



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2017

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

Crl.O.P.(MD) No.8920 of 2017

WEB COPY

Devadasan

...Petitioner/Respondent /
Respondent

-Vs-

Latha

...Respondent/Petitioner/
Petitioner

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to direct the learned Chief Judicial Magistrate, Nagercoil to consider the recall warrant petition of the petitioner filed under section 70(2) of Cr.P.C., in the event of his surrender in connection with the Non Bailable Warrant issued on 24.06.2016 in Cr.M.P.No.783 of 2016 in M.C.No.22 of 2015, on the file of the Learned Chief Judicial Magistrate, Nagercoil on the same day itself.

For Petitioner : Mr.K.Suresh Kumar

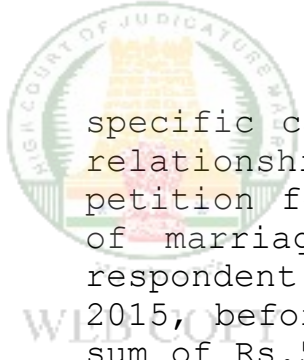
For Respondent : No Appearance

O R D E R

This Criminal Original petition is filed to direct the learned Chief Judicial Magistrate, Nagercoil to consider the recall warrant petition of the petitioner filed under section 70(2) of Cr.P.C., in the event of his surrender in connection with the Non Bailable Warrant issued on 24.06.2016 in Cr.M.P.No.783 of 2016 in M.C.No.22 of 2015, on the file of the Learned Chief Judicial Magistrate, Nagercoil on the same day itself.

2. Heard the learned counsel for the petitioner and perused the records. Despite service of notice on the respondent, no appearance for the respondent.

3.The respondent is none other than the petitioner's wife and it is submitted that the marriage was solemnized between the petitioner and the respondent on 10.06.1974. They have three female children and a male child out of the wedlock. It is stated that the respondent made unnecessary quarrel with the petitioner even for petty reasons and after the respondent developed hatred-ness, there were serious issues between the spouses. It was the



specific case of the petitioner that the respondent dissolved the relationship and hence, the petitioner was constrained to file a petition for divorce in D.O.P.No.409 of 2015, for the dissolution of marriage on the ground of desertion. It appears that the respondent also filed a petition for maintenance in M.C.No.22 of 2015, before the learned Judicial Magistrate, Nagercoil claiming a sum of Rs.5000/- per month as maintenance.

4. Though the petitioner disputed the respondent's entitlement to get maintenance, it is admitted that the learned Chief Judicial Magistrate, Nagercoil partly allowed the petition filed by the respondent for maintenance, by order, dated 22.12.2015 and directed the petitioner to pay a sum of Rs.3,000/- as monthly maintenance to the respondent from 15.05.2015 i.e., from the date of petition. In the meanwhile, on 15.06.2016, the respondent has also obtained another order in I.A.No.21 of 2016 in D.O.P.No.409 of 2015, from the learned District Judge, Kanniyakumari at Nagercoil, that the petitioner shall have to pay a sum of Rs.2,500/- per month as interim alimony and Rs.10,000/- for litigant expenses to the respondent.

5. In view of the petition filed by the respondent, the learned counsel for the petitioner contended that the respondent is not entitled to seek further amount towards maintenance, when already she has obtained an order of maintenance. He further submitted that a sum of Rs.37,500/- has been paid by the petitioner towards maintenance to the respondent, before the District Court, Kanniyakumari at Nagercoil.

6. From the records, it appears that the respondent has filed a petition in Cr.M.P.No.783 of 2016 seeking enforcement of the maintenance order in M.C.No.22 of 2015. However, it is also stated that the petitioner could not present on 24.06.2016 and hence, a non-bailable warrant was issued against the petitioner. Subsequently, when the petitioner filed a petition under Section 70(2) Cr.P.C., to consider and recall warrant, the same is not considered and no order has been passed so far. In the circumstances, the petitioner approached this Court.

7. Having regard to the limited scope of the prayer sought for in this petition, this Court is inclined to pass the following direction without expressing any opinion on the merits of the petitioner's case:

"The learned Chief Judicial Magistrate, Nagercoil is directed to consider the recall warrant petition of the petitioner filed under Section 70(2) Cr.P.C., in the event of surrender in connection with the non-bailable warrant issued on 24.06.2016 in Crl.M.P.No.783 of 2016 in M.C.No.22 of 2015. The learned Chief Judicial Magistrate, Nagercoil and pass appropriate order on the same day".



8. With the above direction, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CS-III)

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/True copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Kanniyakumari at Nagercoil.

+1cc to Mr.K.Sureshkumar, Advocate, SR. 68815

DAS/PJL

KK/SV MMS/SAR1/07.08.2017/3P-3C/

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