



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.RC(MD)No.562 of 2019**

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Dr.Vinod Thangaswamy

: Petitioner/Respondent

Vs.

Dr.A.Jebila Pringle

: Respondent/Petitioner

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure against the order, dated 03.07.2019 passed in Crl.MP No.107 of 2019 in MC No.40 of 2017 by the Family Judge, Kanyakumari @ Nagercoil.

For Petitioner

: Mr.N.Anandakumar

For Respondent

: Mr.K.Vamanan

J U D G M E N T

This criminal revision is directed against the order, dated 03.07.2019 passed in Crl.MP No.107 of 2019 in MC No.40 of 2017 by the Family Judge, Kanyakumari @ Nagercoil.

2.The petitioner is the Dental Doctor by profession and he got married with the respondent on 26.06.2009 and they blessed with a female child. Due to matrimonial tiff, the respondent/wife filed several cases against the petitioner, one of which is D.V.No.13 of 2017 on the file of the Judicial Magistrate No.II, Nagercoil. The respondent filed petition for maintenance against the petitioner and obtained an ex-parte order in MC No.40 of 2017 on 11.12.2017, directing the petitioner to pay a sum of Rs.15,000/- to the respondent and Rs.10,000/- to her minor child. In the meantime, due to establishment of Family Court, Kaniyakumari @ Nagercoil, on 23.03.2018, the respondent filed petition before the Family Court, Kaniyakumari @ Nagercoil, in Cr.MP No.288 of 2018 for recovery of arrears of maintenance from the petitioner. The petitioner received notice in the said petition, but he has not chosen to appear before the said Court and hence, he was set ex-parte. The learned Family Court has issued Distress Warrant for recovery of arrears of maintenance from the petitioner's immovable property and as such, on 31.05.2019, the petitioner paid the entire arrears of maintenance and hence, Cr.MP No.288 of 2019 was closed. In the above circumstances, the petitioner filed a petition to set aside the ex-parte order along with condone delay petition in Crl.MP No.107 of



2019 to condone the delay of 411 days in filing to set aside the ex-parte order. The said petition was dismissed by the learned Family Judge, Kaniyakumari @ Nagercoil, on 03.07.2019. Aggrieved by the same, the petitioner is before this court.

3. Heard both sides and perused the materials available on record.

4. The learned counsel appearing for the petitioner submitted that the petitioner is a Dental Doctor practicing at Erode and he is facing all the cases at Nagercoil Court and the previous counsel engaged by him did not properly represented the interest of the petitioner before the court of law and he did not properly communicate the update developments in the pending cases to the petitioner and the delay caused on the part of the petitioner is neither willful and nor wanton and the learned Family Judge failed to take into consideration that the petitioner has paid a sum of Rs.2,75,000/- to the respondent towards entire arrears of maintenance as on 31.05.2019 and the lower court failed to consider the fact that the petitioner appeared in DV case also filed by the very same person. In view of the above circumstances, he prays for setting aside the impugned order passed by the trial court.

5. On the other hand, the learned counsel appearing for the respondent submitted that the summon issued by the lower court was properly served to the petitioner, but the petitioner wantonly did not appear before the court and the ex-parte order passed by the lower court is correct and the reasons for condoning the delay are not properly explained by the petitioner and no documentary evidence was produced before the lower court and prays for dismissal of the criminal revision.

6. It is seen from the records that the petitioner is a Dental Doctor practicing at Erode and he is facing all the cases filed against him by the respondent at Nagercoil. It is also seen from the records that the petitioner has paid a sum of Rs.2,75,000/- to the respondent towards entire arrears of maintenance as on 31.05.2019.

7. The main grievance of the petitioner is that he is having good case and due to the fault on the previous counsel engaged by him, he could not appear before the lower court to contest the case.

8. At this juncture, it is pertinent to refer the decision reported in **AIR 1981 SC 140 (Rafiq and Another Vs. Munshilal and another and AIR 1984 SC 41 (Smt. Lachi and others vs. Director of Land Records and others)**. In the above said decisions, the Hon'ble Supreme Court observed as under:-

"What is the fault of the party who having done everything in his power expected of him, would suffer because of default of his advocate..... The problem that agitates us is



whether it is proper that a party should suffer for the inaction, deliberate omission, or misdemeanour of his agent.... We cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted."

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9. Further, in the decision reported in **(1993)1 SCR 794 (Salil Dutta Vs. T.M. & Mc(P) Ltd.)**, the Hon'ble Apex Court, observed as under:-

"It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult."

10. Keeping in view of the facts and circumstances of the case and also the law settled by the authorities referred to above, this court is of the considered view that the impugned order passed by the lower court is liable to be set aside and accordingly, it is set aside.

11. In the result, this criminal revision is **allowed**. The impugned order, dated 03.07.2019 passed by the Family Judge, Kaniyakumari @ Nagercoil, is set aside. The learned Family Judge, Kaniyakumari @ Nagercoil is directed to dispose of the case in MC No.40 of 2017 afresh purely on merits and in accordance with law, after giving reasonable opportunity to the parties concerned, within a period of four weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (AS)

// True Copy //

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Sub Assistant Registrar(CS)



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To,

The Family Judge,
Kanniyakumari @ Nagercoil.

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+1 CC to M/s.K.VAMANAN, Advocate (SR-5154[F] dated 07/02/2020)

Cr1.RC(MD) No.562 of 2019

05.02.2020

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