

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1113 of 2020
and Crl.M.P.No.7732 of 2020

K.Murugan

... Petitioner/Respondent

Versus

1.Rosaline Gloria
2.Minor Mullaiventhan (become major)
3.Minor Sasikumar
4.Minor Thamizhkumar
5.Minor Bharanidharan

.. Respondents/Petitioners

PRAYER: Criminal Revision petition is filed under Section 397 & 401 Cr.P.C seeking to set aside the order in Crl.M.P.No.399 of 2020 in STC.No.616 of 2010 passed by the learned Additional Mahila Judge cum Judicial Magistrate, Tiruvannamalai.

For Petitioner : Mr.S.Seenuvasan

For Respondents : Mrs.H.Kalpana for
M/s.P.G.Thiyagu

O R D E R

This Criminal Revision Petition has been filed seeking to set aside the order in Crl.M.P.No.399 of 2020 in STC.No.616 of 2010 passed by the learned Additional Mahila Judge cum Judicial Magistrate, Tiruvannamalai.

2. The respondents 2 to 5 along with their mother-R1 filed STC.No.616 of 2010 for maintenance under Section 28 of Domestic Violence Act and Section 125(3) Cr.P.C. The Magistrate after full fledged enquiry, dismissed the petition against the mother and ordered Rs.1,000/- each to respondents 2 to 5. The 1st respondent has not challenged the said order. Subsequently the respondents filed execution petition before the Magistrate under section 125(3) Cr.P.C and Section 28 of Domestic Violence Act. The Magistrate after hearing the case, given the direction to pay the arrears of Rs.4,48,000/- as per the order made in

S.T.C.No.616 of 2010. Further, order of attachment was passed by attaching salary of the Petitioner from November 2020 till 01.02.2026. In respect of arrears of maintenance of Rs.4,48,000/-, order of attachment by attaching the salary of the petitioner, who is working as conductor in Tamilnadu State Transport Corporation, Tiruvannamalai District. Challenging the said order, the petitioner is before this Court.

3. Admittedly, the respondents 3 to 5 are the minors and the petitioner has not challenged the paternity of the respondents 2 to 5. The learned Judicial Magistrate, Tiruvannamalai, passed the award in S.T.C.No.616 of 2010 and the petitioner has not challenged the said order, however, not complied with the order of the Magistrate dated 13.06.2014. The respondents have filed Execution Petition before the Magistrate in Crl.M.P.No.399 of 2020. The learned Magistrate after hearing the said Crl.M.P. attached the salary of the petitioner for the arrears of the amount and directed to pay the same and further directed for attachment till 01.02.2026. Challenging the said order passed in Crl.M.P.No.399 of 2020 dated 22.10.2020, the petitioner is before this Court. Since it is already stated that the petitioner has not challenged the paternity of the respondents 2 to 5 and also not challenged the original order in S.T.C.No.616 of 2010, now the petitioner challenged only the order of attachment passed by the Magistrate in Crl.M.P.No.399 of 2020.

4. Admittedly the first respondent is the mother of the respondents 2 to 5. Since the 1st respondent is employed as a teacher, she is able to maintain herself. Therefore no maintenance was ordered for the first respondent. However considering the age of the respondents 2 to 5 and the petitioner is also working as a conductor in the Transport Corporation, i.e., a man of means to maintain their children, viz., the minor children who are not having any means to maintain themselves, maintenance was awarded to respondents 2 to 5. Therefore, as a dutiful father, the petitioner is liable to maintain the minor children. Admittedly the minor children are not in the custody of the petitioner but they are in the custody of the first respondent/mother. When the order of maintenance was passed in STC, the same was not complied with by the petitioner, the respondents filed Execution Petition in CMP.No.399 of 2020. The Magistrate passed the order of attachment from his salary.

5. The learned counsel for the petitioner would submit that the order dated 18.04.2014 in S.T.C.No.616 of 2010 is only exparte order. Eventhough, the order passed in STC.No.616/2010 is an exparte order, it has become final. In any event, the contention of the learned counsel for the petitioner is not acceptable in view of the fact that the maintenance order was

passed in the year 2014 and Execution Petition in C.M.P.No.399 of 2020 was filed only in the year 2019. Therefore, as per Section 125 Cr.P.C., any application for execution has to be filed within one year. Therefore, beyond the limitation period, the application filed by the respondents under Section 125(3) Cr.P.C., in C.M.P.No.399 of 2020 is not maintainable. The Magistrate not ordered Execution for the maintenance ordered to the 1st respondent/wife, but only ordered for minor children.

6. Since the application is not filed for the recovery of the maintenance amount for any of the spouses or by the parents and since the execution petition is filed for minors and the order also passed in C.M.P.No.399 of 2020 for attachment upto the date of the children attaining majority, the filing of the petition in C.M.P.No.399 of 2020 after one year cannot be the sole ground to disallow the execution petition. In these circumstances, this Court does not find any merit in the petition. Further, this Court cannot take hyper technical view to disallow the order of attachment for payment of arrears of maintenance since the respondents 2 to 5 are minor children and therefore, the revision is liable to be dismissed.

7. In view of the above observation, finding no perversity in the order passed by the Magistrate for attachment of the salary of the petitioner, this Criminal Revision is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

mpa

To

1.The Additional Mahila Judge
cum Judicial Magistrate, Tiruvannamalai.

2.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.P.G.Thiyagu, Advocate SR.2638

Cr1.RC.No.1113 of 2020
and Cr1.M.P.No.7732 of 2020

RLD(CO)
CB(02/03/2021)