

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.3344 OF 2017

JUDGMENT:

The revision petitioner is the husband, who filed the present Criminal Revision Case under Sections 397 and 401 of the Criminal Procedure Code, 1973 (for short, 'Cr.P.C.') aggrieved by the order dated 21.9.2017 in CrI. M.P. No.236 of 2016 in M.C. No.175 of 2010 on the file of XVI-Additional District & Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, R.R. District at Malkajgiri, whereby and whereunder he refused to accede to the request for enlargement of time for conducting DNA test to himself (revision petitioner) and respondent No.2, who is the daughter of 1st respondent, 5-year old, claimed to have born through the revision petitioner, and dismissed the application filed under Section 148 of C.P.C. read with Section 151 of C.P.C.

2. Heard Sri Ch. Satish Kumar, learned counsel for the revision petitioner and Y. Subhash, learned counsel for the respondents 1 and 2.

3. Since learned Additional Public Prosecutor for the State of Telangana opposed, the present Revision is disposed of at the admission stage itself.

4. Touching the relevant facts, the revision petitioner, originally, filed Criminal M.P. No.545 of 2014 under Section 12 of the Family Courts Act, to send him and respondent No.2 for D.N.A.

Test at his expenses. The said petition was allowed on 1.4.2015 by granting two months time for taking steps for DNA test. Thereafter, he filed Crl. M.P. No.236 of 2016, from which the order under challenge herein arises in the Revision for the aforesaid purpose.

5. The said order was resisted to by the respondents by filing counter contending that the petitioner having succeeded in getting the order for DNA test failed to deposit requisite amounts and absconded after the orders were passed and did not attend the Court. They even contended that the revision petitioner appeared only after filing of the execution petition for recovery of arrears of maintenance. According to them, the said petition was returned on 27.7.2015 and he has resubmitted the same on 25.1.2016 and now alleging that the respondent No.1 was not cooperating for DNA Test.

6. The learned Additional Sessions Judge, Cyberabad, Malkajgiri, rejected the request on three grounds. First, the petitioner failed to appear despite granting two months' time; second, though, the petition was returned on 27.7.2015 he resubmitted it only on 25.1.2016, and, thus he took 182 days for representation. Third, when the main Maintenance Case is coming up for further evidence of the petitioner, the petitioner failed to make out reasonable cause for delay in depositing the expenses for DNA test and for not complying with the orders dated 1.4.2015 in Crl. M.P. No.545 of 2014 and thereby dismissed the application.

7. Turning to the submissions of the learned counsel that despite allowing earlier application to subject the petitioner and

respondent No.2 for DNA Test, rejecting the request to extend the time is not tenable. It is according to him that due to non-cooperation of the 1st respondent, the petitioner could not comply with the condition imposed by the Court below.

8. Turning to the affidavit filed in Criminal M.P.No.236 of 2016, what all the petitioner averred in explaining the reasons, is that earlier counsel on record has orally intimated the 1st respondent to bring the 2nd respondent for DNA test and the 1st respondent did not turn up. Second reason shown by him is that the DNA test could not be conducted in time because of non-cooperation from respondent No.1, and, therefore, to enlarge the time for one month for conducting DNA test. The reasons assigned by the Court below in rejecting the request are mentioned hereinbefore.

9. Originally, Maintenance Case was filed in the year 2010 by the 1st respondent herein to grant maintenance to herself and the 2nd respondent. Criminal M.P. No.545 of 2014 was filed in M.C. No.175 of 2010 under Section 12 of the Family Courts Act to send the 2nd respondent and himself for DNA test to prove the paternity of the 2nd respondent. It is clear that the said petition was allowed on 1.4.2015 directing the 2nd respondent for DNA test at the expenses of the petitioner, within two months. The petitioner appears to have kept quiet without even making payment of necessary expenses within two months, at least no reasons are assigned by him except stating that his advocate-on-record earlier informed the 1st respondent to bring the 2nd respondent and that due to non-cooperation he could not comply

the order passed by this Court. If that was the reason, certainly, he would have rushed to the Court by making relevant application bringing to the notice of the learned Additional Sessions Judge, Malkajgiri, about non-cooperation of the respondent No.1 to bring the 2nd respondent, which he did not do nor did he deposit the expenses. This apart, for a period of 182 days he kept quiet having filed the petition and later represented it, and he did not disclose any reasons at all as to why 182 days delay occurred.

10. Thus, viewed from any angle, there is absolutely no plausible explanation at all to accede to his request for extension of time. When the stage at which the application in CrI. M.P. No.545 of 2014 was filed is noted, it is clear that only after completion of evidence of the respondents herein and when it was coming up for the evidence of the petitioner herein, who is the respondent in M.C. No.175 of 2010, he moved Criminal M.P. No.545 of 2014 and his conduct is manifest from the fact that he did not obey the orders passed by this Court and later he has not shown due diligence in, immediately, rushing to the Court complaining non-cooperation if there is any truth in such an allegation and even kept quiet without representing the petition for about 182 days, for which he has not offered any plausible explanation at all.

11. Therefore, there is no merit in the present Criminal Revision Case and, accordingly, the same is dismissed confirming the order passed by the Court below. It is desirable to direct the learned Additional Sessions Judge, Malkajgiri, to dispose of M.C. No.175 of

2010 as expeditiously as possible not later than three (3) months from the date of receipt of a copy of the order. The petitioner herein, who is the respondent in Maintenance Case, is also directed to cooperate with the Court for disposal of Maintenance Case within three months as directed.

As a sequel thereto, miscellaneous petitions if any pending in the Criminal Revision Case shall stand closed.

January 24, 2018.
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A. SHANKAR NARAYANA, J

