



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE M.DHANDAPANICrI.O.P.(MD)No.9438 of 2011 and
M.P(MD).No.1 of 2011

Marimuthu

... Petitioner

-Vs-

Muthulakshmi

... Respondent

Prayer : This Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for records of the proceedings in Cr.M.P.No.1185 of 2011 in M.C.No.2 of 2010, on the file of the learned Judicial Magistrate, Karaikudi and quash the same.

For Petitioner : Mr.N. Balakrishnan
For Respondent : Mr.S. Ravi

O R D E R

This Criminal Original Petition is filed to call for records of the proceedings in Cr.M.P.No.1185 of 2011 in M.C.No.2 of 2010, on the file of the learned Judicial Magistrate, Karaikudi and to quash the same.

2. The petitioner and the respondent are husband and wife respectively. The respondent has filed a petition in M.C.No.2 of 2010 under Section 125 of Cr.P.C., before the trial Court, claiming a sum of Rs.5,000/- as maintenance, in order to maintain her three children, viz., two sons and one daughter and herself. After hearing the arguments, the trial Court, vide order dated 20.01.2011, awarded a sum of Rs.3,000/- per month as maintenance to the respondent. Challenging the said order, the petitioner has filed a revision in Cr.R.P.No.5 of 2011, under Section 397(1) Cr.P.C., before the Sessions Court, Sivagangai, and also filed a petition for stay along with the main petition and the same is pending. In the meantime, the respondent filed Cr.M.P.No.1185 of 2011 in M.C.No.2 of 2010 under Section 128 Cr.P.C., before the trial Court, claiming arrears of maintenance amount of Rs.36,000/-, which was due to her for 12 months. The trial Court directed the petitioner to pay the arrears amount on or before 03.06.2011, vide order dated 05.05.2011. Since the petitioner did not pay the amount within the said period and due to his non-appearance before the Court on that day, the



trial Court issued Non Bailable Warrant against him, vide its order dated 03.06.2011, which is impugned in the present Criminal Original Petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner is working as a Watchman and he is earning only Rs.2,000/- per month and hence, he is unable to pay the amount as claimed by the respondent. However, the learned counsel appearing for the petitioner did not produce any document to show that the petitioner is earning only Rs.2,000/- per month as salary

4. The learned counsel appearing for the respondent would submit that wife of the petitioner not able to maintain herself and three children without any monetary support from the petitioner. However, the petitioner has own house and land and he is also employed as a watchman in the Tamil Nadu Water Supply and Drainage Board and earning a sum Rs.15,000/- per month, the respondent claimed only Rs.5,000/- as against the petitioner, in order to maintain herself and children.

5. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.

6. Admittedly, as against the order of maintenance, the petitioner filed a revision before the first appellate Court. The present Criminal Original Petition has been filed only against the Non-Bailable Warrant issued by the trial Court for non-payment of arrears of maintenance amount. Hence, I do not find any error or illegality in the said order warranting interference by this Court. Accordingly, the Criminal Original Petition is dismissed. The petitioner is directed to pay the balance arrears amount to the respondent within a period of four weeks from the date of receipt of a copy of this order. After payment of the arrears of the amount, the trial Court is directed to recall the Non-Bailable Warrant issued against the petitioner and the learned Judicial Magistrate, Karaikudi, is directed to dispose of CrI.M.P.No.1185 of 2011 in M.C.No.2 of 2010, on merits and in accordance with law, as expeditiously as possible. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To
The Judicial Magistrate, Karaikudi
trp

RL/2C/2P/GT/SAR4/15/12/2017

<https://hcservices.ecourts.gov.in/hcservices/>

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