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Cont.P.No.1051of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Contempt Petition No.1051 of 2022

1.B.Karthiga

2.A.Nithaesh

..Petitioners

Vs

1.P.Arunkumar

..Respondent

Prayer : Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondent for wilful and deliberate disobedience of the order passed by this Court in Crl.R.c.Nos.302 and 304 of 2020 dated 25.10.2021.

For Petitioners : Mr.J.Saravana

For Respondent : Mr.S.Vijayakumar

ORDER

The petitioners have filed the present Contempt Petition under Section 11 of the Contempt of Court Act to punish the respondent for willful and



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deliberate disobedience of the order of this Court dated 25.10.2021 in

WEB Crl.R.C.Nos.302 and 304 of 2020.

2. The petitioners are the wife and children and the respondent is the husband of the first petitioner/father of the second petitioner.

3. According to the first petitioner/wife, the marriage between the couples took place on 15.04.2013. Out of the said wedlock, they were blessed with a child (minor son) on 12.03.2015. After the marriage, due to misunderstanding, the wife and child are living separately from the respondent/husband. While so, the petitioner/wife filed a petition for divorce and the respondent/husband filed a petition for restitution of conjugal rights in the year 2016 and the same were pending before the Family Court. The Petitioners/Wife and the minor child were not having sufficient means to maintain themselves and hence, they filed a maintenance petition in M.C.No.40 of 2016 before the learned Judicial Magistrate-1 Court at Tambaram. On 13.09.2019, the Court below directed the husband/respondent to pay a sum of Rs.11,000/- per month each to the petitioners/wife & child, against which, the respondent/husband filed Crl.R.C.No.302 of 2020 to set aside the order and petitioners/wife & child filed a Crl.R.C.No.304 of 2020 for



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enhancing the maintenance amount. This Court by a common order dated 25.10.2021, dismissed the criminal revision filed by the respondent/husband and partly allowed the criminal revision filed by the petitioners/wife & child by directing the respondent/husband to pay a sum of Rs.15,000/- as monthly maintenance to the wife w.e.f., 01.07.2018 and to pay a sum of Rs.20,000/- as monthly maintenance to the minor child from the date of filing of the maintenance petition and also directed the respondent/husband to bear the educational expenses of the child provided that the wife produces all the fee receipts and also directed the respondent/husband to pay the arrears of maintenance within a period of two months from the date of the order. Aggrieved over the said common order, the respondent/husband has preferred an appeal before the Hon'ble Supreme Court in SLP.N (Crl) Nos.4648 & 4649 of 2022 and the same are pending till date and no order of stay has been granted.

4. The petitioners/wife & child have filed this Contempt Petition before this Court for willful disobedience of the order of this Court dated 25.10.2021 in Crl.R.C.Nos.302 & 304 of 2020. When the matter came up for hearing, the learned counsel appearing for the respondent/husband raised a question of maintainability of the contempt petition. This Court, by order dated



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18.08.2022, after relying upon the judgment of the Hon'ble Supreme Court

stated that normally in the matters in which there is a provision for execution of the decree or implementation of the order, when alternative remedy is there, the Contempt should not be entertained and discretion of the Court to be exercised for maintaining the dignity and majesty of law. Therefore *prima facie* the maintainability of the Contempt Petition cannot be disputed. Further, when the matter came up before this Court, this Court directed the respondent/husband either to deposit the amount or get a stay order from the Hon'ble Supreme Court or otherwise argue the matter and adjourned the matter to 27.10.2022.

5. The learned counsel appearing for the petitioners/wife & child has relied upon the following the judgment in support of his case:-

(i) T.Sudhakar Prasad vs. Govt of A.P., & Ors reported in ***2001(1)***

SCC 516;

(ii) Rajnesh vs. Neha & Anr., reported in ***(2021) 2 SCC 324;*** and

(iii) Sonali Bhatia vs. Abhivansh Narang reported in ***2021 SCC online Del 5114***

6. The learned counsel appearing for the respondent has filed a counter before the Registry on 26.10.2022, without serving copies to the learned



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counsel for the petitioners. In the counter affidavit, it is stated that as against the Criminal Revisions, he preferred SLP before the Hon'ble Supreme Court in SLP (CrI) Nos.4648 & 4649 of 2022 and the same were listed for the admission. The counsel for the respondent/husband fell sick due to Covid-19 and consequently, the matters were adjourned. Further it is stated that when SLPs are pending before Hon'ble Supreme Court, it is inappropriate on the part of the petitioners/wife & child to state that the respondent/husband has committed contempt willfully and deliberately, which would amount to gross contempt of Court. Further it is stated that the respondent/husband has absolutely no intention to commit any willful disobedience of the order of this Court, dated 25.10.2021 and that the respondent/husband paid a total amount of Rs.6,58,432/- from 2016 to till now.

7. In support of his contention, the learned counsel appearing for the respondent/husband placed reliance on the following judgments:-

(i) *R.N.Dey & Ors., vs. Bhagyabati Pramanik & Ors.*, reported in (2000) 4 SCC 400;

(ii) *Sudhir Vasudeva vs. M.George Ravishekar* reported in (2014) 3 SCC 373

(iii) *R.N.Dey and Ors vs. Bhagyabati Pramanik & Ors.*, reported in (2000) 4 SCC 400.



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8. In reply to the judgment relied upon by the learned counsel appearing for the petitioners in the case of **Rajnesh vs. Neha & Anr.**, (supra), the learned counsel appearing for the respondent/husband referred the paragraph 132, of the judgment, which is extracted hereunder:-

132. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.

9. Further, the learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court and submitted that when there is a specific provision for execution of the order or decree, the contempt proceedings are not required to be initiated and they have to invoke the execution procedure and get the order to be executed. Further, the learned counsel for the respondent/husband submitted that challenging the impugned order of this Court dated 25.10.2021, the respondent/husband preferred appeal before the Hon'ble Supreme Court and he has exercised his right to file an appeal remedy



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and the same are pending, and therefore, there is no willful disobedience of the order of this Court dated 25.10.2021.

10. Heard the learned counsel appearing for the parties and perused the materials placed on record.

11. On a reading of the entire records, it could be seen that admittedly the respondent/husband has not complied with the order of this Court in CrI.R.C.Nos.302 & 304 of 2020 dated 25.10.2021, but however, the respondent/husband has stated that he preferred appeals before the Hon'ble Supreme Court in SLP (CrI) Nos.4648 & 4649 of 2022 and the same are pending. No doubt there is an enabling provisions under Section 128 Cr.P.C., for execution of the order passed under Section 125 Cr.P.C. However, considering the nature of case on hand, the minor child cannot be made to wait till the appeal gets finality before the Hon'ble Supreme Court under Section 125 Cr.P.C., which is a beneficial legislation and if the wife and child are unable to maintain themselves, when the husband has sufficient means, it is obligation on the part of the husband/father of the child to maintain the wife and children.



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12. In this case, admittedly, the respondent/husband is drawing a salary of more than Rs.2,00,000/- per month and the respondent/husband admitted the fact that the petitioner/wife worked before marriage, subsequently, she resigned her job. After separating from her husband, she worked for about one year and resigned later, since she could not take care of her child. Even at the time of filing the maintenance petition, she was not working and therefore, considering the status of the respondent/husband and prevailing cost of living as on date, a sum of Rs.11,000/- is not sufficient to maintain both the mother and her child. Further, the minor child has to be given food, education in proper time and the child cannot be made to wait till the appeal attains finality before the Hon'ble Supreme Court. Even the Hon'ble Supreme Court has held that when a petition can be filed for the interim maintenance by invoking proviso to Section 125 of Cr.P.C., the Court has to pass the order within a period of sixty days, whereas in the case on hand, the petitioners/wife & child filed the maintenance case in the year 2016 and the same is pending. The learned Judicial Magistrate passed an order of maintenance, against which criminal revision has been filed by the husband as well as by the wife & child before this Court and this Court also directed the respondent/husband to pay the enhanced maintenance to the wife & child and to pay the arrears amount, till date the respondent/husband has not paid any arrears amount, but he is



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dragging on the proceedings one way or other way and therefore, it is nothing but willful disobedience of order of this Court. Though the petitioners/wife & child failed to file the petition under Section 128 Cr.P.C., for execution of the order passed by the learned Judicial Magistrate under Section 125 Cr.P.C, they preferred revision before this Court and the same was partly allowed by giving opportunity to the respondent/husband to pay the entire arrears amount within a period of two months. But however, the respondent/husband stated that against the said order, he preferred appeals before the Hon'ble Supreme Court and the same are pending. A mere pending of SLP, is not a ground to postpone the compliance of the order of the Courts below unless there is a specific stay from the Hon'ble Supreme Court .

13. In the case of ***Rajnesh vs. Neha & Anr.***, (supra), the Hon'ble Supreme Court held as follows:-

114.Enforcement of the order of maintenance is the most challenging issue, which is encountered by the applicants. If maintenance is not paid in a timely manner, it defeats the very object of the social welfare legislation. Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law. The Bombay High Court in Sushila Viresh Chhadva vs.



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Viresh Nagshi Chhadva reported in AIR 1996 Bom 94:-

“7.... The direction of interim alimony and expenses of litigation under Section 24 is one of urgency and it must be decided as soon as it is raised and the law takes care that nobody is disabled from prosecuting or defending the matrimonial case by starvation or lack of funds”

14. Even otherwise this is not a case that the child can be made to wait for the appeals to attain finality before the Hon'ble Supreme Court and the said contention raised by the respondent/husband is summarily rejected. As already stated, the child has to be feeded in time and to be provided education in time and other incidental expenses like tuition, medical expenses if any. Therefore, this Court despite giving direction orally on several occasion to the respondent/husband to pay the some arrears amount for the benefit of child, the respondent/husband is evading to pay the any arrears of amount, which is nothing, but is willful disobedience of the order of the Court.

15. Considering the facts and circumstances of the case and welfare of the child's education, this Court is of the view that one more opportunity shall be given to the respondent/husband to pay a sum of Rs.10,00,000/- immediately to the petitioners/wife & child towards arrears of maintenance



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amount within a period of one month, failing which the action of the respondent/husband would amount to a contempt and the respondent/husband shall undergo sentence of simple imprisonment of one month from the expiry of the date of one month.

With the above direction, this Contempt Petition is disposed of .

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Index : Yes/No

Internet:Yes/No

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Note:- Issue order copy on 31.10.2022

To

The Judicial Magistrate -I, Tambaram.



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P.VELMURUGAN, J.

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