



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SRI JUSTICE A V SESA SAI
CRIMINAL PETITION NO: 7700 OF 2013

Between:

1. Gollapudi Kishore Babu, S/o Venkaiah, R/o II Lane, L.B.S.Nagar, Kothuru Village, Nellore Rural Mandal, Sri P.S.R.Nellore District.

...PETITIONER(S)

AND:

1. Gollapudi Rebaka, W/o Kishore Babu, R/o Nagulavaram Village, Bogole Mandal, Sri P.S.R.Nellore District.
2. Gollapudi Rohith, S/o Kishore Babu, Beng Minor Rep. by his Mother and Guardian R-1 R/o Nagulavaram Village, Bogole Mandal, Sri P.S.R.Nellore District.
3. Gollapudi Rakesh, S/o Kishore Babu, Beng Minor Rep. by his Mother and Guardian R-1 R/o Nagulavaram Village, Bogole Mandal, Sri P.S.R.Nellore District.
4. The State of Andhra Pradesh, Rep. by its Public Prosecutor, High Court of A.P., at Hyderabad, through III Town PS., Rajahmundry.

...RESPONDENTS

Counsel for the Petitioner(s): P S P SURESH KUMAR

Counsel for the Respondents: PUBLIC PROSECUTOR (AP)

The Court made the following: ORDER

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI****CRIMINAL PETITION No.7700 OF 2013****ORDER:**

Heard Sri P.S.P.Suresh Kumar, learned counsel for the petitioner, Smt. M.Bhagyasri, learned counsel for respondent Nos.1 to 3 and Sri S.VenkatSainadh, learned Special Assistant Public Prosecutor appearing for respondent No.4, apart from perusing the material available on record.

2. This Criminal Petition is filed under Section 482 Cr.P.C., seeking quashment of the orders dated 15.06.2013 passed by the Special Judge for trial of the cases under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-V Additional Sessions Judge, Nellore, in C.R.P. No.40 of 2012, whereunder and whereby, the learned Sessions Judge confirmed the order dated 15.02.2012 passed by the Court of Additional Judicial Magistrate of the First Class, Kavali, in M.C. No.17 of 2009.

3. The facts and circumstances leading to the filing of the present Criminal Petition are as infra:

Respondents 1 to 3 filed M.C. No.17 of 2009 on the file of the Court of Additional Judicial Magistrate of the First Class, Kavali, under Section 125 Cr.P.C., praying for maintenance to them at the rate of Rs.3,000/- per month each. The marriage between the petitioner and the 1st respondent herein took place in the year 1996 at Nellore as per the Christian rites and customs. According to the 1st respondent, the petitioner herein



necked her out, suspecting her fidelity. As evident from the material available on record, it is the case of the petitioner herein that he underwent vasectomy in the year 2005 and the 1st respondent herein got pregnancy in the year 2007.

4. On the basis of the material available on record, learned Magistrate framed the following point for determination:

"Whether the petitioner is entitled for award of maintenance as prayed for or whether she is disentitled for maintenance as she is living in adultery?"

5. During the course of trial, the wife-1st respondent herein examined herself as P.W.1 and did not file any documents, whereas the husband-petitioner herein, apart from examining himself as R.W.1, got examined his father-Sri GollapudiVenkaiah as R.W.2 and filed Exs.R.1 to R.6 documents in order to substantiate his case. The learned Magistrate, disbelieving the version of the husband-petitioner herein, partly allowed the Maintenance Case, directing the petitioner herein to pay maintenance at the rate of Rs.2,000/- per month to the 1st respondent herein and at the rate of Rs.1,500/- per month each to the two sons of the petitioner and 1st respondent, i.e., Rajesh and Rakesh, from the date of filing of the petition, apart from granting Rs.10,000/- per month towards shelter and clothing for the 1st respondent and two children and also awarded Rs.1,000/- towards costs.



6. Aggrieved by the said order, the petitioner-husband preferred C.R.P. No.40 of 2012 on the file of the Court of Special Judge for trial of the offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-V Additional Sessions Judge, Nellore. The learned Sessions Judge, by way of an order dated 15.06.2013, dismissed the revision, confirming the order of maintenance passed by the learned Magistrate.

7. In the above background, the present Criminal Petition came to be filed under Section 482 Cr.P.C., assailing the orders passed by the revisional Court and the trial Court.

8. According to the learned counsel for the petitioner, the orders passed by the trial Court and the revisional Court are highly erroneous, contrary to law and opposed to the very spirit and object of the provisions of Section 125 of Cr.P.C. In elaboration, it is further contended by the learned counsel that since the 1st respondent herein is leading adulterous life, the question of granting maintenance does not arise in view of the provisions of sub-section (4) of Section 125 Cr.P.C. It is also the submission of the learned counsel that as the petitioner herein had undergone vasectomy operation in the year 2005, the version of the 1st respondent about the birth of the child to him in the year 2007 cannot be believed.

9. On the other hand, it is contended by the learned counsel for the respondents 1 to 3 and the learned Special



Assistant Public Prosecutor Sri S.VenkatSainadh that there is no error nor there exists any infirmity in the impugned orders, as such, the same are not amenable for any correction under Section 482 Cr.P.C. It is also their submission that there is absolutely no basis for the allegations made by the petitioner herein, as such, the learned trial Judge and the learned Sessions Judge are perfectly justified in declining to give any credence to the case of the petitioner herein.

10. In the above background, now, the issue that emerges for consideration of this Court is "whether the orders passed by the trial Court and the learned Sessions Judge, which are impugned in the present Criminal Petition, are sustainable and tenable? and whether the same warrant any interference of this Court under Section 482 Cr.P.C.?"

11. The provision of law which is relevant for the purpose of adjudication in the present Criminal Petition is Section 125 Cr.P.C., which reads as under:

"125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or



(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month' s allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, suchMagistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied



that there is just ground for so doing. Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife' s refusal to live with him.

(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

12. The object behind incorporating Section 125 Cr.P.C. is very laudable and the said provision of law enables the wife, who is unable to maintain herself, legitimate or illegitimate minor child, whether married or not, who is unable to maintain itself, or a legitimate or illegitimate child (not being a married daughter), who has attained majority, where such child is, by reason of any physical or mental abnormality or injury, unable to maintain itself, and the father or mother, who are unable to maintain themselves, are entitled to claim maintenance from the person who neglects or refuses to maintain, despite having sufficient means. The said provision of law imposes not only statutory obligation but also the social responsibility.

13. According to sub-section (4) of Section 125 Cr.P.C., no wife is entitled to receive maintenance, if she is living in



adultery and if she refuses to live with her husband without any sufficient reason.

14. In the instant case, the plea of the petitioner herein is that since the 1st respondent herein is leading adulterous life, she suffers disqualification to claim maintenance in terms of sub-section (4) of Section 125 Cr.P.C. The allegation of adultery cannot be viewed lightly, having regard to the social stigma, it attaches to an individual and the said allegation cannot be permitted to be made without there being any foundation or basis. In the case on hand, in order to substantiate his case, the petitioner herein filed Ex.R.1-certified copy of the vasectomy operation certificate and Ex.R.6-certificate issued by the Jubilee Hospital, Nellore. By relying upon the said documents, the husband-petitioner herein pleads that in view of the said documents, which demonstrate that the petitioner herein had undergone vasectomy operation in the year 2005, a presumption needs to be drawn against the 1st respondent herein as to the allegation of adultery. In fact, the learned Magistrate, while dealing with the said documents, categorically and in a detailed manner, discussed about the said documents and also took into consideration the non-examination of the authors of the said documents. It is also clear from the order passed by the learned Magistrate that the learned Magistrate had taken into consideration the aspect of presumption under Section 112 of the Indian Evidence Act. The finding of the learned Magistrate that the minor operations conducted by the doctors may fail in



some cases cannot also be faulted. Admittedly, the Original Petition filed by the petitioner herein, seeking dissolution of marriage on the ground of adultery is pending consideration and the petitioner herein has failed to establish the allegation made by him in terms of sub-section (4) of Section 125 Cr.P.C. In fact, the learned Sessions Judge also, in the impugned order dated 15.06.2013 in C.R.P. No.40 of 2012, elaborately and extensively dealt with all the issues raised and declined to give any credence to the case of the petitioner herein. In view of the above reasons, this Court does not find any merits in the present Criminal Petition.

15. Accordingly, the Criminal Petition is dismissed. No costs.

Miscellaneous Petitions pending, if any, in the Criminal Petition shall stand closed.

A.V.SESHA SAI, J

16.02.2021

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CRIMINAL PETITION No.7700 OF 2013

16.02.2021

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***THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

+CRIMINAL PETITION No.7700 OF 2013

% 16.02.2021

Between:

Gollapudi Kishore Babu, S/o.Venkaiah,
Christian, 40 years, R/o.II Lane, L.B.S.Nagar,
Kothuru village, Nellore Rural Mandal,
Sri P.S.R.Nellore District.

- - -Petitioner

And

1. GollapudiRebaka, W/o.KishoreBabu,
Christian, 34 years, R/o.Nagulavaram village,
Bogole Mandal, Sri P.S.R. Nellore District.

And others - - - Respondents

! Counsel for the Petitioner : Sri P.S.P.Suresh Kumar

^ Counsel for Respondents 1 to 3 : Smt. M.Bhagyasri

Counsel for Respondent No.4 : Sri S.VenkatSainadh,
Special Assistant Public Prosecutor

< **Gist:**

> **Head Note:**

? **Cases referred:**

Nil

This Court made the following: