

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Cont.P.No.2032 of 2019

K.Sasikala

... Petitioner

Vs.

1.Kanagasabapathi

2.Muthurathinam

3.Karunambikai

... Respondents

Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondent herein for willful disobedience of the order made in CrI.O.P.No.14712 of 2018 dated 11.08.2018.

For Petitioner : Mr.N.Ponraj

For Respondents : Mr.P.Kalimuthu

ORDER

Today, the alleged contemnors Kanagasabapathi, Muthurathinam and Karunambikai are present before this Court.

2.An affidavit dated 24.02.2020 sworn to by Kanagasabapathi has been filed and that has been adopted by Muthurathinam and Karunambikai.

3.The facts of the case have been set out in detail in the order dated 19.11.2019 that was passed by this Court in CrI.M.P.SR.Nos.44234 and 55945 of 2019 and the same is as under :

“For the sake of convenience, the parties will be referred to by their name.

2.Kanagasabapathi got married to Sasikala and they have a daughter through the wedlock. On account of matrimonial discord, they got estranged. Sasikala initiated proceedings in D.V.A.No.6 of 2018 before the Judicial Magistrate II, Pollachi claiming various reliefs under the Domestic Violence Act against Kanagasabapathi and his nine relatives. Therefore, Kanagasabapathi and his nine relatives filed CrI.O.P.No.14712 of 2018 to quash the prosecution. This Court passed final orders in CrI.O.P.No.14712 of 2018 on 11.08.2018. For the purpose of deciding the maintainability of these petitions, it may be necessary to extract the relevant paragraphs from the order dated 11.08.2018, which read as follows:

“10. Be that as it may, it is the duty of Kanagasabapathi to provide an alternative accommodation for Sasikala, which, she will have to accept and she cannot insist that she will reside only in No.2/43, Vinayagar Koil Street house, especially when the same has been allotted to Muthurathinam in partition.

11. In view of the aforesaid discussion, the proceedings in D.V.A.No.6 of 2018 as against petitioners 2 to 10 (respondents 2 to 10) before the trial Court) is quashed. However, it is made clear that Kanagasabapathi shall continue to comply with the interim order dated 05.06.2018 passed by this Court by depositing Rs.5000/- as ad interim maintenance. It is open to the Trial Court to modify or vary the said order.

12. The learned counsel for Kanagasabapathi and other accused submitted that Kanagasabapathi is ready and willing to continue to deposit Rs.5,000/- per month as directed by this Court vide order dated 05.06.2018 and that the petitioners 2 to 10 will not unnecessarily harass Sasikala. The said submissions of the learned counsel are placed on record.

In fine, this Criminal Original Petition is partly allowed as indicated in paragraph No.11 above. Connected Crl.M.Ps. are closed.”

3. While that being so, Kanagasabapathi filed a petition in Crl.M.P.SR.No.44234 of 2019 in Crl.O.P.No.14712 of 2018 with the following prayer:

“....to modify the condition imposed in Para 11 Crl.O.P.NO.14712 dated 11.08.2018 and directing the

respondent K.Sasikala to accept an alternative accommodation as sharing house provided by 1st Respondent (husband) as per order this Hon'ble Court and thus render justice.”

4. The Registry entertained doubts about the very maintainability of this petition and prepared a note and placed before this Court.

5. This Court, therefore, directed the matter to be listed for hearing today under the caption “For Maintainability”.

6. When the matter stood as above, Sasikala filed a modification petition in Crl.M.P.SR.No.55945 of 2019 with the following prayer:

“....to modify the order by removing the direction in para no.10 that it is the duty of Kanagasabapathi to provide an alternative accommodation for Sasikala, which, she will have to accept and she cannot insist that she will reside only in No.2/43, Vinayagar Koil Street house, especially when the same has been allotted to Muthurathinam in partition, made in Crl.O.P.No.14712 of 2018 dated 11.08.2018 and thus render justice.”

7. This petition has not been numbered by the Registry nor any maintainability note been prepared, because

this Court had directed the Registry to post this petition also to be heard along with CrI.M.P.SR.No.44234 of 2019 filed by Kanakasabapathi, for maintainability.

8. Heard Mr.P.Kalimuthu, learned counsel for Kanakasabapathi and Mr.N.Ponraj, learned counsel for Sasikala.

9. Mr.Kalimuthu, learned counsel for Kanakasabapathi submitted that when Kanakasabapathi is ready and willing to offer alternative accommodation to Sasikala, she is refusing to vacate the portion that has been allotted to Kanakasabapathi's sister Muthurathinam in a joint compromise decree in a partition suit.

10. Mr.Ponraj, learned counsel for Sasikala, contended that the order passed by this Court in Paragraph 10 (supra) is beyond the jurisdiction in as much as Sasikala's claim before the trial Court in DV proceedings to stay in that portion of the house has been negated by this Court in the quash application filed by Kanakasabapathi. Therefore, Mr.Ponraj prayed for modification of Paragraph 10 of the order dated 11.08.2018.

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

12. The bone of dispute is whether Sasikala can claim shared house in No.2/43, Vinayagar Koil Street house, Pilchinnampalayam.

13. At the outset, this Court makes it clear that in Paragraph 10 of the order dated 11.08.2018, this Court has not given any directions either in favour of Kanakasabapathi or in favour of Sasikala. This Court has only made an observation. It is always open to the trial Court to pass appropriate orders in the DV Petition on this aspect based on the evidence adduced by the parties. The trial Court need not be influenced by whatever has been stated in Paragraph 10 of the earlier order dated 11.08.2018. In the opinion of this Court, both the petitions, namely CrI.M.P.SR.Nos.44234 of 2019 filed by Kanakasabapathi & CrI.M.P.SR.No.55945 of 2019 filed by Sasikala are not maintainable in view of the bar under section 362 Cr.P.C. Hence, the Registry's note is upheld.”

4.In Para No.12 of the earlier order dated 11.08.2018, this Court had recorded the undertaking given by the learned counsel for Kanagasabapathi that, neither he nor his family members will unnecessarily harass Sasikala. After the order was passed, a quarrel ensued between Sasikala and Muthurathinam on 06.04.2019 and on the complaint lodged by Sasikala, the police registered a case in Crime No.88 of 2019 on 06.04.2019, for the offences under Sections 294(b), 324 and 506(ii) IPC, against

Muthurathinam, Kanagasabapathi and Karunambikai. The registration of this F.I.R. has triggered this contempt petition, inasmuch as it is alleged in this contempt petition that, after having given the undertaking that Sasikala will not be harassed, the alleged contemnors have harassed Sasikala on 06.04.2019 and an F.I.R. has been registered against them as stated above.

5. On the contrary, the alleged contemnors submitted that, it was Sasikala, who had abused them, along with her brother Sathish, and on the complaint of Muthurathinam, the same police registered a case in Crime No.89 of 2019 on 06.04.2019, for the offences under Sections 294(b), 324 and 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act, 2002, against Sasikala and her brother Sathish.

6. On a conspectus of the facts obtaining in this case, it is seen that, both sides had quarreled, resulting in cases being registered against each of them. In such view of the matter, this Court cannot hold the alleged contemnors guilty of contempt for violation of the undertaking given by them on 11.08.2018 in Crl.O.P.No.14712 of 2018.

7. As a result, this Contempt Petition is closed.

However, as observed by this Court in the earlier order dated 19.11.2019, it is open to Kanagasabapathi to approach the Judicial Magistrate No.II, Pollachi, in connection with D.V.A.No.6 of 2018, for modification of the order dated 05.06.2018, except insofar as the payment of interim maintenance of Rs.5,000/- per month is concerned.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

dpq

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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Nrk/25/02/2020

Copy to :

The Judicial Magistrate No.II,
Pollachi.
(in connection with D.V.A.No.6 of 2018)