

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	07.11.2022
PRONOUNCED ON	17.11.2022

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.350 of 2022

Shanmuga Sundaram

...Petitioner

-Vs-

1.Priyadharshan (Minor)

Represented by his mother/second respondent

2.Shanthi

... Respondent

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C to call for C.M.P.No.8106 of 2021 vide order dated 05.03.2022 on the file of the learned Judicial Magistrate No.III, Thirupattur, Vellore District and set aside the same.

For Petitioner : Mr.M.Sathish Kumar
For Respondents : Mr.G.Munuraj

ORDER

This Criminal Revision Case has been filed to call for C.M.P.No.8106 of 2021 vide order dated 05.03.2022 on the file of the learned Judicial Magistrate No.III, Thirupattur, Vellore District and set

aside the same.

2. The petitioner is the husband and the second respondent is the wife and the first respondent is the son born out of their wedding lock. The respondents filed a petition for maintenance in M.C.No.18 of 2011 before the learned Judicial Magistrate No.III, Thirupattur in which the learned Judicial Magistrate after enquiry ordered a monthly maintenance of Rs.7000/- to the first respondent and Rs.4000/-to the second respondent.

3. Aggrieved over the said order, the petitioner herein filed a revision petition before the III Additional Sessions Court, Vellore in C.R.P.No.2 of 2014. The learned III Additional Sessions Judge, after hearing the revision, dismissed the same and confirmed the maintenance ordered by the learned Judicial Magistrate in M.C.No.18 of 2011. Aggrieved over the order of the learned III Additional Sessions Judge, the petitioner approached this Court by way of Crl.O.P.No.13870 of 2016

and the same was also dismissed.

4. Thereafter, the respondents filed the Civil Miscellaneous Petition in C.M.P.No.8106 of 2021 before the learned Judicial Magistrate No.III, Thirupathur for execution of maintenance order. When the matter was pending before the learned Judicial Magistrate, even after the notice was served to the respondent/petitioner herein and despite of giving opportunity, he has not filed any counter and therefore the learned Judicial Magistrate issued warrant for the non-payment of arrears of 89 months. Challenging the said order of warrant, the respondent therein/petitioner herein has filed the present revision petition before this Court.

5. The learned counsel for the petitioner would submit that the second respondent caused mental cruelty to the petitioner and therefore he has filed a petition for divorce in H.M.O.P.No.19 of 2011 before the Sub-Court, Vaniyambadi. The same was allowed and the petitioner got

divorce on the ground of cruelty. The said fact was not considered by the Court below.

6. Further, the learned counsel for the petitioner would submit that there was a suit for partition filed by the second respondent on behalf of the first respondent in O.S.No.49 of 2014 on the file of learned Additional District Judge, Dharmपुरi, in which the first respondent was allotted 1/4th share and the respondents had taken possession of the allotted property. Therefore, they are having sufficient means and despite they filed a petition for maintenance by suppressing the vital facts as if they are unable to maintain themselves.

7. It is also contended by the learned counsel for the petitioner that the petitioner had already paid a sum of Rs.3,46,500/- in spite of the 1/4th share allotted to the first respondent in the ancestral property and therefore the respondents have not approached the Court with clean hands. After getting divorce from the second respondent, the petitioner

got married with one Kalpana and having a separate family and entire family is solely depending on the income of the petitioner. Therefore, since the first respondent has already got the property by way of partition suit, the respondents have sufficient means and they can maintain themselves with the income from the property allotted to them.

8. The learned counsel for the petitioner also stated that the execution petition cannot be filed after one year and the petitioner cannot be retained for more than one month. Hence, the learned Judicial Magistrate, who issued warrant, failed to consider all the legal and factual aspects

9. Per contra, the learned counsel for the respondents would submit that even though the respondents got the order of maintenance from the learned Judicial Magistrate in M.C.No.18 of 2011, the petitioner have filed a revision before the Sessions Court and lost. Subsequently, the petitioner had also filed a petition before this Court, which was also

dismissed. Thereafter, the respondent approached to the learned Judicial Magistrate, who pass the maintenance order, for execution. Considering the facts, the learned Judicial Magistrate passed the impugned order.

10. The learned counsel for the respondent further contended that though the learned counsel for the petitioner submitted that the first respondent was allotted 1/4th share from the ancestral property of the petitioner, only a preliminary decree was passed in the said suit and challenging the said preliminary decree, the petitioner filed an appeal and the final decree is yet to be passed. Hence the possession of property has not been taken over by the respondents and since the respondents have no sufficient means, they were unable to maintain themselves.

11. The learned counsel for the respondent also stated that all the defence taken by the petitioner, in maintenance petition and in subsequent revision and original petitions, was lost and it is not liable to dismiss the maintenance petition only on the ground of preliminary

decree was passed in favour of the respondent. More so, the order of maintenance passed by the learned Judicial Magistrate has been upheld by this Court and the petitioner has not challenged further. Therefore, the order of maintenance attained finality and the petitioner is liable to make payment of arrears as per the order in M.C.No.18 of 2011. Despite having sufficient means the petitioner neglect to maintain respondents by refusing to comply with the Maintenance Order. As on date, there are arrears of maintenance, which is extracted below:

<i>S.No</i>	<i>CMP No.</i>	<i>For the Period</i>	<i>Amount in Total</i>	<i>Paid Amount</i>	<i>Balance Amount</i>
1	2618/2013	08.09.2011 to 07.06.2013	Rs.2,31,000/-	Rs.2,31,000/-	Nil
2	3098/2015	08.06.2013 to 07.05.2014	Rs.1,21,000/-	Rs.1,10,500/-	Rs.10,500/-
3	3099/2015	08.05.2014 to 07.04.2015	Rs.1,21,000/-	Rs.5,000/-	Rs.1,16,000/-
4	1045/2016	08.04.2015 to 07.03.2016	Rs.1,21,000/-	Nil	Rs.1,21,000/-
5	1292/2017	08.03.2016 to 07.02.2017	Rs.1,21,000/-	Nil	Rs.1,21,000/-
6	241/2018	08.02.2017 to 07.01.2018	Rs.1,21,000/-	Nil	Rs.1,21,000/-
7	157/2019	08.01.2018 to 07.12.2018	Rs.1,21,000/-	Nil	Rs.1,21,000/-
8	4518/2019	08.12.2018 to	Rs.1,21,000/-	Nil	Rs.1,21,000/-

<i>S.No</i>	<i>CMP No.</i>	<i>For the Period</i>	<i>Amount in Total</i>	<i>Paid Amount</i>	<i>Balance Amount</i>
		<i>07.11.2019</i>			
<i>9</i>	<i>3152/2020</i>	<i>08.11.2019 to 07.10.2020</i>	<i>Rs.1,21,000/-</i>	<i>Nil</i>	<i>Rs.1,21,000/-</i>
<i>10</i>	<i>8107/2021</i>	<i>08.10.2020 to 07.09.2021</i>	<i>Rs.1,21,000/-</i>	<i>Nil</i>	<i>Rs.1,21,000/-</i>
<i>11</i>	<i>-2022</i>	<i>08.09.2021 to 07.08.2022</i>	<i>Rs.1,21,000/-</i>	<i>Nil</i>	<i>Rs.1,21,000/-</i>
<i>12</i>	<i>-2022</i>	<i>08.08.2022 to 07.11.2022</i>	<i>Rs.33,000/-</i>	<i>Nil</i>	<i>Rs.33,000/-</i>
			<i>Rs.14,74,000/-</i>	<i>Rs.3,46,500/-</i>	<i>Rs.11,27,500/-</i>
			<i>-</i>		<i>-</i>

12. Further it is submitted by the learned counsel for the respondent that when the matter came up before this Court in the present revision, this Court directed the petitioner to deposit some amount and pursuant to that, the petitioner paid Rs.3,46,500/- out of Rs.14,74,000/- arrears amount. After deducting that amount paid by the petitioner, the balance amount as on date is Rs.11,27,500/-. Therefore, he prays this Court to dismiss this Revision Petition as the learned Judicial Magistrate has rightly considered the fact and dismissed the petition as there is no merit in the petition.

13. Heard the learned counsel on both sides and perused the materials available on records.

14. Admittedly the petitioner is the husband, the second respondent is the wife and the first respondent is the son born to them. There is a dispute between the petitioner and second respondent. The petitioner filed a petition for divorce in H.M.O.P.No.19 of 2011 before the Sub Court, Vaniyampadi. Thereafter, the respondent has also filed a suit for partition in O.S.No.49 of 2014 before the learned Additional District Judge, Dharmapuri, since the first respondent is entitled to have the share in the ancestral property of the petitioner. Meanwhile, since the respondents are unable to maintain themselves, they filed a maintenance petition in M.C.No.18 of 2011 before the learned III Judicial Magistrate, Thirupattur and the learned Judicial Magistrate ordered a sum of Rs.7000/- and Rs.4000/- towards monthly maintenance to the first and second respondent respectively.

15. Therefore, challenging the said order the petitioner filed revision in C.R.P.No.2 of 2014 before the Sessions Court and the same was dismissed. Thereafter, he filed a original petition in Crl.O.P.No.13870 of 2016 before this Court, which was also dismissed. Hence, the order of the learned Judicial Magistrate, to pay a sum of Rs.7,000/- and Rs.4,000/- as monthly maintenance to the first and second respondent respectively, is confirmed and subsequently the respondent filed execution petition in C.M.P.No.8106 of 2021 and the said petition was ordered, which is the impugned order for this revision petition.

16. Though the learned counsel for the petitioner has raised different defence that the first respondent got property by way of partition, taken possession and they are able to maintain themselves out of income from the property, the learned counsel for the respondent submitted that even though in the partition suit preliminary decreed was passed, against that preliminary decree, the petitioner filed an appeal and

now the appeal is pending. Hence so far no final decree has been passed in the partition suit. However, the petitioner has not proved that the respondents have taken possession over the 1/4th share of the property allotted to them and enjoying the income from the same.

17. Further the petition is only for arrears of maintenance and the order of maintenance confirmed by this Court in Crl.O.P.No.13870 of 2016 and now the petitioner cannot re-agitate the same and he has to pay the arrears of maintenance. In this case, the petitioner has to prove whether he has paid the arrears of amount or not. Facts remains that the petitioner has taken different defence and obtained divorce from the second respondent on the ground of cruelty. However, all the defence cannot be taken at this stage, especially at execution stage, when the order of maintenance was confirmed by this Court and there is no further challenge.

18. Admittedly there was order on maintenance in M.C.No.18 of 2011 dated 23.04.2013. Therefore, from that day till now, the petitioner had not paid Rs.7,000/- and Rs.4,000/-, totally Rs.11,000/- per month to the respondents. Calculating the same, the respondents have filed the C.M.P.No.1806 of 2021 before the learned Judicial Magistrate and the learned Judicial Magistrate has also calculated the same. Since the petitioner has not filed any proof to show that he had paid entire arrears of the amount, the learned Judicial Magistrate issued order of warrant.

19. It is also contended by the learned counsel for the petitioner that the execution petition was filed after the lapse of more than one year and hence the same is not maintainable. In this regard, the learned Judicial Magistrate refer the decision of Division Bench of this Court and entertained the execution petition and issued warrant to the petitioner herein.

20. Therefore, this Court finds that the petitioner is liable to pay the entire arrears amount and in order to give him an opportunity, the petitioner is directed to deposit the arrears amount before the learned Judicial Magistrate No.III, Thirupattur to the credit of M.C.No.18 of 2011, within a period of three weeks from the date of receipt of copy of this order. In failing to deposit the entire arrears, the learned Judicial Magistrate No.III, Thirupattur is directed to execute warrant as per the order passed in C.M.P.No.8106 of 2021 dated 05.03.2022.

21. With the above directions, this Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petitions are also closed.

17.11.2022

Index: Yes/No
Speaking Order/Non-Speaking Order
nsa

Note: Issue order copy on 18.11.2022

To

1.The Judicial Magistrate No.III,
Thirupattur,
Vellore District

2.The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.350 of 2022

P.VELMURUGAN, J.

nsa

Pre-delivery order in
Crl.R.C.No.350 of 2022

17.11.2022