



Crl.R.C.No.702 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.702 OF 2023 &
Crl.M.P.No.5454 of 2023

S. Mayakrishnan

.. Petitioner

Vs

Mrs.Chitra

... Respondent

Prayer: Criminal Revision Case filed under section 397 and 401 Cr.P.C. to allow the revision petition and set aside the order dated 21.03.2023 passed in Crl.M.P.No.2700 of 2021 in M.C.No.2 of 2015 on the file of Judicial Magistrate, Tirukoilur, Villupuram District.

For Petitioner : Mr. V. Rajendran

ORDER

This Criminal Revision case has been filed challenging the order dated 21.03.2023 passed by the Judicial Magistrate, Thirukoilur, Villupuram in



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Crl.M.P.No.2700 of 2021 in M.C.No.2 of 2015 imposing simple imprisonment on the petitioner for a period of 30 months and 15 days for non payment of maintenance amount awarded by the court towards total default period of 61 months.

2. The facts leading to filing of the Criminal Revision Case is as follows;

(i) The petitioner/husband and respondent/wife got married on 06.07.2006 and out of their wedlock, a male child was born on 31.3.2008. Due to difference of opinion, they are living separately and now the child is residing with the respondent/wife.

(ii) Seeking maintenance, the respondent/wife has filed a maintenance case in M.C.No.2 of 2015 before the Judicial Magistrate, Thirukoilur, Villupuram District against the petitioner. The learned Magistrate, by order dated 01.04.2021, has ordered interim maintenance to the respondent/wife and her child at the rate of Rs.2500/- per month and thereby he has to pay a sum of Rs.5000/- per month.



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(iii) Pending maintenance case, the respondent/wife filed Crl.M.P.No.2700 of 2021 to enforce the order of maintenance for the default period of 74 months from 01.02.2015 to 31.03.2021, wherein, the learned Magistrate, by the order impugned, has imposed simple imprisonment on the petitioner for a period of 15 days for each month of default period and sentenced him to undergo 30 months and 15 days Simple Imprisonment in total for the default period of 61 months, or until the payment if sooner made. It was further ordered that if the petitioner/husband pays the entire arrear amount of Rs.2,96,000/- while serving the sentence, he shall be released on making of such payment immediately.

(iv) Aggrieved against such awarding of imprisonment on the petitioner, the present Criminal Revision Case is filed by the petitioner/husband.

3. The learned counsel for the petitioner submitted that the respondent was working in a private hospital as nursing sister and earning monthly salary



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of Rs.15,000/- per month and even today, she is continuing her job. Whereas, the petitioner is a daily wage labourer and is hardly earning Rs.12,000/- per month. The learned Magistrate has totally failed to consider the means and source of the petitioner while arriving at the quantum of maintenance, which is high and excessive comparatively to his real income. The impugned order passed by the learned Magistrate is ex-facie illegal and unlawful based on erroneous construction of section 125(3) of Cr.P.C. He further submitted that the order of the Magistrate awarding imprisonment of 30 months to the petitioner is erroneous, improper and contrary to the settled principle of law. The non-payment of arrears of maintenance by the petitioner is neither willful nor wanton, but it was due to his poor, poverty and inability. Thus he prayed for setting aside the impugned order.

4. Heard the learned counsel appearing for the petitioner and perused the materials and documents available on record.

5. On perusal of the impugned order, it is seen that the petitioner has committed default in payment of arrears for a period of 5 years and one



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month. After enquiry, the learned Magistrate, under section 125(3) Cr.P.C., has imposed simple imprisonment for a period of 30 months and 15 days for the total default period of 61 months. According to the petitioner, the impugned order passed under section 125(3) of Cr.P.C., is illegal and unlawful.

6. Section 125(3) Cr.P.C., read as follows;

125. Order for maintenance of wives, children and parents,

(1).....

(2).....

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any port of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:



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Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing

In view of the above provision, it is clear that the sentence of imprisonment passed by the learned Magistrate for default of each month for 15 days is within law. Hence, there is no illegality or infirmity in the order passed by the court below. I find no merits in this revision. Hence, this Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is closed.

19.04.2023

msr
Index: yes/no
Internet:yes/no

To

The Judicial Magistrate, Thirukoilur, Villupuram.



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V. SIVAGNANAM, J.

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