



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.[MD] No.16439 of 2018

and

Crl.M.P[MD]Nos.7268 and 7269 of 2018

Salamuthu : Petitioner / Respondent / Respondent

vs.

1.Praba
2.Minor Sametha
3.Minor Rithika

: Respondents / Petitioners / Petitioners

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in Crl.M.P.No.2222 of 2018 in M.C.No.10/2012 on the file of learned Judicial Magistrate, Sankarankovil and set aside the order dated 07.08.2018 by allowing this criminal original petition

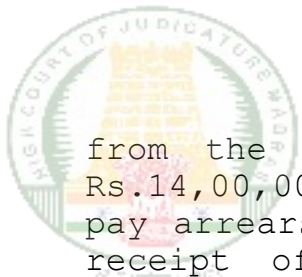
For Petitioner : Mr.N.Murugesan

For Respondents : Mr.R.J.Karthick

O R D E R

This criminal original petition has been filed to quash the order dated 07.08.2018 passed in Crl.M.P.No.2222 of 2018 in M.C.No.10/2012 by the learned Judicial Magistrate, Sankarankovil.

2.The petition has been filed challenging the impugned order passed by the learned Judicial Magistrate, Sankarankovil issuing non-bailable warrant and ordering the arrest of the petitioner for non-payment of the arrears of maintenance. The petitioner is the husband. The first respondent/wife has filed M.C.No.10 of 2012 before the Judicial Magistrate, Sankarankovil. The learned Judicial Magistrate, after hearing both sides, passed an order dated 05.02.2018 directing the petitioner/husband to pay Rs.10,000/- to the wife and Rs.5,000/- each to her minor children and in total, directing the petitioner/husband to pay Rs.20,000/- per month as maintenance to the wife and her minor children. The trial Court has also directed the arrears to be paid from the date of petition i.e.,



from the month of May 2012 to February 2018 which worked out Rs.14,00,000/-. The trial Court has also directed the petitioner to pay arrears of Rs.14,00,000/- within three months from the date of receipt of the copy of the order. The said order was not challenged. Thereafter, on the petition filed by the first respondent/wife, the trial Court had ordered attachment of Rs.20,000/- from the salary of the petitioner/husband. However, the amount of arrears of Rs.14,00,000/- remained unpaid, despite lapse of three months, thereby, the first respondent/wife had filed Crl.M.P.No.2222 of 2018 seeking for recovery of the arrears of maintenance amount. Since the petitioner/husband did not appear before the trial Court towards payment of Rs.14,00,000/-, the learned Judicial Magistrate, by the impugned order dated 07.08.2018 issued non-bailable warrant against the petitioner and ordered arrest of the petitioner, which is under challenge.

3.The learned counsel for the petitioner would submit that subsequent to the order passed in M.C.No10 of 2012, the amount of Rs.20,000/- had been directly deducted from the salary of the petitioner. He would further submit that the gross salary of the petitioner is Rs.99,841/- and an amount of Rs.73,161/- is being deducted in total and that the petitioner's take home salary is only an amount Rs.38,000/-. He would further submit that the petitioner has to take care of his aged ailing mother and that he is also working at Andaman and that his survival at Andaman is very difficult with the amount of Rs.38,000/-. However, without prejudice to his contention, the petitioner is agreeing to pay an additional amount of Rs.10,000/- per month towards recovery of the arrears of Rs.14,00,000/-. He would further submit that this amount of Rs.10,000/- is apart from the amount of Rs.20,000/- paid towards the maintenance of his wife and children. The petitioner has also filed an affidavit regard the same. He would further submit that if the petitioner is arrested, there is a possibility that he may loose his job, which would result in not being able to pay the amount. He would submit that the petitioner does not have enough leave and thereby, he would pray that his affidavit may take into consideration and further amount of Rs.10,000/- to be ordered to be deducted from his salary.

4.The learned counsel appearing for the first respondent/wife would submit that the first respondent/wife and the children are facing severe hardships, since the department is sending the amount deducted from the petitioner once in three months. He would further submit that if the petitioner is agreeable for additional amount of Rs.10,000/- being deducted from his salary to be deposited to the credit of M.C.No.10 of 2012, he has no objection in the non-bailable warrant being recalled. In view of the consent of both parties that the additional amount of Rs.10,000/- may be deducted from the salary of the petitioner, this Court is of the opinion that the impugned order may be set aside and the non-bailable warrant may be recalled.



5. In view of the same, the impugned order dated 07.08.2018 passed by the learned Judicial Magistrate, Sankarankovil is set aside and the petitioner shall be represented through his counsel before the Judicial Magistrate, Sankarankovil and he shall file an affidavit accepting/agreeing that further amount of Rs.10,000/- may be deducted from his salary from 01.02.2020 towards recovery of arrears of Rs.14,00,000/- pending in M.C.No.10 of 2012. On such affidavit being filed, the learned Judicial Magistrate shall pass orders directing recovery of Rs.30,000/- per month from the salary of the petitioner and recall the non-bailable warrant. The respondent/wife is at liberty to approach the trial Court to seek for modification for enhancement of maintenance.

With the above observations, this Criminal Original Petition is closed. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate, Sankarankovil.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.N.MURUGESAN, Advocate (SR-2161[F] dated 21/01/2020)

+1 CC to M/s.R.J.KARTHIK, Advocate (SR-2107[F] dated 21/01/2020)

CrI.O.P. [MD] No.16439 of 2018

and

CrI.M.P[MD]Nos.7268 and 7269 of 2018

20.01.2020

skn

SDS (22.01.2020) 3P-6C