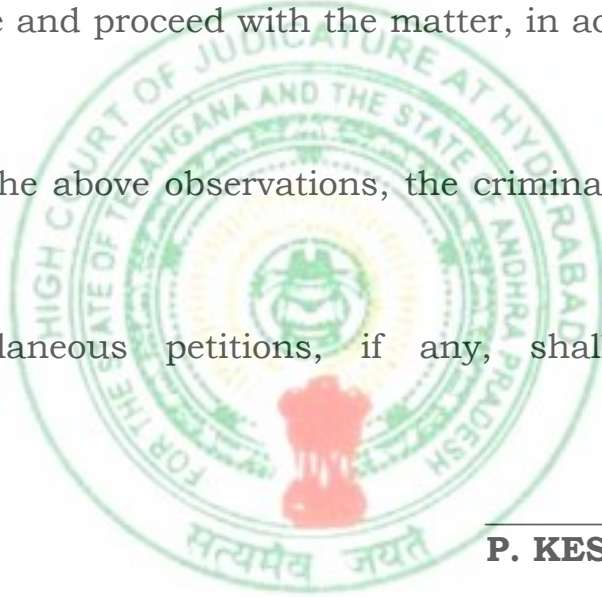
Accordingly, I.A.No. 2 of 2018 is ordered and the delay of 925 days in filing the criminal revision case is condoned subject to the petitioners paying a sum of Rs.5,000/- to the Telangana State Legal Services Authority, Hyderabad within a

period of two weeks from the date of receipt of a copy of this order.

In the conspectus of the discussion made above, since the magistrate has no power to dismiss the application filed under Section 125 Cr.P.C. for default, this Court is inclined to set aside the order dated 15.04.2015 in dismissing M.C.No.214 of 2012 for default and restore the same, in the interest of justice. The learned Family Judge is directed to restore M.C.No.214 of 12012, issue notices to the parties by fixing a date and proceed with the matter, in accordance with law.

With the above observations, the criminal revision case is allowed.

Miscellaneous petitions, if any, shall also stand dismissed.



P. KESHAVA RAO, J

Date:19.06.2018.
CCM

HONOURABLE SRI JUSTICE P. KESHA VA RAO



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