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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01/12/2022

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

Cr1.RC(MD)No.736 of 2022

and

Cr1.MP(MD)No.9067 of 2022

S.Radha Sankareswari : Petitioner

Vs.

M.Selvam : Respondent

Prayer:- This Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code to set aside the order, dated 01/07/2022 made in Cr.M.P No.4656 of 2021 in MC No.2 of 2016 on the file of the Judicial Magistrate, Sathankulam and pass such further or other orders.

For Petitioner : Mr.S.Siva Thilakar

For Respondent : Mr.K.Sivabalan

**ORDER**

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This criminal revision has been filed seeking to set aside the order, dated 01/07/2022 passed in Cr.M.P No.4656 of 2021 in MC No.2 of 2016 by the Judicial Magistrate, Sathankulam.

2.The facts in brief:-

It is a matrimonial issue. The petitioner herein filed MC No.2 of 2016 before the Judicial Magistrate, Sathankulam, seeking maintenance of Rs.10,000/- per month. In the above said proceedings, the respondent did not appear. So an ex-parte order was passed, on 10/08/2016 and a sum of Rs.4,500/ was granted as monthly interim maintenance. To set aside the ex-parte order, the respondent filed Crl.MP No.7147 of 2018 and that was allowed after enquiry and again, Rs.5,000/- was ordered as interim monthly maintenance, from 10/10/2018. Against the said order, he filed Crl.RC No.11 of 2019 before the Principal District and Sessions Judge, Tuticorin. That was dismissed and direction was issued to the trial court to dispose the main Maintenance Case within a period of six months.



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3. During the enquiry process, the respondent has stated that one time settlement was arrived between the parties for Rs.4,85,000/- before the All Women Police Station, Tiruchendur. Later, the matter has been dragged on by the respondent. So, she filed CrI.MP No.4656 of 2021 in MC No.2 of 2016 under sections 125(3) and 128 Cr.P.C. There was delay in disposing the matter. So she filed CrI.OP(MD)No.4576 of 2022 and that was also allowed by this court, on 10/03/2022 directing the trial court to dispose the matter within a period of four weeks. But that petition was dismissed by the trial court on technical grounds. Against which, this revision has been filed.

4. Heard both sides.

5. At the out set, this court express its displeasure over the manner in which the above said petition filed by the petitioner has been dealt and disposed of. It is a matrimonial issue and the above said petition has been filed for recovery of interim maintenance amount. A simple petition and a simple relief. It ought not to have been decided on technicalities.



6. Whether section 125(2) or 128 Cr.P.C is attracted or not is a matter for consideration. The trial court ought to have decided the same on its own merits, without looking into the provision under which the above said petition has been filed. The manner of disposal not only an irregularity, but also illegality. So on the sole ground, the impugned order passed by the trial court is liable to be set aside.

7. In the result, this criminal revision is **allowed**. The impugned order passed by the trial court is set aside. The respondent is directed to pay the entire arrears amount, within a month from the date of receipt of a copy of this order, either directly to the petitioner or deposit the entire amount to the credit of trial court. If the above said condition is not complied by the respondent, then he has to undergo Simple Imprisonment for 2 months. The trial court is directed to follow the compliance.

8. With these directions, this criminal revision stands allowed to that extent. Consequently, connected Miscellaneous Petition is closed.



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01/12/2022

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Index:Yes/No

Internet:Yes/No

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To,

The Judicial Magistrate,
Sathankulam,
Tutirocin District.

G. ILANGO VAN, J

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01/12/2022