

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

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THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.MP.No.8936 of 2019

in

Crl.RC.No.310 of 2019

N.Jayachandran

... Petitioner

-Vs-

J.Gajalakshmi

.. Respondent

Criminal Miscellaneous Petition filed under Section 482 of Cr.P.C. to permit the petitioner to withdraw the sum of Rs.2,50,000/- made by way of deposit in the credit of Crl.M.P.No.92 of 2019 in Crl.R.C.SR.399 of 2019 dated 07.02.2019 vide acknowledgement dated 01.03.2019.

For Petitioner : Mr.C.Sivanesan

For Respondent : Ms.V.Anuradha

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ORDER

This Criminal Miscellaneous Petition has been filed to permit the petitioner to withdraw the sum of Rs.2,50,000/- deposited to the credit of Crl.M.P.No.92 of 2019 in Crl.R.C.SR.399 of 2019 vide order

2. For the sake of convenience, the petitioner and the respondent will be referred to by their name.

3. N.Jayachandran got married to one J.Gajalakshmi and their marital life ran into rough weather, resulting in the spouses getting estranged. Gajalakshmi filed M.C.No.117 of 2008 under section 125 Cr.P.C. before the Family Court, Chennai, in which, the Family Court, by order dated 25.08.2008 directed Jayachandran to pay a sum of Rs.2,500/- p.m. to Gajalakshmi w.e.f. 11.03.2008. Gajalakshmi filed M.P.No.975 of 2012 in M.C.No.117 of 2008 under Section 127 Cr.P.C seeking enhancement of maintenance. The Family Court, by order dated 23.07.2018, enhanced the maintenance as follows:

"In the result, the amount of maintenance of Rs.2,500/- per month is enhanced to a sum of Rs.4,000/- per month from 11.03.2010 with an increase of Rs.1,000/- per year and is fixed to a sum of Rs.12,000/- from May, 2018 and the respondent is directed to pay the same with the accumulative arrears. No costs."

4. Challenging the order dated 23.07.2018, Jayachandran filed Crl.MP.No.92 of 2019 in Crl.RC.SR.No.399 of 2019 seeking to condone the delay of 18 days in filing the Criminal Revision, under Section 5 of the Limitation Act. In Crl.M.P.No.92 of 2019 in Crl.RC.SR.No.399 of 2019, this Court passed the following order on 07.02.2019.

"Since the revision is against the order of enhancement of maintenance, the petitioner/husband is directed to deposit a sum of Rs.2.5 lakhs before this Court, on or before 28.02.2019 and on such deposit, the delay of 18 days is hereby condoned."

5. Pursuant to the aforesaid order, Jayachandran has deposited the sum of Rs.2,50,000/- vide Demand Draft bearing No.975362 dated 01.03.2019 drawn in favour of the Registrar General, High Court, Madras. Thereafter, the delay was condoned and the revision petition was numbered as Crl.RC.No.310 of 2019. In Crl.RC.No.310 of 2019, final orders were passed by this Court on 12.03.2019, which is as follows:

"6. Considering the change of circumstances, this Court is inclined to enhance the maintenance amount. However, the order passed by the Family Court, Chennai is modified to the effect that the revision petitioner/husband is directed to pay a sum of

Rs.12,000/- per month towards monthly maintenance to the respondent/wife, from the date of the filing of the petition in MP.No.975 of 2012 in MC No.117 of 2008, till today and also for the future maintenance hereinafter.

7. With the above modification, this Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed."

6. While that being so, Jayachandran has filed the present miscellaneous petition seeking payment out of Rs.2,50,000/- that was deposited by him.

7. Heard Mr.C.Sivanesan, learned counsel for Jayachandran and Ms.V.Anuradha, learned counsel for Gajalakshmi.

8. The learned counsel for Jayachandran submitted that Gajalakshmi has instituted a recovery proceedings under Section 128 Cr.P.C. against Jayachandran, wherein, she has claimed the entire arrears amount and therefore, this Criminal Miscellaneous Petition should be allowed and the sum of Rs.2,50,000/- should be repaid to Jayachandran.

9. Per contra, the learned counsel for Gajalakshmi refuted the contention and stated that Jayachandran has not paid any amount after the final orders passed by this Court.

10. This Court gave its anxious consideration to the rival submissions.

11. This Court directed Jayachandran to deposit the sum of Rs.2,50,000/- as a pre-condition for allowing the application seeking condonation of delay. The said sum of Rs.2,50,000/- should be reckoned towards the arrears amount of maintenance payable by Jayachandran to Gajalakshmi and hence, the same cannot be refunded to Jayachandran, however, it should be paid to Gajalakshmi. Even though in the Execution petition, Gajalakshmi has claimed the entire amount as arrears, on receipt of Rs.2,50,000/- from this Court, the same should be adjusted in the Execution proceedings and only for the balance amount, the order can be passed in the Execution petition.

12. In the result, this Criminal Miscellaneous Petition is

<http://www.judis.nic.in> dismissed. However, permission is granted to Gajalakshmi to

withdraw the sum of Rs.2,50,000/- lying to the credit of Crl.MP.No.92 of 2019 in Crl.RC.SR.No.399 of 2019 on the file of this Court. The Registry is directed to disburse the sum of Rs.2,50,000/- to Gajalakshmi. The Family Court, Chennai, while dealing with the Execution petition filed by Gajalakshmi, should give credit to the above said sum that has to be paid to Gajalakshmi.

08.07.2019

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking order

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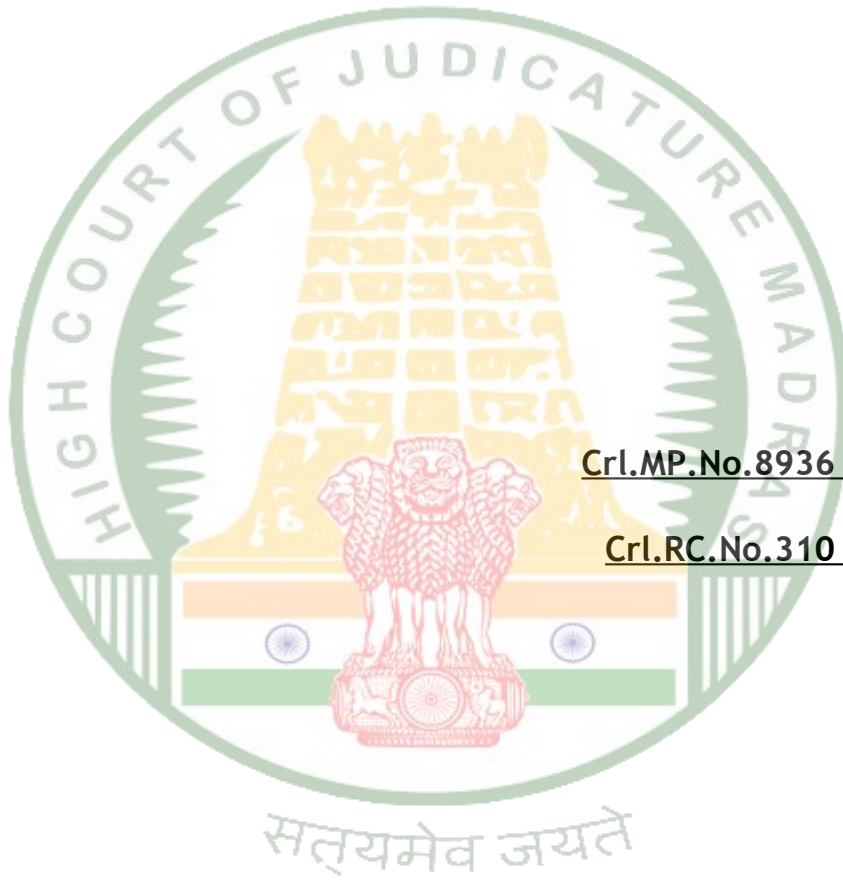
To

The Family Court,
Chennai.

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P.N. PRAKASH, J.

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