



Crl.R.C. No.1422 of 2023 & Crl. M.P. No.12300 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM

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

Crl.R.C.No. 1422 of 2023 &

Crl.M.P. No.12300 of 2023

A. Sivabalan

...Petitioner

Vs.

1. S.M.Gnanapriya

2. Vasumathi @ Swetha

...Respondents

Prayer : Criminal Revision Case filed under Section 397(1) r/w 401 Cr.P.C. against the order dated 11.07.2023 in C.M.P. No.2403 of 2021 in M.C. No.1 of 2018, on the file of the Judicial Magistrate, Tiruttani.

For Petitioner : Mr. A.R.Suresh

ORDER

Challenge in this Criminal Revision is made to the orders dated 11.07.2023 in C.M.P. No.2403 of 2021 in M.C. No.1 of 2018, on the file of the Judicial Magistrate, Tiruttani.



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2. This Criminal Revision Case is listed today before this Court for admission and the same is decided in the admission stage itself.

3. The facts leading to the filing of the present Criminal Revision are as follows:

3.1. The respondents herein filed a Maintenance Case under Section 125 Cr.P.C. in M.C. No.01/2018 before the Judicial Magistrate, Tiruttani, The learned Judicial Magistrate, Tiruttani, allowed the said Petition vide his orders dated 26.03.201 by directing the present revision petitioner herein to pay a sum of Rs.15,000/- per month to the 1st respondent and Rs.14,000/- per month to the 2nd respondent towards maintenance from the date of filing of the petition. It was further directed that the maintenance shall be paid on or before 5th of every English calendar month and the entire arrears of maintenance amount paid within six weeks from the date of the order.

3.2. Challenging the abovesaid order, the revision petitioner filed a revision in C.R.P. No.14/2021 before the I Additional District



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Court, Tiruvallur, which was dismissed by the learned I Additional District Judge, Tiruvallur, vide orders dated 10.02.2023.

3.3. Since the revision petitioner did not pay the maintenance amount as per the orders passed in M.C. No.01/2018, the respondents filed a petition in CMP No.2403/2021 before the Judicial Magistrate, Tiruttani, for attaching his salary and the immovable property of the the revision petitioner at Plot No.7, G3 Mullai Plots, Padmavathy Nagar, New Perungulathur, Chennai 600 063 for recovery of the arrears of maintenance of Rs.11,31,000/-.

3.4. The revision petitioner filed a counter stating that he has been paying a sum of Rs.15,000/- per month to the 1st respondent and Rs.14,000/- to the 2nd respondent as per the orders passed in M.C.No.01/2018. According to him, he paid a sum of Rs.24 lakhs to the 1st respondent for purchasing a property and that the 1st respondent utilising the said amount purchased properties in her name and in her brother's name and thus, she is not entitled to claim maintenance.



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3.5. The learned Judicial Magistrate, Tiruttani, after considering the rival submissions made by both the parties allowed the petition filed by the respondents and issued a Distress Warrant to attach the immovable property of the revision petitioner at Plot No.7, G3 Mullai Plots, Padmavathy Nagar, New Perungulathur, Chennai 600 063, by observing thus:

"Heard both sides. Records perused. It is seen that the respondent has been directed by this court to pay a sum of Rs.15,000/- per month to the 1st petitioner and to pay a sum of Rs.14,000/- to the 2nd petitioner through order dated 26.03.2021 in M.C. No.1 of 2018. As the respondent in this application failed to comply with the said order, the petitioners have come up with the present application under Section 128 of Criminal Procedure Code, 1973 to enforce the said order by attaching the salary and properties of the respondent. The defence taken by the respondent has already been discussed by this Court in C.M.P. No.549/2023 and the said petition was dismissed by this court by order dated 30.05.2023. Further the said defence was also taken by the respondent in the revision preferred



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as against the order of this Court in M.C.No.01/2018 dated 26.03.2021. The Hon'ble I Additional District Court, Tiruvallur, has rejected the defence taken by the respondent and dismissed the revision with cost by order dated 10.02.2023 in C.R.P. No.14/2021. As per the order of this court, the respondent is duty bound to pay the monthly maintenance amount to the petitioners. The respondent herein has failed to establish that the petitioners are not entitled to the maintenance claim amount. The respondent has also failed to establish that he had paid the monthly maintenance amount to the petitioners. No valid reason has been stated by the respondent for non payment of the maintenance amount to the petitioners. Therefore, this court is convinced that the maintenance order has not been complied with by the respondent and the petitioners are entitled to maintenance arrear amount of Rs.11,31,000/-. Hence, the respondent is directed to pay the arrear maintenance amount and this court issues Dstraint warrant to attach the immovable property of the respondent at Plot No.7, G3 Mullai Plots. Accordingly, this petition is allowed.



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3.6. Aggrieved by the said orders, the present Criminal Revision is filed by the revision petitioner/husband.

4. Mr. A.R.Suresh, learned counsel for the revision petitioner contended that the 1st respondent is an Engineering graduate and she can support her family. It is also his contention that since he has been paying the maintenance amount as ordered by the trial court in M.C.No.01/2018, there are no arrears of maintenance and hence the orders passed by the trial court judge in issuing a Distress Warrant attaching the only property of the revision petitioner is erroneous. He also drew the attention of this Court to the school records of the 2nd respondent and contended that the 1st respondent had married for the second time and showed one S.M. Gopinath as the father of the 2nd respondent.

5. The contention of the revision petitioner that he has been paying the maintenance amount as per the orders passed by the trial court, has not been substantiated by way of adducing acceptable oral/documentary evidence. His further contention is that the 1st



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respondent is well qualified and she can also maintain her family. In this regard, both the trial court and the appellate court had held that the 1st respondent does not have sufficient means to maintain herself and her daughter. Moreover, the revision petitioner did not adduce any documentary evidence to show that the 1st respondent is earning sufficient amount to maintain her family. As regards the contention of the learned counsel for the revision petitioner that the 1st respondent had shown one S.M. Gopinath as the father of his daughter and therefore she had married for the second time, cannot be accepted for the simple reason that the records show that the 1st respondent/wife changed the initial of her daughter and mentioned her name as G.Vasumathi (G denotes the name of the mother Gnana Priya). In the school records the father name of the 2nd respondent is shown as S.M. Gopinath. The said S.M. Gopinath is the brother of the 1st respondent and this is clear from the orders passed by both the courts below. The 1st respondent has given her brother's name as a guardian to the 2nd respondent and by mistake his name is mentioned in the place of 'name of the father' in the school records. The revision petitioner knowing this fact very well had gone to



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the extent of stating that the 1st respondent married for the second time.

Another contention of the revision petitioner is that the 1st respondent purchased properties from the money given by him to her. However, no documentary evidence has been adduced in this regard and this aspect has also been dealt with by both the courts below. Thus the present revision case fails and is therefore dismissed.

6. In the result,

- i. the Criminal Revision Case is dismissed. Consequently connected miscellaneous petition is closed.
- ii. the orders dated 11.07.2023 in C.M.P. No.2403 of 2021 in M.C.No.1 of 2018, on the file of the Judicial Magistrate, Tiruttani, is confirmed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

The Judicial Magistrate, Tiruttani

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