

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.9487 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. questioning the order dated 07.02.2018 passed in I.A.No.306 of 2017 in M.C.No.73 of 2016 by the Family Court, Nellore, SPSR, Nellore District, awarding maintenance pendent lite, Rs.3,000/- each to the minor children and Rs.5,000/- to the wife of the petitioner.

The petitioner was the husband of the 1st respondent and respondents 2 and 3 are his children. The respondents filed petition under Section 125 Cr.P.C before the Family Court alleging that the petitioner refused and neglected to maintain them and failed to provide any maintenance and not looking after the welfare of the children while contending that the petitioner possessed sufficient means and whereas the respondents did not possess any means or source of income to maintain themselves.

During pendency of the main petition, the respondents filed petition under Section 125(1) Cr.P.C. for grant of interim maintenance on the same ground. The petitioner raised specific plea that the 1st respondent is living in adultery, which disentitle her to claim maintenance as per Sub-section 5 of Section 125 Cr.P.C., but the Judge, Family Court did not consider the said contention and committed an error in granting maintenance. The petitioner further accepted the maintenance granted to the minor children i.e. respondents 2 and 3 while disputing the liability of the 1st respondent to pay maintenance on the ground that she is living in adultery and developed illicit intimacy with one Kiran and requested to set aside the order passed by the Court below.

In view of the concession of learned counsel for the petitioner, the liability to pay maintenance to the minor children, i.e. respondents 2 and 3 needs no further consideration. Whereas, the liability of the petitioner to pay interim maintenance to the 1st respondent is in dispute since she is living in adultery and having sexual intercourse with one Kiran. But before the Judge, Family Court, no document is produced and no oral evidence is adduced in support of his contention that his wife is living in adultery in view of bar under Section 125(5) Cr.P.C.

Along with the petition, a final report was filed by the Sub-Inspector of Police, Nellore II Town Police Station, in Crime No.98 of 2015 registered for the offence of woman missing and on the basis of the report, learned counsel for the petitioner contended that the 1st respondent is disentitled to claim maintenance as she is living in adultery with one Kiran and drawn the attention of this Court to various allegations in the final report. Without marking any document before the Judge, Family Court, the petitioner is not entitled to introduce evidence in this petition. However, the final report is only to close the crime, but whatever alleged in the final report cannot be said to be gospel truth. The alleged living in adultery by the 1st respondent is a question of fact to be decided based on oral and documentary evidence, if any produced during enquiry. But at this stage, based on such final report, the Court cannot deny the relief of interim maintenance under Section 125(1) Cr.P.C., during pendency of the main petition and the order passed by the Judge, Family Court cannot be reversed or set aside. Therefore, there are absolutely no grounds to set aside or quash the order passed by the Court below. However, it is left open to the petitioner to raise all such contentions during enquiry in the main petition and on raising such contentions, the Judge, Family Court is under obligation to decide the issue with reference to Section 125(5) Cr.P.C.

In the result, the criminal petition is dismissed confirming the order dated 07.02.2018 passed in I.A.No.306 of 2017 in M.C.No.73 of 2016 by the Family Court, Nellore, SPSr, Nellore District.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

06.09.2018
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