



WEB COPY



Crl.R.C.Nos.666, 667 and 796 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 12.06.2023**

**PRONOUNCED ON: 27.06.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE V.SIVAGNANAM**

**Crl.R.C.Nos. 666, 667 & 796 of 2022**

|                                      |      |                                |
|--------------------------------------|------|--------------------------------|
| K.Raja Rao                           | ...  | Petitioner in<br>all Crl.R.Cs. |
|                                      | /vs/ |                                |
| 1.N.P.Lakshmi<br>2.Tejashree Kolluri | ...  | Respondents in<br>Crl.R.Cs.    |

**PRAYER in Crl.R.C.Nos.666 & 667 of 2022:** Criminal Revision Case has been filed under Sections 397 & 401 of the Code of Criminal Procedure to call for records and set aside the order passed by the learned VII Additional Family Court at Chennai in M.P.Nos.1144 of 2018, 1115 of 2019 in M.C.No.238 of 2016 dated 23.05.2022.

**PRAYER in Crl.R.C.No.796 of 2022:** Criminal Revision Case has been filed under Sections 397 & 401 of the Code of Criminal Procedure to set aside the order dated 22.04.2022 of the learned VII Additional Family Court at Chennai in M.P.No.80 of 2020 in M.C.No.238 of 2016.





Crl.R.C.Nos.666, 667 and 796 of 2022

Family Court at Chennai. In the maintenance case, the learned Judge passed an exparte order on 27.04.2018 directing the petitioner/husband to pay a sum of Rs.40,000/- to the first respondent/wife and a sum of Rs.30,000/- to the second respondent/daughter as maintenance for every month from the date of petition. Thereafter, the first respondent/wife filed a petition in M.P.No.1144 of 2018 under Section 128 Cr.P.C. for issuing direction to the petitioner/husband to pay a sum of Rs.21,00,000/- as arrears of maintenance at the rate of Rs.70,000/- per month for the period from 25.05.2016 to 24.11.2018 and further filed an another petition in M.P.No.1115 of 2019 under Section 128 Cr.P.C. for a direction to the petitioner/husband to pay a sum of Rs.7,70,000/- towards arrears of maintenance at the rate of Rs.70,000 per month for the period from 26.11.2018 to 26.10.2019. By a common order, the learned judge allowed the two petitions and sentenced the petitioner/husband to undergo one month simple imprisonment under Section 125 (3) Cr.P.C. in each petition for his default payment of arrears of maintenance of Rs.21,00,000/- and 7,70,000/- for the period from 25.05.2016 to 24.11.2018 & 26.11.2018 to 26.10.2019 respectively at the rate of Rs.70,000/- per month and ordered



two imprisonment consecutively. The petitioner/husband filed a petition in M.P.No.80 of 2020 in M.C.No.238 of 2016 to condone the delay of 48 days in filing application and set aside the exparte decree in M.C.No.238 of 2016. The said condone delay petition was allowed on 22.04.2022 by the learned Judge with the following conditions:

***“Petition and respondent absent. Heard both side already and records perused.***

***This court inclined to condone the delay of 285 days on the following conditions:***

- 1. The petitioner shall deposit 50% of the arrears amount in M.C.No.238 of 2016, from the period of filing of said case till the order i.e., the date of decree, before this Court and he also required to deposit 25% of arrears amount from the date of decree till today on or before 23.05.2022, on his default this order will be automatically stand cancelled.***
- 2. On such deposit, the respondent /petitioner is entitled to withdraw 50% of total amount and remaining 50% will be dispursed subject to the outcome of the result in M.C.No.238 of 2016, and further more subject to the***



***result of M.C.No.238 of 2016, order in respect of amount withdrawn from this court by the respondent/petitioner will be passed and with this observation this petition is partly allowed and call on 23.05.2022.”***

Aggrieved by these orders, these three criminal revision cases are filed by the petitioner/husband.

3.The learned counsel for the petitioner/husband submitted that the trial Judge failed to give opportunity to defend the case by the petitioner in condone delay application and not allowed the petitioner to defend the case and thereby, violated natural justice. The maintenance was awarded not on merit. It is only an ex parte decree. The learned Judge had not given sufficient time to comply with the order passed in M.P.No.80 of 2020 and hurriedly passed the impugned orders in biased manner. The first respondent/wife is employed and earning good salary. The petitioner was set ex parte without the service of summons. Only by paper publication has been issued, thereafter, the petitioner was set ex parte, it is unjust and dismissing the delay condonation petition is unjust, a chance has to be



given to the petitioner/husband. The petitioner/husband filed an application to condone the delay of only 48 days and without proper calculation, the Court calculated the delay is 285 days and reiterated the other grounds raised in the grounds of revision and pleaded to set aside the abovesaid three impugned orders and allow these three criminal revisions cases.

4.The learned counsel appearing for the respondents supported the order of the trial Court and further, submitted that the petitioner/husband wantonly evading the summons. Further, wantonly avoiding the payment of maintenance. Though the trial Court condoned the delay petition on condition, since the petitioner/husband has not complied with the condition within the period as directed by the Court, the impugned orders have been passed and there is no valid reason to interfere with the impugned orders passed by the trial Court and thus, pleaded to dismiss all the three revision cases.

5.I have considered the matter in the light of the submissions made



CrI.R.C.Nos.666, 667 and 796 of 2022

by the learned counsel for the petitioner as well as the learned counsel for the respondents.

6. On perusal of records, it is seen that the petitioner and the first respondent are husband and wife. The second respondent is their daughter. The first respondent/wife had filed a maintenance case in M.C.No.238 of 2016 against the petitioner on the file of the VII Additional Family Court at Chennai seeking monthly maintenance of Rs.1,50,000/-. Against which, the petitioner/husband had also filed a divorce petition in H.M.O.P.No.145 of 2017 before the civil Judge at Kandukur District, Prakasam, Andhra Pradesh, subsequently, it was transferred as per the Hon'ble Supreme Court order in Transfer Petition (Civil) No.2042 of 2018 to the VII Additional Family Court at Chennai. In the maintenance case, the learned Judge passed an ex parte order on 27.04.2018 directing the petitioner/husband to pay a sum of Rs.40,000/- to the first respondent/wife and a sum of Rs.30,000/- to the second respondent/daughter as maintenance for every month from the date of petition. Thereafter, the first respondent/wife filed two petitions in M.P.No.1144 of 2018 & M.P.No.1115 of 2019 under



Crl.R.C.Nos.666, 667 and 796 of 2022

Section 128 Cr.P.C. for issuing direction to the petitioner/husband to pay a sum of Rs.21,00,000/- & Rs.7,70,000/- as arrears of maintenance at the rate of Rs.70,000/- per month for the period from 25.05.2016 to 24.11.2018 and from 26.11.2018 to 26.10.2019 respectively. By a common order, the learned judge allowed the two petitions and sentenced the petitioner/husband to undergo one month simple imprisonment under Section 125 (3) Cr.P.C. in each petition for his default payment of arrears of maintenance and ordered two imprisonment consecutively. The petitioner/husband filed a petition in M.P.No.80 of 2020 in M.C.No.238 of 2016 to condone the delay of 48 days in filing application and set aside the exparte decree in M.C.No.238 of 2016. The said condone delay petition was allowed on 22.04.2022 by the learned Judge with the abovesaid conditions.

7.Further, on perusal of records, it is not disputed that the maintenance case in M.C.No.238 of 2016 was decreed as set exparte on 27.04.2018 and awarded a sum of Rs.40,000/- and Rs.30,000/- to the respondents respectively. Further, it is not disputed that summon was not served upon the petitioner/husband on paper publication, notice given for



non appearance in pursuance of the paper publication, he was set exparte.

Thereafter, he filed an application to set aside the exparte decree with a delay of 48 days. According to the petitioner/husband's contention, it is 48 days, according to the Court calculation, there is a delay of 285 days. The grievance of the petitioner/husband is that the Court had not returned the delay condonation petition for correcting the actual days of delay. The Court itself calculated and mentioned as 285 days and passed the impugned order. Being an exparte decree, a reasonable chance has to be given to the petitioner/husband to defend the claim. In this case, a chance has not been given to the petitioner/husband to defend his case. Further, On perusal of the records, it is noticed that both the parties had not filed assets and liabilities of respective parties for quantifying the maintenance amount.

8. Under these circumstances, both the parties have to be given a chance to file assets and liabilities of them for arriving right quantum of maintenance. Therefore, I am of the view that the delay in filing the application to set aside the exparte order has to be decided in this case, and



there is a dispute with regard to actual date of delay. Under these circumstances, I am inclined to set aside the impugned order passed in M.P.No.80 of 2020 in M.C.No.238 of 2016 and to restore the delay condonation petition and to calculate the correct delay in filing application. Thereafter, the learned Judge may decide it on merit. Further it is noticed that the impugned order in M.P.No.80 of 2020 is passed in the absence of the petitioner and respondents, though in the order heard both sides already. There is no reasoned order passed by the learned judge and only docket order is passed. Therefore, the impugned order passed in M.P.No.80 of 2020 in M.C.No.238 of 2016 is set aside and the delay condonation petition in M.C.No.80 of 2020 is restored and the learned Judge is hereby directed to dispose the delay condonation petition after giving opportunity to both the parties on merits. Since the delay condonation petition in M.P.No.80 of 2020 is restored, the sentence imposed in M.P.Nos.1144 of 2018 and 1115 of 2019 is to be set aside and the petitioner/husband is directed to pay 50% of the maintenance amount awarded by the Court in M.C.No.80 of 2020 till the disposal of the maintenance case in M.C.No.238 of 2016 on merits and three months time is given to the



Crl.R.C.Nos.666, 667 and 796 of 2022

petitioner/husband for the payment of the 50% of the arrears of the maintenance amount.

With the above direction, the three criminal revision cases are allowed.

Index : Yes/No  
Internet : Yes/No  
sms

27.06.2023

To

The learned VII Additional Family Court at Chennai.



WEB COPY



Crl.R.C.Nos.666, 667 and 796 of 2022

**V.SIVAGNANAM ,J.**

sms

**Pre-delivery order made in**  
**Crl.R.C.Nos. 666, 667 & 796 of 2022**

**27.06.2023**