

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.690 of 2017 and
CrI.M.P.Nos.6614 of 2017 & 17220 of 2018

M.Shanmugam @ Bhojan

...Petitioner/Respondent

-Vs-

Lakshmi

....Respondent/Petitioner

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order of dismissal dated 05.12.2016, passed by the learned Judicial Magistrate, Udhagamandalam, The Nilgiris, in C.M.P.No.5896 of 2015, in M.C.No.5 of 2014.

For Petitioner : M/s.Lenin And Bhagya
For Respondent : Mr.K.V.Sridharan

ORDER

The petitioner is husband and the respondent is wife. The respondent has filed a maintenance case under Section 125 of Cr.P.C. in M.C.No.5 of 2014 before the learned Judicial Magistrate, Udhagamandalam, The Nilgiris. The learned Magistrate, since notice being served on the petitioner/husband and he did not appear before the Court, has passed an ex-parte order dated 06.03.2014 awarding maintenance at Rs.4000/- per month. The petitioner filed a petition to condone the delay of 299 days in filing petition to set aside the exparte order and the learned Magistrate dismissed the same on 05.12.2016. Aggrieved against the same, the petitioner is before this Court with the present criminal revision case.

2 The learned counsel for the petitioner would submit that the petitioner is an aged person and due to his ailment he has been taking treatment and hence the petitioner was not available in the village and he was not aware of the notice sent in the maintenance case. The petitioner came to know about the proceedings in the maintenance case, only when the NBW was issued on the petitioner and the police came to arrest him.

Thereafter, the petitioner has filed the present miscellaneous petition seeking to condone the delay of 299 days in filing the petition to set aside the ex-parte order. The learned Magistrate without considering the reasons stated by the petitioner, dismissed the same, which warrants interference. The learned counsel would further submit that the petitioner is ready to deposit entire arrears amount provided the petitioner is allowed to contest the maintenance case on merits.

3 The learned counsel for the respondent/wife would submit that even though notice has been served on the petitioner/husband, he did not appear before the trial Court. The trial Court after giving all the opportunities to the petitioner, had passed the ex-parte order. Even after passing the order of maintenance, the petitioner has not paid the maintenance to the respondent/wife. This Court, while granting interim stay of the impugned order, has directed the petitioner to deposit 50% of arrears amount and the petitioner also deposited the same before the trial Court. The respondent/wife may be permitted to withdraw the amount deposited by the petitioner and the respondent also filed a miscellaneous petition for the same.

4 Heard the learned counsel appearing on either side and perused the materials available on record.

5 The respondent wife has filed a maintenance case against the petitioner, in which notice was ordered and even after receipt of the notice, the petitioner did not appear before the Magistrate. The learned Magistrate, since proceedings under Section 125 of Cr.P.C is only summary in nature, and despite service of notice the petitioner did not appear, had passed the ex-parte order, granting maintenance. The petition filed by the petitioner seeking to condone the delay of 299 days in filing petition to set aside the ex-parte order was dismissed by the learned Magistrate. It is seen that the petitioner/husband has already deposited 50% of arrears amount before the learned Judicial Magistrate, Udhagamandalam, The Nilgiris, as directed by this Court and he is also ready to deposit entire arrears amount, but, he wants to contest the maintenance case on merits. Even though, condoning the delay is purely discretionary power of the Court, considering the conduct of the petitioner and also the fact that he is ready to deposit entire arrears of maintenance as ordered by the Court below, this Court is inclined to set aside the impugned order dated 05.12.2016 in C.M.P.No.5896 of 2015.

6 Accordingly, the order dated 05.12.2016 made in C.M.P.No.5896 of 2015 is hereby set aside on condition that the petitioner shall deposit entire arrears of maintenance from the

date of filing of maintenance case in M.C.No.5 of 2014 till the date of disposal of this criminal revision case within a period of one month from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Udhagamandalam, The Nilgiris. On such deposit, the learned Magistrate is directed to take the petition to set aside the ex-parte order on file on the same day itself and dispose of the same and further after giving due opportunities to both the parties shall dispose of the maintenance case on merits within a period of three months from the date of deposit by the petitioner as directed above. The respondent/wife is at liberty to file an appropriate petition to withdraw the entire arrears amount to be deposited by the petitioner/husband and both the parties are directed to cooperate with the Magistrate to dispose of the maintenance case within the stipulated time as above.

7 In the result, the criminal revision case is allowed with the above terms. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate, Udhagamandalam,
The Nilgiris.

2.The Chief Judicial Magistrate ,
Udhagamandalam.

+1cc to Mr.K.V.Sridharan, Advocate, S.R.No. 23724
+1cc to Mr.Lenin and Bhagya, Advocate, S.R.No. 22738

Crl.R.C.No.690 of 2017 and
Crl.M.P.Nos.6614 of 2017 & 17220 of 2018

KAN(CO)
GN(18/03/2019)