



Crl.M.P.No.9571 of 2023
in Crl.R.C.No.1221 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.M.P.No.9571 of 2023
in Crl.R.C.No.1221 of 2023

Kasivel	Vs.	... Petitioner
Malar		... Respondent

Prayer : Criminal Miscellaneous Petition filed under Section 398 (3) of Criminal Procedure Code 1973 to suspend the sentence imposed in Crl.M.P.No.5634/2021 in M.C.No.20/2020 on the file of the Judicial Magistrate, Thirukovilur, Kallakurichi District and enlarge the petitioner on bail.

For Petitioner : Mr.S.Suresh

ORDER

The criminal miscellaneous petition has been filed seeking to suspend the sentence imposed in Crl.M.P.No.5634/2021 in M.C.No.20/2020 on the file of the Judicial Magistrate, Thirukovilur, Kallakurichi District and to enlarge the petitioner on bail.



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2. The respondent herein filed M.C.No.20/2020 against the revision petitioner seeking for payment of maintenance of Rs.4,000/- per month. The said petition was allowed by the trial Court Judge on 16.09.2021 and in execution of the same, the respondent herein filed C.M.P.No.5634/2021 before the Judicial Magistrate, Thirukovilur.

3. Though the present revision petitioner was served with notice, he did not appear before the Court. The learned Judicial Magistrate, Thirukovilur, after going through the entire records and the evidence of the respondent, imposed simple imprisonment on the present revision petitioner for a period of 4 months and 15 days and also directed him to pay the arrears amount of Rs.38,000/-, vide his orders dated 27.04.2023. Since the revision petitioner did not make any payment, he was immediately confined in Central Prison, Cuddalore. Thereafter, the present revision petitioner filed a petition for bail along with two petitions in C.M.P.No.3758/2023 to condone the delay of 520 days in filing the petition to set aside the order passed in M.C.No.20/2020 and



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C.M.P.No.3759/2023 under Section 126(2) Cr.P.C. to set aside the *ex parte* order made in M.C.No.20/2020 dated 16.09.2021. Both the petitions were dismissed by the trial court judge vide his order dated 31.05.2023.

4. Heard, Mr.S.Suresh, learned counsel for the revision petitioner.

5. Mr.S.Suresh, learned counsel for the revision petitioner contended that the present revision petitioner is aged 67 years and that he was deserted by his wife 40 years back i.e. during the year 1981 and that she has subsequently given birth to a female child also. His further submission is that the maintenance petition in M.C.No.20/2020 was filed after a lapse of 40 years and now the present revision petitioner also married another woman and has three children.

6. It is true that the present revision petitioner did not appear in person or through his counsel, when he was served with notice in



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Crl.M.P.No.5634/2021 and therefore, the learned Judicial Magistrate, Thirukoilur, sentenced him to undergo simple imprisonment for a period of 4 months and 15 days for not making payment as directed by the trial Court in M.C.No.20/2020.

7. Considering the age of the present revision petitioner and also the submissions made by the learned counsel for the revision petitioner that the revision petitioner would pay a sum of Rs.20,000/- to the respondent herein, this criminal miscellaneous petition is allowed and the sentence is suspended, however, subject to the following conditions.

- i. The revision petitioner is directed to pay a sum of Rs.20,000/- on or before 20.07.2023 to the credit of M.C.No.20/2020 and the receipt from the respondent should be submitted before this court.
- ii. The revision petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) before the trial Court with two sureties, each for a like sum to the satisfaction of the Judicial Magistrate, Thirukoilur.



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iii. The sureties shall affix their photographs and Left Thumb Impression on the surety bond and the trial Court may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity.

10.07.2023

(2/2)

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

