

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Dated: 16/09/2022

PRESENT

The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.RC(MD)No.581 of 2022
and
Cr1.MP(MD)No.7176 of 2022

S.Abuthakeer : Petitioner/Respondent/
Respondent
Vs.

1.S.Faritha Fathima
2.Minor Roopina Banu : Respondents/Petitioners/
(Minor second respondent Petitioners
represented through her
mother and guardian,
the first respondent)

Prayer:- This Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code to call for the records and to set aside the order, dated 26/05/2022 passed in the petition in Cr.M.P No.3908 of 2019 in MC No.56 of 2014 on the file of the Judicial Magistrate Court, Aruppukottai.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.C.M.Arumugam

O R D E R

This revision has been filed seeking to set aside the order, dated 26/05/2022 passed in the petition in Cr.M.P No.3908 of 2019 in MC No.56 of 2014 by the Judicial Magistrate Court, Aruppukottai.

2.The facts in brief:-

It is a matrimonial issue, over which the respondents initiated MC No.56 of 2014 seeking maintenance. That was ordered by the trial court, on 02/09/2019 directing the petitioner to pay a sum of Rs. 10,000/- each to the respondents 1 and 2 from the date of petition. Against which, revision was preferred and that was dismissed by the revisional court, on 11/03/2021 confirming the quantum. To execute the order, the respondents filed Cr.MP No.3908 of 2019 stating that 54 months arrear is due and the total amount to be paid is Rs.10,80,000/- and that was filed, on 03/04/2019. The trial court passed the order, on 26/05/2022 directing the petitioners to undergo 15 months simple imprisonment or until the payment of arrears of maintenance amount. That was ordered , on 26/05/2022. Against which, this criminal revision has been preferred mainly not only on the ground

of limitation, but also with regard to the period of punishment.

3.Heard both sides.

4.An elaborate argument has been advanced by the learned counsel appearing for the petitioner not only on the factual issue, but also on legal issue.

5.After hearing the parties, I made a suggestion to settle the issue. Even though the learned counsel appearing for the respondents readily accepted the same, but a rider has been made by him to the effect that let the petitioner be directed to pay the balance arrears of maintenance. According to him, more than Rs.16,00,000/- is now due. As per the order of this court, a portion of the amount Rs.3,00,000/- was also paid towards part of the arrears amount.

6.But the learned counsel appearing for the petitioner would submit that the entire family has been spoiled by one person. But it appears that the petitioner is not accepted, the suggestion of this court. There is

some sort of grudge against the respondents. So that can be sorted out, if the parties sit together in the mediation process. Now whatever it may be, the matter can be disposed of on merits.

7. With regard to the first contention that the respondents can file execution petition only for one year is also out of place and cannot be accepted for the simple reason that even though, the Maintenance Case was filed in 2014, final order was passed, on 02/02/2019 directing the petitioner to pay the maintenance from the date of the petition. On the date of the disposal, 52 months arrears has to be paid. Cr.M.P No.3908 of 2019 has been filed within time. So the time cannot be calculated from the date of the original petition. The time limitation of 12 months will start running only from the date of order and not from the date of the petition I.e., the original petition was filed. The petitioner cannot take advantage of the long delay in disposing the Maintenance Case for the purpose of argument that the respondents are entitled for arrears only for 12 months. This amount became due only on the date of the order namely 02/02/2019. So the first ground of limitation of

12 months is not acceptable. Subsequent period of 12 months can be taken and not for the original period.

8. The next ground is that even though single petition has been filed, the Magistrate can impose the imprisonment only for a period of one month or until the payment, if sooner made. Much argument was advanced on this point. He has also cited very many judgments.

9. No doubt that at one point of time, there was an opinion that even if a single petition is filed under section 125(3) Cr.P.C for so many months, the Magistrate can impose penalty at the maximum period of one month only. But that view has been diluted subsequently.

10. There is no doubt on that, as mentioned earlier, the execution petition can be filed within a year from the date of the order of the original petition. Here, as mentioned earlier, there is no bar of limitation. But the argument that only one month maximum period can be imposed is completely out of place and not acceptable in view of the change of views. More particularly, we can refer the decision of the Division

Bench of this court in the case of M.Rajkumar Vs. Commissioner, Madurai City, Madurai & others (HCP (MD)SR No.31625 of 2018, dated 09/01/2019). After elaborate discussion, that judgment was rendered in a Habeas Corpus Petition. After considering all the relevant judgments including the judgment that has been cited by the learned counsel appearing for the petitioner in the case of Shahada Khatoon and anothers Vs. Amjad Ali and others [(1999)5 SCC 672). so we need not trouble much this order upon the above said controversy, since it has been now well settled by the Division Bench of this court. The view that has been expressed by this court prior to the Division Bench decision in the case of R.Kumaravadivel Vs. Lakshmi and others (CDJ 2007 MHC 1600), now it cannot be taken advantage by this petitioner.

11.The contention on the part of the petitioner is rejected outright and the entertaining of the petition by the executing court cannot be found fault. But at the same time, one important thing must be born in mind as stated earlier. The maintenance petition was kept pending for more than 4 years. So because of the pendency of the petition for several years, the arrears has accumulated.

So also the period imprisonment is increased. So for that purpose, the petitioner should not be penalised by ordering 15 months imprisonment at a stretch. So, I am of the considered view that the imprisonment of 15 months can be reduced to six months. Since a portion of the amount has been paid by the petitioner, an opportunity may be given to the petitioner to pay the balance amount to avoid the imprisonment.

12. In the light of the above facts, this criminal revision is partly **allowed** and **15 months simple imprisonment is reduced to 6 months of simple imprisonment until payment is made.** The imprisonment shall remain suspended for two months. In the meantime, the petitioner must pay the entire arrears amount and must file a compliance report before the concerned executing court. If any violation of the above said condition, the executing court may take steps to secure the petitioner for subjecting him to undergo the remaining period of imprisonment.

13. With the above said direction, this criminal

revision is **partly allowed**. Consequently connected
Miscellaneous Petition is closed.

16/09/2022

Index:Yes/No
Internet:Yes/No
er

To,

The Judicial Magistrate,
Aruppukottai.

G. ILANGO VAN, J

Cr1.RC(MD)No.581 of 2022

16/09/2022

