



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction**

Tuesday, the Seventh day of June Two Thousand and Twenty Two

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) . No.2735 of 2022

in

CRL RC(MD) .NO.942 of 2019

Muthukumar

... Petitioner/Revision Petitioner

Vs

1 Kartheeswari
W/o.Muthukumar

2 Minor.Pranav Rithish
S/o.Muthukumar

... Respondent/Respondent

Prayer CRL MP(MD) . No.2735 of 2022:-

This Criminal Miscellaneous Petition filed Under Section 482 of Cr.p.c. To modify the order dated. 21.01.2022 passed in Crl.R.C. (MD) No. 942/2019 and thereby permit the petitioner to deposit 50 percent of the proportionate arrears of maintenance in respect of first Respondent and 2nd Respondent to them separate as per the Schedule of Calculation to the Petition and pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstance of the case and thus render justice.

Prayer in CRL RC(MD) .NO.942 of 2019:-

This Criminal Revision petition filed Under section 397 and 401 of Cr.p.c., to set aside the order passed on 19.10.2019 and 02.11.2019 by the Hon'ble Judicial Magistrate, paramakudi passed in Crl.MP.No.4083 of 2019 in M.C.NO.16 of 2014 and direct the Hon'ble Judicial Magistrate, Paramakudi to pass orders on merits and thus render justice.

ORDER:- This Criminal Miscellaneous petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.A.ARUL JENIFER, Advocate for the Petitioner and of MR.J.BARATHAN, Advocate for the respondents, this Court made the following order:

The above petition has been filed invoking Section 482 Cr.P.C., seeking modification of the order dated 21.01.2022 passed in

<https://hcservices.ecourts.gov.in/hcservices>



Crl.R.C.(MD)No.942 of 2019, on the file of this Court.

2. Admittedly, the first respondent is the wife and the second respondent is the son of the petitioner. The respondents have filed a petition in M.C.No.16 of 2014 seeking maintenance and the learned Judicial Magistrate, Paramakudi, after enquiry, has passed an order directing the petitioner to pay Rs.3,000/- to the first respondent and Rs.6,000/- to the second respondent and directed him to pay the arrears amount within two months from the date of the order. Aggrieved by the said order, the petitioner has preferred a revision in Crl.R.C.No.5 of 2019 and the learned Principal Sessions Judge, Ramanathapuram, on perusing the records and on hearing the arguments of both sides, has passed an order dated 05.09.2019, dismissing the revision petition.

3. It is not in dispute that subsequently, the first respondent has filed a petition in Cr.M.P.No.4083 of 2019 for arrears of maintenance amount, that the petitioner has entered into appearance and filed his counter statement, that the learned Magistrate has passed an order directing the petitioner to pay the entire amount, vide order dated 19.10.2019 and that since the petitioner has not turned up for the subsequent hearing on 02.11.2019, the learned Magistrate has passed an order for issuance of Non-Bailable Warrant against the petitioner. Aggrieved by the said order, the petitioner has preferred a revision before this Court in Crl.R.C.(MD)No.942 of 2019 and the learned Judge of this Court, vide order dated 21.01.2022 disposed of the Criminal Revision Petition directing the petitioner to pay 50% of the arrears amount on or before 28.02.2022 and to pay the balance of the arrears amount on or before 08.04.2022 and to pay the monthly maintenance amount on or before the seventh of every month. The petitioner has now come forward with the above petition seeking modification permitting him to deposit 50% of the proportionate arrears of maintenance in respect of the respondents 1 and 2 separately.

4. When the above matter was taken up in the earlier hearings, Thiru.A.Baskaran, learned Counsel has entered into appearance for the respondents. Since the learned Counsel for the petitioner has taken a stand that the first respondent may receive the entire amount and spend it lavishly ignoring the welfare of their minor son, the learned Counsel for the respondents submitted that the first respondent is ready to file an affidavit to the effect that she will not withdraw the maintenance amount of the second respondent and sought time to file an affidavit. But on the subsequent hearing, Thiru.J.Barathan, learned Counsel has entered into appearance for the respondents 1 and 2 and raised the very maintainability of the above petition and the numbering of the petition by the Registry and also posting of the above matter before this Court, as the learned Judge, who has passed the orders in Criminal Revision, is very much available.



5. As already pointed out, the petitioner has challenged two orders passed in Crl.M.P.No.4083 of 2019, vide dated 19.10.2019, directing the petitioner to pay the entire balance amount and the second order dated 02.11.2019, issuance of NBW against the petitioner. This Court, by giving a finding that the petitioner has been wilfully evading the payment, directed the petitioner to pay 50% of the arrears amount on or before 28.02.2022 and the balance arrears on or before 08.04.2022 and thereby disposed of the Criminal Revision Petition.

6. As rightly contended by the learned Counsel for the petitioner, the petitioner has not challenged the liability fixed on the petitioner nor the quantum of maintenance fixed by the trial Court, which was confirmed by the Principal Sessions Court. Moreover in the Criminal Revision Petition in Crl.R.C.(MD)No.942 of 2019, this Court has not passed any final orders determining the liability nor any other main issue existed between the parties. The petitioner, by alleging that the first respondent may receive the entire amount and spend it lavishly ignoring the welfare of the second respondent, has sought for some modifications directing him to deposit the proportionate arrears of maintenance separately. Since the petitioner has only challenged the docket order passed by the trial Court and this Court has also disposed of the revision, by giving a direction to the petitioner to deposit the amount in two installments and the petitioner has now only sought for modification with respect to depositing the amount, this Court is having every right and jurisdiction to consider and decide as to whether the modification sought for is to be permitted or not. Considering the above, the very contention of the learned Counsel for the respondents that the present application for modification itself is legally not maintainable, is absolutely devoid of merits and the same is liable to be rejected.

7. Now coming to the next argument that the above matter ought to have been posted before the very same Judge, who has disposed of the Criminal Revision Petition and the same should not have been placed before this Bench, there is neither any Rule nor any Circular, which mandates the adoption of such a procedure.

8. The Hon'ble Apex Court, in its order dated 13.01.2006 passed in a petition for Special Leave to Appeal (Crl.)No.872/2005 with Crl.M.P.No.1929 of 2005 in ***Thiru.M.Jegan Mohan Rao Vs. P.V.Mohan Rao Naidu and another***, has reiterated the principle laid down by the Hon'ble Supreme Court that in case if the learned Judge, who had refused the bail in the first instance available, the matter should have been placed before him and indicated that such cases of successive bail applications should be placed before the same Judge, who had refused bail in the first instance, unless that Judge is not available and also expressed hope that the High Court will take notice of the judgment of the Hon'ble Supreme Court.



9. In pursuance of the directions of the Hon'ble Supreme Court, this Court, on administrative side has issued a circular dated 08.02.2006, directing the Registry that the successive bail applications filed should be posted before the Hon'ble Judge, who had refused the bail in the first instance unless that Hon'ble Judge is not available and the petitions for cancellation of bail should also be posted before the same Hon'ble Judge, who granted the bail in the first instance unless that Hon'ble Judge is not available.

10. The above judgment of the Hon'ble Supreme Court and the consequent circular issued by this Court are applicable to the bail matters and not to any other matters including the criminal revisions. Moreover, as per the roster issued for the period from 07.02.2022 to 30.04.2022, the Criminal Revision Petitions upto the year 2019 has been allotted to this Court. Hence, the next contention of the learned Counsel for the respondents that the matter should not have been posted before this Bench is also devoid of substance and the same is liable to be rejected instantly.

11. Now coming to the merits of the case, it is evident from the records that the first respondent has filed a petition in H.M.O.P.No.52 of 2008 for restitution of conjugal rights, that the petitioner has filed a petition in H.M.O.P.No.166 of 2008 for divorce, that as per the orders of this Court in Tr.C.M.P.(MD)No.62 of 2011, both the petitions were tried jointly and the learned Subordinate Judge, Paramakudi has passed an order dated 26.02.2016 allowing the petition for conjugal rights and dismissing the divorce petition.

12. It is pertinent to note that the petitioner, in the affidavit filed in support of the modification petition, has only referred the petition filed by the first respondent for restitution of conjugal rights and also alleged that though he was ready to join with the first respondent, she has chosen to retreat from the family life and that thereby he has completely suppressed the filing of the divorce petition and he has not whispered anything about the filing of the divorce petition and the dismissal of the same.

13. As already pointed out, the respondents have made the maintenance claim in M.C.No.16 of 2014 and the Criminal Revision Petition filed by the petitioner challenging the award of maintenance passed in M.C.NO.16 of 2014 was dismissed on 05.09.2019. Since the petitioner has not chosen to pay the amount, the first respondent was constrained to file the Criminal Miscellaneous Petition claiming arrears of maintenance for 52 months and the learned Magistrate has passed an order dated 19.10.2019 directing the petitioner to pay the entire arrears by 02.11.2019 and that since the petitioner has failed to comply with the said order and also failed to appear before the Court, NBW was ordered to be issued against the petitioner. Admittedly, the first respondent alone has been taking



care of the second respondent continuously. It is not the case of the petitioner that he has taken care of his son at any point of time.

14. The learned Counsel for the respondents would submit that though the petitioner has not bothered about the welfare of the second respondent, in order to escape from the liability, has filed a petition in G.W.O.P.No.54 of 2019 seeking custody of the second respondent by alleging that he has sufficient means to look after the second respondent, but he has not chosen to pay the arrears despite the directions issued by the trial Court and the issuance of NBW. It is also not in dispute that even after the dismissal of the Criminal Revision Petition on 21.01.2022, the petitioner has not chosen to comply with the directions of this Court and has come forward with the above petition seeking modification.

15. As rightly contended by the learned Counsel for the respondents, the above petition came to be filed only to drag on the proceedings and thereby preventing the respondents from realizing the fruits of the maintenance award. As rightly contended by the learned Counsel for the respondents, the petitioner, without bothering about the welfare and interest of the second respondent till the disposal of the Criminal Revision Petition, has filed the above petition as if he is interested in the welfare of his son and as if the first respondent is acting against the interest of the minor and thereby he is attempting to shed crocodile tear.

16. Considering the entire facts and circumstances of the case and also the fact that the petitioner has not complied with the directions of the trial Court and of this Court in the Criminal Revision Petition, this Court has no hesitation to hold that the above petition came to be filed only to delay the payment and thereby preventing the respondents from realizing the fruits of the award. Hence, this Court concludes that there is absolutely no merit in the above petition and the same is liable to be dismissed.

17. In the result, the above Criminal Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



TO

1. The Judicial Magistrate, Paramakudi.

Copy to:

WEB COPY

The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai

+1. CC to M/S.T.R.JEYAPALAM Advocate SR.No.24651

ORDER DATED : 07/06/2022

=====
ORDER
=====

CRL MP(MD) . No.2735 of 2022
in
CRL RC(MD) .NO.942 of 2019

Giving direction and etc.
as stated within.

RD(15.06.2022) 6P 4C