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Crl.O.P.No.2732 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.2732 of 2023

&

Crl.M.P.No.1602 of 2023

K.Hayath Basha

... Petitioner

Vs.

1.Shamshad Begum

2.Ajmath Ali

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to modify/relax the condition of payment of 50% of the arrears of maintenance amount as per the Orders of Judicial Magistrate, Ambattur in M.C.No.20 of 2018 dated 19.02.2021 to the Respondents within one month from the date of the Order imposed in Order dated 19.12.2022 passed in Crl.M.P.No.3802 of 2022 on the file of Principal District & Sessions Judge, Thiruvallur.

For Petitioner : Mr.R.Ragavendran

For Respondents : -



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ORDER

This petition is filed to modify/relax the condition of payment of 50% of the arrears of maintenance amount as per the orders of learned Judicial Magistrate, Ambattur in M.C.No.20 of 2018 dated 19.02.2021 to the Respondents within one month from the date of the Order imposed in Order dated 19.12.2022 passed in Crl.M.P.No.3802 of 2022 on the file of learned Principal District & Sessions Judge, Thiruvallur.

2. Learned counsel for the petitioner submitted that respondents filed a petition under Section 125 of Cr.P.C. in M.C.No.20 of 2018 seeking maintenance of Rs.10,000/- each. The learned Judicial Magistrate, Ambattur passed Order on 19.02.2021 directing the petitioner to pay Rs.7,500/- each to the respondents as monthly maintenance. Challenging this order, petitioner filed criminal revision petition in Crl.Revision S.R.No.4158 of 2022 on the file of the learned Principal District and Sessions Judge at Thiruvallur along with a petition under Section 5 of Limitation Act to condone the delay of 481 days in filing criminal revision petition. The learned Principal and Sessions Judge, Thiruvallur passed a conditional order on 19.12.2022 that the petition will be allowed on payment of 50% of the arrears of maintenance amount as per the



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orders of the learned Judicial Magistrate, Ambattur in M.C.No.20 of 2018 dated 19.02.2021 to the respondents within a period of one month from the date of the order. Challenging this Order, this petition is filed.

3. Learned counsel for the petitioner submitted that the order granting maintenance is an ex parte order. No asserts and liabilities statements have been filed by the respondents. Maintenance ordered at Rs.7,500/- to the respondents is not supported by any documentary evidence. The petitioner is now unemployed. He is not able to pay the amount ordered by the Principal District and Sessions Court, Thiruvallur. Therefore, this petition.

4. Considered the submissions of the learned counsel for the petitioner and perused the records. It is seen from the order of the learned Judicial Magistrate, Ambattur in M.C.No.20 of 2018 that petitioner filed a counter affidavit in that case. He also cross examined PW1. Thereafter, he did not participate in the enquiry. Thus, the order was passed. It is not as though the petitioner had not given an opportunity to contest the maintenance case. Despite filing counter, cross examining PW1, he decided not to participate in the further proceedings resulting in passing order of maintenance at Rs.7,500/- each to the respondents. It is not open to the petitioner to claim now that



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assets and liabilities statement was not filed by the respondents. The claim of the petitioner that he is unemployed is also doubtful. Even if he is unemployed, it is his bounden duty to maintain his wife and child.

5. Considering this scenario, this Court finds that ordering payment of maintenance at Rs.7,500/- per month to each of the respondents cannot be considered as exorbitant amount. Petitioner had not filed the revision against the order granting maintenance, in time. He filed the petition with a delay of 481 days. Therefore, conditional order was passed that the petitioner has to pay 50% of the arrears of maintenance amount to the respondents. This court finds no reason to take a different view of the matter for the reason that the petitioner has not paid any amount towards maintenance either during the pendency of the maintenance case or after disposal of the maintenance case on 19.02.2021.

6. Therefore, this Court finds no merits in this petition and therefore, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed. The petitioner is granted four weeks time from today for payment of arrears amount as ordered by the learned Principal



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District and Session Judge, Thiruvallur in Crl.M.P.No.3802 of 2022 on
19.12.2022.

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Internet:Yes/No
Index:Yes/No
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G.CHANDRASEKHARAN, J.
mpl

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