

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.R.C.No.1083 of 2019  
and  
Cr1.M.P.No.14668 of 2019

D.Udayakumar ... Petitioner/Respondent

Vs.

1. U.Yasodha

2. U.Ravichandran @ U.Ravikumar, Minor... Respondents/Petitioners  
( represented by mother/1<sup>st</sup> respondent)

PRAYER: This Criminal Revision Petition has been filed, under Section 397 read with 401 of Cr.P.C., seeking to set aside the order dated 16.08.2019, made in M.P.No.639/2017 in M.C.No.343/2014, by the V Additional Family Court, Chennai.

For Petitioner : Mr.A.Laxmi Raj Rathnam  
For Respondents: Mr.D.Udhaya Shankar

O R D E R

- 1.The Criminal Revision petition has been filed, against the order dated 16.08.2019, made in M.P.No.639/2017 in M.C.No.343/2014, by the V Additional Family Court, Chennai.
- 2.For the sake of convenience, the parties are referred to as a husband and wife.
- 3.The marriage between the parties was solemnized on 27.01.2005 at Selva Rani KalyanaMandapam at No.312, Surya NarayanaChetty Street, Royapuram, Chennai as per the Hindu Rites and Customs Act. The marriage was an arranged one and out of the wedlock, a male child by name U.Ravichandran, the 2<sup>nd</sup> respondent was born on 18.02.2006. Due to the matrimonial dispute, the parties separated and that the afford and the wife had filed M.C.No.343/2014, before the I Additional Family Court, Chennai, claiming maintenance under Section 125 of Cr.P.C., in M.C.No.343/2014, claiming an amount of Rs.10,000/- per month for maintenance to her and Rs.10,000/- per month to the 2<sup>nd</sup> respondent/child. The petitioner/husband did not appear

despite receipt of notice and thereby, Trial Court set him exparte and after hearing the matter on merits, the Trial Court, partly allowed the petition and directed the petitioner/husband to pay a sum of Rs.4,000/- per month to the wife and a sum of Rs.3,000/- per month to the 2<sup>nd</sup> petitioner totaling a sum of Rs.7,000/- per month to the respondents and directed the petitioner/husband to pay the maintenance from the dated of filing of the petition viz, 31.07.2014.

4. Thereafter, the petitioner/husband had filed a petition to set aside the exparte order in M.P.No.639/2017 under Section 5 of the Limitation Act, praying to condone the delay of 824 days for filing the petition to set aside the exparte order passed in M.C.No.343/2014, on 21.07.2015. Since, the petitioner/husband did not pay any interim maintenance amount as directed by the Trial Court, The Trial Court allowed the Petition in M.P.No.639/2017 for condonation of delay on condition, that the petitioner/husband shall pay the arrears of maintenance amount within one month from the date of the order, or else the petitioners petition will be dismissed automatically. Challenging the order passed by the Family Court, the petitioner/husband filed Crl.R.C.No.529/2018, before this Court. Notice was ordered to the respondent and this Court, after hearing both sides and after recording the undertaking of the petitioner/husband that the arrears of Rs.2,06,500/- will be paid within four weeks from the date of receipt of a copy of that order had passed an order directing condonation of delay and directed to restore the main case in M.C.No.343/2014 and dispose of the same, on merits and in accordance with law. This Court, in Crl.R.C.No.529/2018, further had observed that any default on the part of the petitioner/husband to comply with the undertaking will result in resumption of the order passed by the Court below dismissing the petition seeking to condone the delay. The revision petitioner/husband had not complied with the undertaking and had not paid the arrears of maintenance of Rs.2,06,500- within four weeks as per the undertaking given before this Court and thereby, the order of dismissing the petition to condone the delay had resumed. As against the same, the present revision petition has been filed.

5. The learned counsel for the petitioner would submit that since settlement talks were going on between the parties, the petitioner had not paid the arrears of amount within the time frame as per the undertaking given by him before this Court. He would submit that it is not the intention of the petitioner not to comply with the undertaking and infact, the petitioner intended to give a Quietus by giving one time settlement and thereby, he would seek to set aside the order.

6. The learned counsel for the respondent/wife would submit that the respondent/wife was deserted during the year 2005 and that she and her child had suffered without maintenance for several years and that the wife had filed M.C.No.343/2014 and despite the notice being served on the petitioner/husband, he did not appear before the Court and the Trial Court, after hearing the parties passed a detailed order on merits. The respondent filed a petition to set aside the exparte order in M.P.No.639/2017, with a delay of 824 days and the Trial Court finding that it was a tactics adopted by the petitioner husband to willfully delay, protract and evade payment had allowed the petition, on condition to pay the arrears of maintenance. As against the conditional order, the petitioner had earlier approached this Court and this Court based on the undertaking given by him that he will pay the entire arrears amount within a period of four weeks, before the Trial Court, allowed the revision. Once again, the petitioner had failed to comply with the undertaking given before this Court and thereby, the order passed in M.C.No.343/2014, dated 21.07.2015 has become final. When this Court has earlier pass an order in the revision Crl.R.C.No.529/2018, on condition and when such condition has not been complied, the present revision will amount to a review against the order passed in Crl.R.C.No.529/2018, wherein, the order passed in the very same Miscellaneous Petition in M.P.No.639/2017 in M.C.No.343/2014, had been challenged. He would submit that it is the intention of the petitioner to avoid paying maintenance to his wife and child by one way or other and this is one more tactics adopted by the petitioner husband and thereby, he would seek to dismiss the revision petition.
7. This Court heard the submissions made by the learned counsel on both sides and carefully gone through the orders and perused the materials placed on record.
8. The petitioner had earlier challenge the very same order passed in M.P.No.639/2017, by filing Crl.R.C.No.529/2018, this Court, by order dated 10.07.2018, had directed to condone the delay and restore the main case on payment of entire arrears, whereas the petitioner has not complied with the order and thereby, the original exparte order passed in M.C.No.343/2014, dated 21.07.2015 has become final. The present revision petition, now challenging the very same order in M.P.No.639/2017, in the opinion of this Court would amount to review of the order passed in Crl.R.C.No.529/2018, which is not maintainable. There is no merit in this revision petition.

9. In view of the above, the criminal revision petition stands dismissed. Consequently, connected miscellaneous petition is also closed.

s/d-  
Assistant Registrar (CS VI)

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Sub-Assistant Registrar

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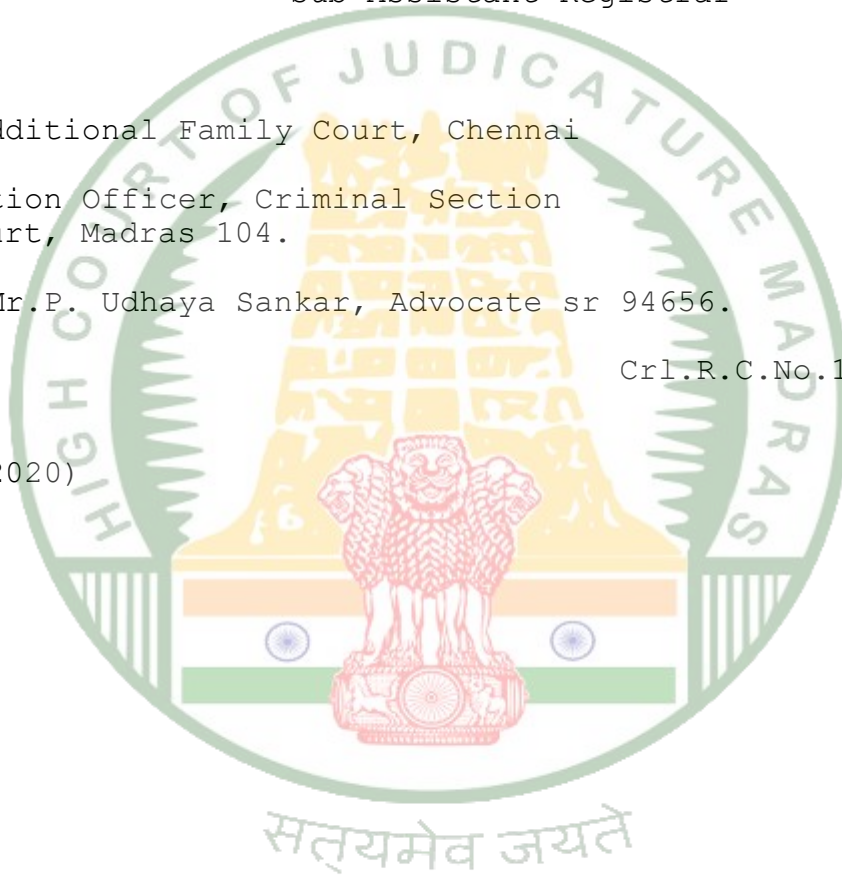
1. The V Additional Family Court, Chennai

2. The Section Officer, Criminal Section  
High Court, Madras 104.

+1 CC to Mr. P. Udhaya Sankar, Advocate sr 94656.

Crl.R.C.No.1083 of 2019

AK(CO)  
SP(21/01/2020)



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