

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.08.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Crl.RC.Nos.326 and 327 of 2016

Y.R.Pavendan ... Appellant in both CrIRCs

Vs.

1. K.Meenakshi

2. Minor P.M.Pamagal

3. Minor P.M.Oviyan

(Minors rep. By their mother / guardian
K.Meenakshi) ... Respondents in both Crl.RCs

Prayer in Crl.RC.No. 326 of 2016: Petition filed under Section 397 and 401 of Cr.P.C as against the Order in Crl.M.P.No.2512 of 2015 in Crl.A /2015, on the file of the learned Principal Sessions Court, Vellore dated 23.11.2015.

Prayer in Crl.RC.No. 327 of 2016 : Petition filed under Section 397 and 401 of Cr.P.C as against the Order in Crl.M.P.No.2512 of 2015 in Crl.A /2015, on the file of the learned Principal Sessions Court, Vellore dated 11.12.2015.

For Appellant	: Mr.S.Saravanan
For Respondents	: Mr.E.Kannadasan

COMMON ORDER

This revision case (Crl.RC.No.327 of 2016) has been filed against the order passed in Crl.M.P.No.2512 of 2015 by the Court of Principal Sessions Judge, Vellore, dated 11.12.2015.

2. The petitioner, being the husband, had suffered with an order passed by the Judicial Magistrate No.III, Vellore by order, dated 18.11.2014 in M.C.No.01 of 2011. By the said order, the learned Magistrate has directed the petitioner to pay a sum of Rs.5000 to the respondent – wife and also to pay a sum of Rs.5000/- to two children of him per month as maintenance.

3. As against the said order, the petitioner has preferred an Appeal before the Appellate Court i.e, the Court of Principal Sessions Judge, Vellore. In preferring the said appeal, there is a delay and in order to condone the said delay, the petitioner had filed necessary petition before the said Court. The said condone delay petition numbered as Crl.M.P.No.2512 of 2015 was taken up for hearing and a conditional order was passed by the learned Judge in the said Crl.M.P.No.2512 of 2015 on 23.11.2015.

4. By the said Order, the learned Judge as a condition had directed the petitioner to pay 50% of the arrears of maintenance as directed by the trial Court on or before 10.12.2015.

5. Thereafter, when the case was called on 11.12.2015, since according to the learned Judge, the said conditional order of payment of 50% of arrears of maintenance was not complied with, the learned Judge has dismissed the said MP, i.e., condone delay petition to condone the delay of 26 days in filing the petition. As against the said order, the present revision has been filed.

6. I have heard Mr.S.Saravanan, the learned counsel appearing for the petitioner as well as Mr. E.Kannadasan, the learned counsel appearing for the respondents.

7. The learned counsel appearing for the petitioner has brought to the notice of this Court by way of an additional affidavit as well as the additional typed set of papers to state that, in fact the petitioner had already complied with the said conditional order made by the 1st Appellate Court i.e., dated 23.11.2015.

8. To substantiate the same, the petitioner has averred at paragraphs 2 and 3 of the additional affidavit, which are reproduced herein:

"I further state that the memo of calculation for the payment of arrears amount is given below.

The amount Awarded by the learned trial Judge :Rs.15,000/-

The date of order of the learned trial Judge : 18.11.2014

*The date of conditional order passed by the appellate Court
: 23.11.2015*

Total arrears amount from (18.11.2014 to 23.11.2015)

*Sum of Rs.15,000 * 12 : Rs.1,80,000/-*

Half arrears amount as per the conditional order : Rs. 90,000/-

Hence, I had to pay the sum of Rs. 1,05,000/- on or before 10.12.2015.

3. I further state that I have paid said sum of Rs.90,000/- before 10.12.2015. The details of the payment are given below.

<i>Date of payment</i>	<i>Mode of payment by the petitioner</i>	<i>Amount in Rupees</i>
15.01.2015	Cash payment paid to 1 st respondent	15,000/-
10.02.2015	Cash payment paid to 1 st respondent	15,000/-
25.03.2015	Vide cheque No.2136 paid to 1 st respondent	15,000/-
23.04.2015	Vide RTGS transfer into 1 st	15,000/-

<i>Date of payment</i>	<i>Mode of payment by the petitioner</i>	<i>Amount in Rupees</i>
	<i>respondent A/C</i>	
<i>13.05.2015</i>	<i>Vide RTGs transfer into 1st respondent A/C</i>	<i>15,000/-</i>
<i>04.06.2015</i>	<i>Vide RTGS transfer into 1st respondent A/C</i>	<i>15,000/-</i>
<i>08.07.2015</i>	<i>Cash payment paid to 1st respondent</i>	<i>15,000/-</i>

Total amount paid to the respondents till 09.12.2015 : Rs.1,05,000/-"

9. By relying upon the same, the learned counsel for the petitioner would submit that the total arrears as on the date of passing the conditional order i.e., 23.11.2015 was Rs.1,80,000/- out of which 90,000/- being 50% ought to have been paid as per the conditional order. However, the petitioner had already paid between January 2015 and July 2015 i.e, after the trial Court Judgment, a sum of Rs.1,05,000/- which is above 50% limitation i.e., Rs.90,000/-. The learned Judge ought to have considered the same and the condone delay petition ought to have been allowed.

10. However, Mr. E.Kannadasan, the learned counsel appearing for the respondents would submit that even though the petitioner has paid some amount as detailed in his additional affidavit, prior to the passing of the conditional order, the same was not brought to the

notice of the learned Judge, who had taken up the said condone delay petition to pass orders, in the context as to whether the petitioner has complied with the said order dated 23.11.2015. Since nothing was brought to the notice of the learned Judge, the learned Judge has proceeded to pass the present impugned order as the petitioner herein had not brought to the notice of the learned Judge whether or not he had complied with the conditional order dated 23.11.2015. Therefore, the learned counsel for the respondents would submit that, in the eye of law, there is absolutely, no infirmity in the said order passed by the learned Judge, as there was no evidence to show that the petitioner had complied with the said conditional order at the time of taking the said petition for consideration, by the learned Judge.

11. I have heard both the learned counsels appearing for the parties.

12. Though it was argued by the learned counsel for the respondents that at the time of consideration of the condone delay petition, there was no proof filed by the petitioner before the Court below to substantiate the contention that he had complied with the conditional order well before the impugned order was passed, the fact

remains, as culled from the additional affidavit filed by the petitioner and also the documents by way of additional typed set of papers in support of his claim would go to show that the petitioner in fact has paid a sum of Rs.1,05,000/- between January 2015 and July 2015 and that payment has been infact more than the 50% of the arrears as on 23.11.2015, when the condition was imposed by the Court below. But the mistake seems to have been occurred on the part of the petitioner in not bringing the said fact before the learned Judge. Had this factor been brought to the notice of the learned Judge, the present impugned order, in the opinion of this Court, would not have been passed.

13. At any rate, now, it is a fact that the petitioner had paid the said sum of Rs.1,05,000/-. By thus, he had already complied with payment of 50% of the arrears of maintenance as on 23.11.2015, hence, there can be no justification to sustain the present impugned order. Accordingly, this Court is of the view that, the impugned order is liable to be interfered with. Hence the same is set aside.

14. In the result, the Appellate Court is hereby directed to take up the main appeal on file and decide the same on merits and in accordance with law. Before taking up the said appeal, if the first

Appellate Court feels that the subsequent arrears accrued was also directed to be paid or in this regard any conditions to be imposed that can also be decided, depending upon the facts and circumstances of the case.

15. Conclusion:

(i) CrI.R.C.No.327 of 2016 is allowed in the aforesaid terms. Consequently, connected CrI.M.P.No. 2185 of 2016 is closed. No costs.

(ii) In view of the order passed in CrI.R.C.No.327 of 2016, since the impugned order in CrI.R.C.No.326 of 2016 has got merged with the impugned order which has been set aside in CrI.R.C.No.327 of 2016, this CrI.R.C.No.326 of 2016 is disposed as no further order is required to be passed in this criminal revision case. No costs.

Index: Yes
Internet: Yes
kua

07.08.2017

To

The Principal Sessions Judge,
Vellore

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R.SURESH KUMAR,J.

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