



C.R.P. (PD) No.2208 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) No.2208 of 2019
and C.M.P.No.14320 of 2019

V.E.Arun
S/o Vairavan

... Petitioner

Vs.

L.Lalitha
D/o Lakshman

... Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the docket order dated 21.02.2019 in E.P.No.132 of 2018 in O.P.No.1721 of 2016 pending on the file of V Additional Principal Judge, Family Court, Chennai.

For Petitioner : Mr.R.Sundarrajan

For Respondent : Mr.S.M.Nandhia Devan



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ORDER

This Civil Revision Petition has been filed, to set aside the docket order of arrest dated 21.02.2019 in E.P.No.132 of 2018 in O.P.No.1721 of 2016 pending on the file of the Family Court, Chennai.

2.Facts leading to filing of this petition are as follows:-

The respondent/wife herein has filed the Original Petition in O.P.No.1721 of 2016, to dissolve the marriage held between the petitioner and the respondent and also to return the articles. Pending Original Petition, the respondent/wife filed a petition in I.A.No.3015 of 2016 under Section 24 of the Hindu Marriage Act, to direct the petitioner/husband to pay a sum of Rs.50,000/- towards interim maintenance and also to pay litigation as well as travel expenses. The Court below by an order dated 06.01.2018 directed the petitioner/husband to pay a sum of Rs.30,000/- towards interim maintenance to the respondent/wife. In the Interim maintenance petition, the petitioner/husband was called absent and he was set as exparte. Since the



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petitioner/husband has not complied the order dated 06.01.2018 passed by the Court below, the respondent/wife filed an execution petition in E.P.No.132 of 2018, to attach the petitioner/husband's pension and recover the amount and subsequently issue warrant against him. Even after taking notice, the petitioner/husband has not represented either by person or through his counsel, which resulted in passing of arrest warrant against the petitioner/husband.

3. Aggrieved against the docket order of arrest dated 21.02.2019 in E.P.No.132 of 2018, the petitioner has preferred the present Civil Revision Petition.

4. Heard the learned counsel for the petitioner as well as the respondent.

5. It is settled proposition of law that if prima facie case is being made



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out, even ex parte, the Magistrate can pass an order of interim maintenance.

In ***Shri Bhagwan Dutt v. Smt. Kamla Devi and Anr. MANU/SC/0205/1974***

: ***(1975) 2 SCC 386***, the Honourable Supreme Court has considered the amount of maintenance payable to wife under Section 488 of the Code of Criminal Procedure, 1898 and the principle laid down is applicable to the case on hand. In para 19, the Apex Court held:

“19. The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments.”

6. Section 125 of the Code confers power on a magistrate of the first class to direct a person having sufficient means but who neglects or refuses



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to maintain (i) his wife, unable to maintain herself, or (ii) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (iii) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself or (iv) his father or mother, unable to maintain himself or herself, upon proof of such neglect or refusal, to pay a monthly allowance for the maintenance of his wife or such child, father or mother, as the case may be, at such monthly rate not exceeding five hundred rupees in the whole as such magistrate thinks fit. Such allowance shall be payable from the date of the order, or, if so ordered from the date of the application for maintenance. Section 126 of the Code prescribes the procedure for the disposal of an application made under section 125. Section 127 of the Code provides for alteration of the rate of maintenance in the light of the changed circumstances or an order or decree of a competent civil court. Section 128 of the Code deals with the enforcement of the order of maintenance. It is not necessary to refer to the



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other details contained in the above said provisions. A reading of the above provisions shows that they are intended to provide for a preventive remedy for securing payment of maintenance which can be granted quickly. Therefore, until the said order of interim maintenance is modified or cancelled, the same needs to be complied with. Therefore, this Court is not inclined to interfere with the docket order of arrest dated 21.02.2019 in E.P.No.132 of 2018 in O.P.No.1721 of 2016 pending on the file of the Family Court, Chennai.

7. In the result, this Civil Revision Petition stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
Jer/nvsri



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To

1.The V Additional Principal Judge, Family Court, Chennai.

2.The Section Officer, V.R.Section
High Court of Madras.



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J.NISHA BANU,J.

Jer/nvsri

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