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*Crl.M.P.No.15274 of 2023
in Crl.RC.No.1626 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.15274 of 2023
in
Crl.RC.No.1626 of 2023

Sanjeev

... Petitioner/

Vs.

1.Sudha
2.Minor Balasubramaniyan
3.Minor Nandhini
R2 & R3 rep. by their mother
and natural guardian Mrs.Sudha

... Respondents

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397(1) r/w. 401 of Cr.P.C to suspend the sentence imposed by the order passed against the petitioner in C.M.P.No.3987 of 2021 in M.C.No.12 of 2014 on the file of the learned Judicial Magistrate, Tirukovilur dated 14.07.2023 and enlarge the petitioner on bail pending disposal of the above said criminal revision.

For Petitioner : Mr.S.Saravana Kumar



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Judicial Magistrate, Tirukovilur by order dated 14.07.2023 made in C.M.P.No.3987 of 2021 in M.C.No.12 of 2014 and enlarge the petitioner on bail pending disposal of the above revision.

2.The petitioner is the respondent in the maintenance case filed by his wife and minor children in M.C.No.12 of 2014 which was allowed by the learned Judicial Magistrate, Tirukovilur by judgment dated 07.04.2021. The direction and order of the learned Magistrate is that the petitioner to pay Rs.4,000/- to each of the petitioners therein, in total Rs.12,000/- per month as maintenance amount. Since the petitioner herein failed to make payment, the respondents herein filed C.M.P.No.3987 of 2021 before the learned Judicial Magistrate, Tirukovilur seeking execution of the order in M.C.No.12 of 2014 for the default period of payment of maintenance from 12.11.2014 to 30.09.2021 for a period of 83 months and total arrears



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amount of Rs.9,96,000/- to be paid by the petitioner herein. The petitioner appeared in the said case and sought time on two occasions and finally, he informed that he is not having any income from the agriculture as well as from real estate business and he is unable to pay the maintenance amount. Per contra, the respondent/wife produced a copy of sale deed vide Doc.No.5784/2022 dated 11.05.2022 to show that the petitioner sold a property and obtained Rs.2,90,000/- as sale consideration. Finding the petitioner's deliberate motive and inaction on the part of the petitioner herein to make payment, the learned Magistrate allowed the petition in C.M.P.No.3987 of 2021 by order dated 14.07.2023 and sentenced the petitioner to undergo 10 days simple imprisonment for each month default and in total 830 days [2 years 3 months and 10 days] simple imprisonment for the default period of 83 months or until the payment if sooner made. Thereafter, the petitioner has been remanded and confined to Central Prison, Cuddalore.

3.The contention of the petitioner is that the marriage between the petitioner and the first respondent was solemnized on 24.10.2005 and they



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were together for around 2 years. On 22.03.2007, the first respondent left the matrimonial home and during this period, first child was born to them. After leaving the matrimonial home, second child was born and the paternity of which was questioned by the petitioner. Further, the desertion by the first respondent was on her own volition without any reason and hence, she is not entitled for any maintenance. The petitioner thereafter filed a petition for restitution of conjugal rights before the Sub Court, Tirukovilur in H.M.O.P.No.31 of 2007 and later it was withdrawn as not pressed on 03.01.2008. Later, the petitioner filed a divorce petition on the ground of desertion and cruelty in H.M.O.P.No.107 of 2009 and the same was allowed on 01.08.2012. The judgment in the divorce petition would clearly give the details of the petitioner being subjected to harassment and cruelty and the desertion by the first respondent was on her own volition. Against the order in H.M.O.P.No.107 of 2009 dated 01.08.2012, the first respondent filed C.M.A.No.12 of 2012 before the District Court, Tiruvannamalai and the same was dismissed on 01.08.2012. Thereafter, the first respondent filed an appeal before this Court in C.M.S.A.No.22 of 2017 and the same is pending. The first respondent earlier filed M.C.No.6 of



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2007 before the learned Judicial Magistrate, Tirukovilur, subsequently she filed a transfer petition before this Court and got the maintenance case transferred to the Sub Court, Tirukovilur where the petition for restitution of conjugal rights was pending, where it was re-numbered as M.C.No.1 of 2008 and the same was dismissed for non-prosecution. In the meanwhile, the respondents filed the present maintenance case in M.C.No.12 of 2014 before the learned Judicial Magistrate, Tirukovilur and obtained an order. Against the order dated 07.04.2021 in M.C.No.12 of 2014, the petitioner preferred a revision before the Sessions Court in Crl.R.C.No.1 of 2023 and the same is pending before the Additional District Court, Villupuram. It is further contended that the petitioner has got fair chance of succeeding in the revision since the desertion by the first respondent was on her own volition has been proved in the matrimonial proceedings.

4.The learned counsel appearing for the petitioner submitted that the petitioner is ready to deposit a sum of Rs.2,00,000/- towards arrears of maintenance amount upfront immediately and also undertook to pay the maintenance amount of Rs.4,000/- to each of the respondents, in total



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Rs.12,000/- every month without prejudice to his contention on merits, without fail subject to the outcome of Crl.R.C.No.1 of 2023. He further submitted that the petitioner is suffering from health ailments and hence, prays for suspension of sentence.

5.Considering the submissions and on perusal of the materials, it is seen that the petitioner had voluntarily surrendered before the Trial Court on 19.04.2023 and thereafter, he was arrested and remanded in Central Prison, Cuddalore. It is also seen that the conditions contemplated under Section 125(3) of Cr.P.C. has not been followed in strict sense. Further considering the health condition of the petitioner and also considering the fact that the petitioner has come forward to deposit a sum of Rs.2,00,000/- towards arrears of maintenance amount with an undertaking to pay maintenance of Rs.12,000/- per month [Rs.4,000/- to each of the respondents] henceforth without any default from the month of November 2023, of course without prejudice to the petitioner's contention in Crl.R.C.No.1 of 2023, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the revision petition.



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6. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.5,000/- (Rupees Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Tirukoilur.

7. Accordingly, this Miscellaneous Petition is ordered.

13.10.2023

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Note: Issue order copy on 16.10.2023



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M. NIRMAL KUMAR, J.

cse

To

- 1.The Judicial Magistrate,
Tirukovilur.
- 2.The Superintendent, Central Prison,
Cuddalore.
- 3.The Public Prosecutor,
High Court, Madras.

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