

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Crl.O.P.No.30032 of 2019

1.M.Geetha

2.Minor K.Srisha

.. Petitioners

vs.

1.The Inspector of Police,
Kodumudi Police Station,
Kodumudi Taluk,
Erode District.

2.V.Karuppusamy

.. Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to direct the learned District Munsif cum Judicial magistrate Court, Kodumudi for issuing a Non Bailable Warrant to the 2nd respondent and direct the 1st respondent to execute the same by securing the 2nd respondent and also sentencing him in accordance with law, for the breach of the order dated 03.10.2018 passed in CMP.No.1680 of 2018 in MC.No.12 of 2017 on the file of the District Munsif cum Judicial Magistrate Court, Kodumudi.

For Petitioners : Mr.R.Prabhakar

For Respondent 1 : Mr.S.Karthikeyan,
Additional Public Prosecutor

For Respondent 2 : No appearance

O R D E R

This Criminal Original Petition has been filed seeking direction to direct the learned District Munsif cum Judicial Magistrate, Kodumudi to secure the second respondent by way of issuing Non Bailable warrant and consequently take sufficient action against the second respondent for the breach of order dated 03.10.2018 passed in CMP.No.1680 of 2018 in MC.No.12 of 2017.

2. Heard Mr.R.Prabhakar, learned counsel appearing for the petitioners and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent. Despite service of notice on the second respondent, there is no representation on his side.

3. The case of the petitioners is that the first petitioner is the wife of the second respondent. On 22.02.2015, the marriage between the first petitioner and the second respondent has been solemnized in Varadharajaperumal temple, Vengampur, Kodumudi. After the marriage, the same was registered in Sub Registrar Office, Kodumudi on 09.03.2015. Out of the wedlock, the first petitioner gave birth to the second petitioner. However, after giving birth to the second petitioner, due to the difference of opinion arose between the first petitioner and the second respondent, the first petitioner left the matrimonial home along with the second petitioner and joined with her parents. In the said circumstances, the petitioner filed a maintenance application under section 125 Cr.P.C against the second respondent and the same was assigned with case number as M.C.No.12 of 2017 in which order has been passed directing the second respondent to pay maintenance to the petitioners to a sum of Rs.3,000/- each for every month.

4. Even after passing the said order, the second respondent herein has not complied with the said order and therefore, without any other option, the petitioners are constrained to file an application under section 128 Cr.P.C. for collecting arrears of maintenance. In the said application, the learned District Munsif cum Judicial Magistrate, Kodumudi issued a distress warrant to the second respondent on 11.10.2018. Subsequently, even after knowing the same, the second respondent has not paid the arrears of maintenance amount as directed by the Magistrate. Hence, in the said circumstances, it is necessary to direct the District Munsif cum Judicial Magistrate to issue Non-Bailable Warrant to the second respondent and take steps for collecting arrears of maintenance amount. Accordingly, the petitioner prayed this Court to allow this petition.

5. The said submission made by the learned counsel for the petitioners is made clear that the second respondent is having liability to pay maintenance to the petitioners, as alleged by the petitioners.

6. In the said circumstances, under section 125(3) Cr.P.C., issuance of Non-Bailable Warrant and taking appropriate action, against the second respondent are the powers vested with the Judicial Magistrate. Section 125(3) Cr.P.C. reads as follows:

"If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to

imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due;

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing."

Applying the said provision with the case on hand, specific direction to the Magistrate is not necessary for issuing Non-Bailable Warrant and it is suffice to direct the Judicial Magistrate to dispose the application filed by the petitioners by adopting the procedure contemplated under section 125(3) and 128 Cr.P.C., within the time as stipulated by this Court.

7. Accordingly, the learned District Munsif cum Judicial Magistrate, Kodumudi is directed to dispose of CMP.No.1680 of 2018 in MC.No.12 of 2017 within a period of three months from the date of receipt of a copy of this Order and take severe steps for collecting arrears of maintenance amount which is payable by the second respondent to the petitioners in accordance with law.

8. With the above directions, this Criminal Original Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
Kodumudi Police Station,
Kodumudi Taluk,
Erode District.

2.The Public Prosecutor,
High Court, Madras.

3. The District Munsif cum Judicial Magistrate,
Kodumudi.

+lcc to Mr.R.Prabhakar, Advocate SR.No.32832

CrI.O.P.No.30032 of 2019

SVI (CO)
GMY (21/10/2020)



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