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Crl.RC.No.710 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	17.11.2022
Pronounced on	:	.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.710 of 2022

and

Criminal M.P.No.7410 of 2022

Senthil Kumaran

... Petitioner

Vs.

1.Malarkodi

... Respondent

2.Saraswathibai

[No relief is claimed against Second respondent
she was shown only for the purpose of cause title
and Crl.Revision as against Second respondent is
given up]

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to set aside the order dated 17.02.2022 made in Crl.M.P.No.2862 of 2018 in M.C.No.22 of 2022, by the Judicial Magistrate-II, Ponneri.

For Petitioner : Mr.E.Prabu

For Respondent : Mr.K.L.Sekar



ORDER

This Criminal Revision Case has been filed seeking to set aside the order passed in Crl.M.P.No.2862 of 2018 dated 17.02.2022 on the file of the the Judicial Magistrate-II, Ponneri.

2. The respondent herein filed a petition in M.C.No.22 of 2012 under Domestic Violence Act and the same was ordered on 05.02.2014 for a sum of Rs.3000/- for maintenance and Rs.3000/- for accommodation per month, totaling Rs.6000/-.

3. Challenging the same, the petitioner herein filed an appeal in C.A.No.38 of 2014 before the learned Principal District and Sessions Judge, Thiruvallur against the order passed on 05.02.2014 in M.C.No.22 of 2012. The respondent also filed an appeal against the said order for enhancement in C.A.No.61 of 2016. In both the appeals, a common order was passed by the learned Principal District and Sessions Judge on 21.02.2017. The order made in M.C.No.22 of 2014 dated 18.10.2014 was set aside and the matter was remanded back to the learned Judicial Magistrate, Ponneri for retrial and also directed the petitioner herein to pay Rs.3000/- as interim maintenance till the disposal of that case.



4. The learned Magistrate took the case and passed an order on 30.01.2018 directing the petitioner herein to pay monthly maintenance of Rs.5000/- per month to the respondent herein and directed payment of arrears from the date of the petition i.e., 18.10.2012.

5. Thereafter, the respondent herein filed a petition under Section 128 of Cr.P.C for execution in Crl.M.P.No.2862 of 2018. The learned Magistrate passed an Order that the petitioner herein has to pay arrears of maintenance amount for 72 months. Therefore, $\text{Rs.5000} \times 72 \text{ months} = \text{Rs.3,60,000/-}$, in which the petitioner herein had already paid Rs.1,08,000/- and liable to pay Rs.2,52,000/- upon arrears to the respondent herein till September 2018. The petitioner herein/respondent therein was willing to pay the arrears of the amount before the next hearing, the case was ordered to be posted on 25.02.2022.

6. The petitioner herein/respondent therein challenged the said order dated 17.02.2022 by way of this Revision.

7. The learned counsel for the petitioner would submit that he has



paid the maintenance amount over and above Rs.1,08,000/-. However, the learned Magistrate failed to consider the payment made by the petitioner and also failed to take into account, the documents filed by the petitioner in support of his payments. He also filed an additional typed set, in which he annexed Statement of Accounts or saving account and this Court directed to file fresh calculation memo to show the amount he paid so far . He also submitted the brief history of calculation memo extracted as follows,

<i>S.No.</i>	<i>Date</i>	<i>Mode of Payment</i>	<i>Amounts</i>
1	April 2014	By cash	Rs.90,000/-
2	02.05.2014	By cash	Rs.31,000/-
3	02.06.2014	Money Order	Rs.6,000/-
4	02.07.2014	Money Order	Rs.6,000/-
5	02.08.2014	Money Order	Rs.6,000/-
6	02.09.2014	Money Order	Rs.6,000/-
7	02.10.2014	Money Order	Rs.6,000/-
8	02.11.2014	Money Order	Rs.6,000/-
9	02.12.2014	Money Order	Rs.6,000/-
10	02.01.2015	Money Order	Rs.6,000/-
11	02.02.2015	Money Order	Rs.6,000/-
12	02.03.2015	Money Order	Rs.6,000/-
13	02.04.2015	Money Order	Rs.6,000/-
14	02.05.2015	Money Order	Rs.6,000/-
15	02.06.2015	Money Order	Rs.6,000/-
16	02.07.2015	Bank Transfer	Rs.6,000/-



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S.No.	Date	Mode of Payment	Amounts
17	06.08.2015	Bank Transfer	Rs.6,000/-
18	08.09.2015	Bank Transfer	Rs.6,000/-
19	12.10.2015	Bank Transfer	Rs.6,000/-
20	13.11.2015	Bank Transfer	Rs.6,000/-
21	15.12.2015	Bank Transfer	Rs.6,000/-
22	06.01.2016	Bank Transfer	Rs.6,000/-
23	10.02.2016	Bank Transfer	Rs.6,000/-
24	01.03.2016	Bank Transfer	Rs.6,000/-
25	11.04.2016	Bank Transfer	Rs.6,000/-
26	09.05.2016	Bank Transfer	Rs.6,000/-
27	20.06.2016	Bank Transfer	Rs.6,000/-
28	12.07.2016	Bank Transfer	Rs.6,000/-
29	09.08.2016	Bank Transfer	Rs.6,000/-
30	08.09.2016	Bank Transfer	Rs.6,000/-
31	18.10.2016	Bank Transfer	Rs.6,000/-
32	22.12.2016	Bank	Rs.12,000/- (for Nov & Dec 2016)
33	10.02.2017	Bank	Rs.12,000/- (for Jan & Feb 2017)
		Total	Rs.3,19,000/-
34	24.03.2017	Bank Transfer	Rs.3,000/-
35	21.04.2017	Bank Transfer	Rs.3,000/-
36	06.05.2014	Bank Transfer	Rs.3,000/-
		Total	Rs.3,28,000/-

Details	Amounts
Crl.M.P.No.2862 of 2018 was filed claiming arrears of maintenance from 18 th April 2012 to 18 th September 2018 for 72 months.	Rs.3,60,000/-



<i>Details</i>	<i>Amounts</i>
Respondent allegedly claimed that the petitioner/husband paid for 21 months.	Rs.1,08,000/-
Petitioner paid a total amount	Rs.3,28,000/-
Balance amount payable as on Sep'2018	Rs.41,000/-

8. Therefore, he would submit that the petitioner herein is only liable to pay Rs.41,000/- as on September 2018. Therefore, the Order passed in Crl.M.P.No.2862 of 2018 dated 17.02.2022 on the file of the the Judicial Magistrate-II, Ponneri has to be set aside and this Revision is liable to be allowed.

9. The learned counsel for the respondent would submit that the impugned order itself shows that the learned Magistrate directed the petitioner herein to pay the arrears of amount i.e., Rs.2,52,000/- upto September 2018 and the petitioner herein/respondent therein expressed his willingness to pay the same on the next date of hearing on 25.02.2022. Subsequently, the petitioner filed this Revision petition. He would further submit that once he had admitted the said arrears of amount i.e., Rs.2,52,000/-, then he cannot file the present Revision. The respondent also filed a calculation memo in support of her case, which reiterates as follows,



<i>S.No</i>	<i>Year</i>	<i>Arrears not paid for the months</i>	<i>Amounts not paid</i>
1	2012	2	Rs.10,000/-
2	2013	12	Rs.60,000/-
3	2014	4	Rs.20,000/-
4	2017	9	Rs.45,000/-
5	2018	9	Rs.45,000/-
	Total	36	Rs.1,80,000/-

As per the order of the Court, the petitioner herein has to pay monthly Rs.8,000/-, but he paid Rs.6,000/- and balance amount for Rs.2,000/- not paid for 36 months. (2000 x 36=Rs.72,000/-)	Rs.1,80,000/-
Total Amount of Arrears	Rs.72,000/-
Balance	Rs.2,52,000/-

10. Heard learned counsel for both sides and perused the records filed in support of the revision petition.

11. Admittedly, the respondent herein filed a petition in M.C.No.22 of 2012 under Domestic Violence Act and the same was ordered on 05.02.2014 for a sum of Rs.3000/- for maintenance and Rs.3000/- for accommodation per month in all totaling Rs.6000/-. Thereafter, the order made in M.C.No.22 of 2014 dated 18.10.2014 was set aside and the matter was



remanded back to the learned Judicial Magistrate, Ponneri for retrial and also directed the petitioner herein to pay Rs.3000/- as interim maintenance till the disposal of that case and the learned Magistrate passed an Order on 30.01.2018 directing the petitioner herein to pay monthly maintenance of Rs.5000/- per month to the respondent herein and directed payment of arrears from the date of the petition i.e., 18.10.2012. Thereafter, the respondent herein filed a petition under Section 128 of Cr.P.C for execution in Crl.M.P.No.2862 of 2018. The learned Magistrate passed an order that the petitioner herein is liable to pay the balance amount of Rs.2,52,000/- upon arrears to the respondent herein till September 2018. However, there has been a dispute with reference to the amount of arrears to be paid by the petitioner.

12. On a perusal of the calculation memo filed by both the parties, the respondent herein admitted all the payments made by the petitioner in the calculation memo except the payment of Rs.90,000/- which was alleged to have been paid by cash in the year 2014. The respondent also admitted the cash payment of Rs.31,000/- made on 02.05.2014. Therefore, the dispute is only for Rs.90,000/- which was said to have been paid through cash in



2014. It is also taken to the notice of this Court, that the date was not mentioned for the payment of Rs.90,000/- and it was simply mentioned as April 2014. The same was specifically denied by the respondent in paragraph No.6 of the calculation memo filed by the first respondent that 'as per the calculation memo, the petitioner did not pay the amount by cash during April 2014 Rs.90,000/.' When the respondent denies the payment, it is for the petitioner to prove the same by producing any acknowledgment or receipt that he had paid the amount and the same was received by the respondent.

13. Since the petitioner has not proved that payment said to have been made in the month of April 2014, the balance amount mentioned in the calculation memo of the petitioner is not acceptable. Further, the petitioner failed to prove that he paid Rs.90,000/- by cash to the respondent, therefore, the disputed amount of Rs.90,000/- said to have paid by the petitioner is also not acceptable.



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14. Therefore, this Revision Case is dismissed. Consequently, the connected Miscellaneous petition is closed.

.11.2022

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To

1. The Judicial Magistrate-II, Ponneri.
2. The Public Prosecutor
High Court of Madras.



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P.VELMURUGAN,J.

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**Pre-Deliver Order in
Criminal Revision Case No.710 of 2022**

.11.2022