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Crl.R.C.No.1333 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.1333 of 2022

and

Crl.M.P.No.14323 of 2022

Eswaramoorthy

... Petitioner

Vs.

Kalpana

... Respondent

Prayer:

Criminal Revision Petition filed under Section 397 r/w Section 401 of Cr.P.C., against the order dated 9th May 2022 made in C.M.P.No.363 of 2018 in M.C.No.19 of 2011 on the file of the Judicial Magistrate No.I, Bhavani, Erode District.

For Petitioner : Mr.S.Lakshmanasamy

For Respondent : Mr.P.Sesubalan Raja



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ORDER

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This Criminal Revision Case is filed against the order dated 09.05.2022 passed in C.M.P.No.363 of 2018 in M.C.No.19 of 2011 on the file of the Judicial Magistrate No.I, Bhavani, Erode District.

2. Petitioner is the husband. Respondent is the wife. Since the petitioner herein has not complied with the order dated 14.08.2014 passed in M.C.No.19 of 2011 on the file of the Judicial Magistrate No.I, Bhavani, the respondent wife filed the petition in C.M.P.No.363 of 2018 under Section 125(3) Cr.P.C before the Magistrate, to execute the order. Since the petitioner has not paid any maintenance amount and arrears of maintenance amount, the learned Magistrate convicted the petitioner and sentenced him to undergo Simple Imprisonment for one year. Challenging the said order, the petitioner has filed the present Revision Case before this Court.

3. Learned counsel for the petitioner would submit that the learned Magistrate has no power to impose the imprisonment for more than one month, for non-payment of arrears of maintenance amount. Hence, the



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order of the learned Magistrate is illegal and liable to be set aside. He further submitted that the petitioner has already undergone five months simple imprisonment.

4. Learned counsel for the respondent would submit that the petitioner has not paid the maintenance amount as ordered by the learned Judicial Magistrate No.I, Bhavani. Hence, he filed a miscellaneous petition in C.M.P.No.363 of 2018, to execute the order. The learned Magistrate after hearing the arguments advanced on either side, rightly passed the order. There is no illegality or irregularity in the order passed by the learned Magistrate. In support of his contentions, he placed relied upon the decision of the Hon'ble Division Bench of this Court made in H.C.P.(MD) SR No.31625 of 2018, dated 09.01.2019.

5. Heard the learned counsel appearing on either side and perused the materials available on record.



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6. Admittedly, the respondent wife filed a maintenance case in M.C.No.19 of 2011 on the file of the Judicial Magistrate No.I, Bhavani. The learned Magistrate passed an order directing the petitioner husband to pay maintenance amount and return of jewels. Since the petitioner has not complied with the order of the learned Magistrate, the respondent filed a petition in C.M.P.No.363 of 2018 by invoking Section 125(3) Cr.P.C., Since the petitioner did not comply with the order of the Court, the learned Magistrate passed the docket order dated 09.05.2022, convicting the petitioner and sentenced him to undergo Simple Imprisonment for one year from 09.05.2022 to 09.05.2023. Since the petitioner has not complied with the order till date, consolidated sentence can be imposed as has been held by the Full Bench of the Hon'ble Gujarat High Court in (II) 2009 DMS 197 (FB).

7. Considering the facts and circumstances of the case and also the petitioner has not complied with the order of the Magistrate Court till now, this Court does not find any illegality or irregularity in the order passed by the learned Magistrate and there is no merit in the petition and the same is



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liable to be set aside. Accordingly, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

However, as a last chance, the petitioner is granted time till 19.10.2022 to comply with the order passed by the Court below, failing which, the sentence of imprisonment imposed on the petitioner shall stand operative and the petitioner be taken custody to serve the sentence.

10.10.2022

mfa
Index:yes/No
Internet:yes/No

To

1. The Judicial Magistrate No.I, Bhavani, Erode District.



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P.VELMURUGAN, J.

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