

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.10678 of 2018

ORDER :

The petitioner is the respondent in M.C.No.15 of 2014 on the file of the Judicial First Class Magistrate, Yemmiganur, Kurnool District, under Section 125 Cr.P.C. maintained by his wife, the 1st respondent herein. The learned Magistrate, by order, dated 15.02.2017, awarded maintenance. One of the contentions raised by him as respondent to the maintenance case was that there was no negligence or abandonment and she is not entitled to maintenance as per Section 125 Cr.P.C., which is a pre-requisite to such entitlement. Aggrieved by the order of the learned Magistrate, he maintained unsuccessfully Criminal Revision Petition No.18 of 2017 that was dismissed, confirming the order of the learned Magistrate, dated 30.08.2018, by the learned II Additional Sessions Judge, Kurnool at Adoni. Impugning the same, the present criminal petition is filed under Section 482 Cr.P.C.

2. Heard learned counsel for the petitioner and learned Public Prosecutor, representing the 2nd respondent-State. For 1st respondent even served, from the track record showing item delivered failed to attend, taken as heard to decide on merits so far as 1st respondent M.C. petitioner concerned.

3. One of the contentions raised mainly is that there is no neglect or abandonment, the Courts below did not specifically discussed with

a finding in this regard. Even taken for arguments sake that Courts did not discuss, though there is a discussion to some extent, it is not even his case that he issued any notice to his wife ever to ask her to join his company, it is not even his case that he filed any matrimonial proceedings under Section 9 of Hindu Marriage Act for restitution of conjugal rights complaining about her refusal to join him and he is willing to take or on any grounds of desertion or cruelty if at all any proceeding under Section 13 of the Hindu Marriage Act. It is not even his case in the M.C. proceedings by making a request to the learned Magistrate to reconcile and he is ready and willing to join or take her to his fold. Once it is her averment that he abandoned and his contention of he did not abandoned and these are the lacunas on his part for no effort on his side, there is nothing to say that she was not abandoned. Suffice to say, the said contention is not tenable to raise now to consider. Even from the factual background with circumstances supra of any prudent conduct of a ordinary person could not have keep quite if at all he was willing and not abandoning as per Section 3 of the Indian Evidence Act, so to infer. Coming to the other contention that he is a pensioner and he has no income as was at the time of granting the maintenance order by the learned Magistrate concerned, remedy is left open to him to invoke the learned Magistrate by with the modified or changed circumstances under Section 127 Cr.P.C. to reduce the quantum of maintenance by showing what he is getting as a pensioner.

4. With this observations, the criminal petition is disposed of, rather than dismissal.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

29th November 2018.

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