

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.M.P.NO.9876 OF 2021
IN
CRL.O.P.NO.16213 OF 2019

R.Brintha

...Petitioner

Vs.

1.P.Duwarakesh

2.K.Paramasivam

3.Mrs.Suguntha

4.P.Kamesh

5.P.Eswari

...Respondents

Prayer : Miscellaneous Petition is filed by the petitioner to withdraw the entire interim maintenance amount deposited by the respondent/petitioner in DVC No.5 of 2019 on the file of the Judicial Magistrate, Ambattur as per the orders dated 24.06.2019 and 15.07.2019 made in Crl.M.P.No.8102 of 2019 in Crl.O.P.No.16213 of 2019.

This Petition filed under section 482 of Cr.P.C pleaded to call for the records pertaining to the case in D.V.C.No.5 of 2019 on the file of the Judicial Magistrate, Ambattur, quash the same.

For Petitioner : Mr.A.Kalaivanan

For Respondent : Mr.K.Balasubramaniam

O R D E R

(The case has been heard through video conference)

This Miscellaneous Petition is filed by the petitioner to withdraw the entire interim maintenance amount deposited by the respondent/petitioner in DVC No.5 of 2019 on the file of the Judicial Magistrate, Ambattur as per the orders dated 24.06.2019 and 15.07.2019 made in Crl.M.P.No.8102 of 2019 in Crl.O.P.No.16213 of 2019.

2. The learned counsel appearing for the petitioner submits that the petitioner herein is the wife of the petitioner in CrI.O.P.No.16213 of 2019, who challenged the maintenance amount awarded by the lower appellate court.

3. It appears to that the respondent's wife filed a domestic violence petition before the trial court for shelter and maintenance and the interim order in the said case was challenged before this Court in CrI.O.P.No.16213 of 2019 by the respondent. This Court directed the respondent herein to deposit a sum of Rs.10,000/- per month as maintenance amount before the Court below in D.V.C.No.5 of 2018 from July 2019 onwards on or before 5th of every month by way of interim order and the said amount was periodically deposited by the respondent in the D.V.C.No.5 of 2018.

4. The counsel for the petitioner submits that during the pendency of the CrI.O.P.No.16213 of 2019, the petitioner filed a petition in CMP.No.1167 of 2020 in D.V.C.No.5 of 2019 to withdraw the maintenance amount for the period from August, 2019 to March, 2020 (eight months) in the sum of Rs.80,000/- deposited by the respondent and the same was dismissed by the court below stating that this Court has directed to deposit the amount and not to withdraw the amount. Thereafter CMP.No.1167 of 2020 in D.V.C.No.5 of 2019 filed by the petitioner was also dismissed by the Court below. The present petition has been filed by the petitioner to withdraw the maintenance amount for the period from August, 2019 to March, 2020 (eight months) in the sum of Rs.80,000/- deposited by the respondent.

5. It is to be pointed out that maintenance is awarded to the spouse only for the purpose of maintaining herself during the pendency of the domestic violence petition filed by the wife. Only an interim measure, this Court had ordered deposit of the amount of Rs.10,000/- purpose towards monthly maintenance to the credit of the petition. Once the wife comes up with a petition for payment out of the said amount, which is in deposit, the court below ought to have entertained the said petition and ordered release of the said amount to the wife and ought not to have relegated her back to this Court on the mere finding that this Court had only directed deposit of the said maintenance amount and that there is no order directing payment out of the said amount. The said reason given by the court below is wholly fallacious and unsustainable.

6. For the reasons aforesaid, this petition is allowed and the petitioner is allowed to withdraw the amount lying in deposit in CMP.No.1167 of 2020 in D.V.C.No.5 of 2019 deposited by the respondent by filing appropriate application and on filing of such application the trial court is directed to

disburse the amount in favour of the petitioner within a period of four weeks from the date of the said application.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate,
Ambattur.

+1cc to M/s.A.Kalaivani, Advocate, S.R.No.58121

CRL.M.P.No.9876 of 2021
in
CRL.O.P.No.16213 of 2019

RLD(CO)
RVM(12/11/2021)