



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C. (MD)No.232 of 2022

WEB COPY

Marx

... Petitioner/Petitioner/
Respondent/Respondent

Vs.

1. R.Rajeswari

2. Minor.M.R.Poulijon

...Respondents/Respondents/
Petitioners/Petitioners

(Minor 2nd respondent rep.by
his Mother, the 1st respondent herein)

Prayer: This Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. to call for the records pertaining to the impugned docket order passed by the learned Family Court, Kanyakumari at Nagercoil dated 25.11.2021 passed in Unnumbered Crl.M.P.SR.No.4519 of 2021 in M.C.No.40 of 2014 in Crl.M.P.No.79 of 2018 and allow the revision petition and direct the Learned Family Court, Kanyakumari District at Nagercoil to number the petition, filed by the petitioner in Unnumbered Crl.M.P.SR.No.4519 of 2021 and to decide the application on merits and in accordance ow law, within the stipulated time framed by this Hon'ble Court.

For Petitioner : Mr.C.Kishore

ORDER

The petition has been filed as against the order passed in unnumbered Crl.M.P.SR.No.4519 of 2021 in M.C.No.40 of 2014 in Crl.M.P.No.79 of 2018, by the Family Court, Kanyakumari at Nagercoil, thereby, returned as not maintainable and barred by limitation.

2.The petitioner is the husband. The first respondent is the wife. They got married and gave birth to the second respondent herein. Thereafter, they had misunderstanding and as such, got separated and living separately. While being so, the respondent herein filed a maintenance case under Section 125 of Cr.P.C. in M.C.No.40 of 2014 on the file of the Chief Judicial Magistrate, Kanyakumari District, Nagercoil. On receipt of the notice, the



petitioner herein, was failed to appear before the trial Court and as such he was set ex-parte. Thereafter, the ex-parte order was passed and thereby, directed the petitioner to pay a sum of Rs.15,000/- to the first respondent and Rs.6,000/- to the second respondent herein. Even then, the petitioner did not comply with the order and as such, the respondents were constrained to file a petition under Section 128 of Cr.P.C to execute the order passed in M.C.No.40 of 2014 in C.M.P.No.206 of 2016. Even after receipt of the notice in the said application, the petitioner did not appear and as such, the Court below issued non-bailable warrant as against the petitioner. Aggrieved by the same, the petitioner filed a petition in Crl.O.P(MD)No.3947 of 2020 and this Court directed the Court below to recall the warrant on condition that the petitioner shall pay a sum of Rs.1 lakh in favour of the first respondent herein by way of demand draft. Thereafter, the petitioner was allowed to pursue the matter on merits. After payment of Rs.1,60,000/- as imposed, the petitioner filed the petition to set aside the ex-parte order passed in M.C.No.40 of 2014.

3.Admittedly, the said petition was filed after a period of four years under Section 126(2), it is clear that the petitioner shall make an application within a period of three months from the date of receipt of a copy of the order to set aside the ex-parte order.

4.Therefore, the Court below has rightly returned the petition as not maintainable and also barred under Section 126(2) of Cr.P.C. Hence, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, this criminal revision case stands dismissed. However, the petitioner is at liberty to file an appeal as against the order of maintenance in the manner known to law, if so advised.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

lr

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1. The Family Court, Kanyakumari District at Nagercoil
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C.KISHORE, Advocate (SR-10865[F] dated 09/03/2022)

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