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Crl.M.P.No.17404 of 2023 in Crl.R.C.SR.No.52775 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.17404 of 2023 in
Crl.R.C.SR.No.52775 of 2023

K.Prabhakaran

... Petitioner

Vs.

M.Mala

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 5 of the Limitation Act, to condone the delay of 1426 days in filing the Criminal Revision Petition against the final order passed on 31-08-2017 in Crl.M.P.No.407 of 2016 in M.C.No.402 of 2010 now pending on the file of III Additional Principal Family Court, Chennai in Crl.R.C.(F)No.52775 of 2023 on 12-10-2023 pending on the file of this Court.

For Petitioner : Mr.G.Saravanan
For Respondent : Mr.P.Palaninathan for
Mr.B.Senthilkumar

ORDER

This Criminal Miscellaneous Petition has been filed to condone the delay of 1426 days in filing the Criminal Revision Case against the final order passed by the learned VI Additional Principal Judge, VI Additional Family Court at Chennai in M.P.No.407 of 2016 in M.C.No.402 of 2010,



dated 31.08.2017.

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2.The brief facts and background of the case is as follows:

- The respondent as a wife of the petitioner filed a maintenance case in M.C.No.402 of 2010 before the learned II Additional Principal Judge at Chennai during the month of September 2010 with averments that the respondent and the petitioner were in love with each other. The petitioner married the respondent on 20.07.2002 at Sri Kamatchi Kalamman Temple situated at K.K.Nagar, Chennai and the same was solemnized as per Hindu Rites and Customs. Since it was a love marriage, no invitation card printed. The respondent lost her father and mother and she has no parents. Taking advantage of her position, the petitioner with honey coated words had developed relationship, later married her in the said temple, thereafter, they were leading their matrimonial life at K.K.Nagar, Chennai.
- The petitioner, who is a Driver later got job at Bahrain in the year 2002 for a monthly salary of Rs.25,000/-. Thereafter, the petitioner went to Bahrain, from there he was constantly in touch with the



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respondent sending several letters between the year 2002 and 2005.

Further, the petitioner's salary was increased receiving Rs.50,000/- per month at a later stage. In the year 2005, the petitioner returned back to Chennai and lived with the respondent. During the month of August 2005, the petitioner informed the respondent that he has to meet his parents, left to his native at Nannilam, Thiruvarur District. Thereafter, the petitioner failed to return to the matrimonial home of the respondent and also neglected to maintain her, hence, she filed the above said maintenance case.

- In the maintenance case, the petitioner was set exparte on 20.06.2016 by the learned II Additional Principal Judge, II Additional Family Court at Chennai. Aggrieved over the same, a set aside petition in M.C.No.407 of 2016 in M.P.No.402 of 2010 was filed by the petitioner which was allowed *vide* impugned order, dated 31.08.2017, with the condition that the petitioner to pay half of arrears of maintenance amount into the Court on or before 30.09.2017, failing which the petition would be dismissed. Challenging the same, the present Criminal Revision Case and condone delay petition with delay



of 1426 days.

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3.The contention of the petitioner is that the condition imposed in M.C.No.407 of 2016 in M.P.No.402 of 2010 to deposit half of arrears of maintenance amount is onerous one which is against law. He further contented that the Family Court failed to see that the maintenance case between the petitioner and the respondent is not a regular case. In this case, according to the petitioner, there was no marriage with the respondent and there is no temple as Sri Kamatchi Kaliamman Temple situated at K.K.Nagar, Chennai. The respondent herein put forth an imaginary story as though the petitioner married her and cohabited as husband and wife. Never the petitioner married the respondent and they lived together as husband and wife. When the basis of the maintenance is that after marriage the petitioner had neglected his wife, in such circumstances the neglected wife claiming maintenance is not proper. In this case, there is no marriage and no husband and wife relationship between the petitioner and the respondent.



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4.The learned counsel for the petitioner submitted that the respondent projected a case of impossibility, non-est, imaginary and concocted a story by projecting some self-serving letters between them during their friendly relationship. The Family Court ought to have weeded out these aspects first and thereafter, proceeded whether at all the respondent is eligible for any maintenance. The petitioner to disprove the factum of marriage should be given an opportunity to proceed his case. The Family Court giving thirty days to pay the arrears of maintenance amount is not proper and no sufficient opportunity or time had been given to the petitioner. The Family Court set asides the exparte order by imposing onerous condition would only make the petitioner impossible to comply with the condition since the Family Court had reverted back to the issue from the date of filing of the maintenance petition i.e., on 03.09.2010. In this case, the maintenance petition itself is not maintainable. In the event of maintenance petition being dismissed, the petitioner would be left with no option to recover the maintenance amount. Hence, he has no other option except to challenge the same before the higher forum.



5.The learned counsel further submitted that the petitioner married one Usha on 19.08.2005 and living with her with two female children and one male child. The respondent is unnecessarily creating trouble in the petitioner's life with Usha. The contention of the petitioner is that the maintenance case was initially posted on 11.04.2016, later adjourned to 24.07.2016, but without notice, the adjournment date was corrected to 24.05.2016 and then, the exparte order has been passed. The petitioner had no opportunity to know about preponing of adjournment date. Taking advantage of the same, the respondent projected a false case and obtained an exparte order behind the petitioner. The learned counsel for the petitioner further submitted that the petitioner's case was defended by him through his power of attorney (his father). The petitioner was in abroad is not in dispute since the setting aside petition has been filed only by the power of attorney and the respondent also filed a counter to the petition not questioning the same. The petitioner was in abroad at the time of passing the exparte order and he came to India on 23.06.2020 due to COVID-19 pandemic restriction. When he came back to India, he was detained in the Airport by the Immigration Authorities. Now, the petitioner has lost his job in abroad and



he remains jobless. At this stage, he is forced to comply with the onerous condition imposed by the Family Court. He further submitted that the delay of 1426 days calculated is not proper. Accordingly to the petitioner, the delay is only 756 days, which is tabulated as follows:

Calculation of Number of Days for CONDONE DELAY (UNTIL 12 Oct 2023)				
This Revision Petition filed on				12 Oct 2023
The Ex-parte Orders set aside by the learned Family Court with onerous condition				31 Aug 2017
Total Number of Days Lapsed				2,233 Days
To be excluded period out of India in lieu of Sec 15(5) of the Limitation Act (from the date of impugned order i.e., 31 Aug 2017 to 22 Jun 2020				1,026 Days
To be excluded period of lock down Covid-19 (23 Mar 2020 to 31 Mar 2021) – MINUS- Days out of India until 22 Jun 2020				301 Days
To be excluded – days in Remand (30 Days X Twice)				60 Days
30 Days	10-Mar-22	08-Apr-22	30	
30 Days	10-Feb-23	10-Mar-23	30	
To be excluded – 90 Days allowed to file Revision Petition				90 Days
Total Number of Days EXEMPTED (1026 + 371 + 60)				1,477 Days
Delayed Number of Days (2333 – 1477)				756 Days

6.In support of his submissions, the learned counsel for the petitioner



produced the following documents:

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- The petitioner produced the marriage invitation of the petitioner and his wife Usha. The marriage held on 19.08.2005 and it is an arranged marriage by both the family members of the petitioner as well as Usha at Peralam village.
- The petitioner produced the photographs of the marriage and photostat copy of the birth certificates of their two daughters and one son in which the petitioner as well as Usha name are recorded as parents.
- The petitioner produced the counter filed by him in M.C.No.402 of 2010 wherein he challenged the very marriage between the petitioner and the respondent. Further, on 19.07.2002, the petitioner was present at Sub Registrar Office, Peralam and purchased a property from one Mrs.Ismoil Nachiya. Such being the position, the respondent alleging that the petitioner was available in Chennai on 20.07.2002 and married the respondent in a imaginary temple viz., Sri Kamatchi Kaliamman Temple situated at K.K.Nagar, Chennai, would not arise. Further, in his counter, he fairly submitted that the



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petitioner and the respondent were in love for sometime, during that time, there was some exchange of letters between them using some honey coated words and they imagined themselves as husband and wife which was put in the letters and the greeting cards. The petitioner and the respondent never lived together as husband and wife at any point of time.

- The petitioner referring to the documents produced by the respondent, submitted that even in the document, it is stated that 'in future after marrying you see how I am going to maintain you' which would clearly show that no marriage had taken place as projected by the respondent on 20.07.2002.

7.The learned counsel for the petitioner further submitted that for the point of limitation, the Hon'ble Apex Court had held that there is no presumption that the delay is an occasion deliberately on account of culpable negligence or on account of malafide and a litigation does not stand to benefit by resorting the delay, hence, the Courts to have a even-handed justice on merits in preference to the approach which scuttles a decision on



merits. In this case, the issue was not decided on merits, only an exparte order was passed. To exclude the dates on which the petitioner was in abroad, the learned counsel for the petitioner relied on Section 15(5) of the Limitation Act and also the following decisions:

- “*Collector, Land Acquisition, Anantnag and another Versus Katiji and others* reported in *(1987) 2 Supreme Court Cases 107*”.
- “*P.C.K.Muthia Chettiar and others Versus V.E.S.Shan Mugham Chettiar (dead) and another* reported in *(1969) 1 SCR 444*”.
- “*Jalma Nachiyar Versus Mohammed Shamshuddeen and Ors.*, reported in *MANU/TN/1006/2002*”.
- “*Rajamani Versus Meenakshisundaram* reported in *1999 (III) CTC 309*”.

8.The learned counsel for the respondent filed typed set of papers and strongly opposed the submissions of the learned counsel for the petitioner stating that the expate order of maintenance was made on 20.06.2016 directing the petitioner to pay Rs.8,000/- per month as maintenance from the date of filing of the petition that is 03.09.2010. In the maintenance case, the



respondent examined herself as PW1 and marked seven documents as Exs.P1 to P7. From Exs.P1 & P2, it is seen that the respondent and the petitioner were together in the family photos. The letters sent by the petitioner (Exs.P3 to P5), it is seen that the petitioner addresses the letters to the respondent as his wife and recollects their matrimonial relationship. The greeting cards were sent by the petitioner to the respondent as loving husband when he was in Bahrain. The bank passbook (Ex.P6) and LIC passbook (Ex.P7) confirmed that the respondent and the petitioner were living as husband and wife. On 21.04.2011, the II Additional Family Court at Chennai directed the respondent to pay a sum of Rs.5,000/- per month from the date of the petition on or before 5th day of every English calendar month, thereafter, the petitioner filed a setting petition, in which, the respondent filed her counter. Since the petitioner failed to cross examine the respondent remaining absent, again he was set exparte on 08.03.2016 directing the petitioner to pay Rs.8,000/- per month and finally, the respondent filed a petition under Section 128 Cr.P.C., in M.P.No.658 of 2017 in M.C.No.402 of 2010 claiming arrears of maintenance from 03.09.2010 to 02.10.2017 to the sum of Rs.6,80,000/-. Thereafter, an Non



Bailable Warrant was issued against the petitioner through the Inspector of Police, Peravalam Police Station, Nannilam, Thiruvarur District due to non-payment of the arrears of maintenance. On 26.06.2019, the Non Bailable Warrant was directed to be executed through the Ambassador, Indian Embassy, Bahrain and case was periodically adjourned from time to time. On 10.03.2022, the petitioner filed M.P.Nos.96 & 97 of 2022 and the same were dismissed directing the petitioner to pay the maintenance as per the orders passed in M.C.No.402 of 2010, dated 20.06.2016. On 10.03.2022, the petitioner appeared before the Family Court but failed to make any payment, hence, he was directed to undergo Simple Imprisonment for a period of one month till 08.04.2022, thereafter too, the petitioner failed to make any payment. The petitioner is a Chronic Defaulter, so far he has not paid even a single pie. The petitioner moved M.P.No.414 of 2020 to recall the warrant issued in M.P.No.658 of 2017 and the same was dismissed on 21.01.2021 for the reason that the petitioner was set exparte on three occasions and each and every time, the petitioner has given one reason or other and also for the reason that the respondent has been deprived of maintenance for more than 10 years. In M.P.No.658 of 2017 in



M.C.No.402 of 2010, the Family Court recorded that without arrears of maintenance, the Non Bailable Warrant issued against them cannot be recalled and passed the order for the petitioner to be arrested by 12.12.2022.

9.He further submitted that the petitioner citing the pendency of the above petition had been evading arrest and the Police is also reluctant to execute the Non Bailable Warrant. The petitioner appointed none other than his own father as power of attorney and represented before the Family Court. Now, the petitioner terming that order has been passed behind his back and directing to pay the maintenance amount from the date of petition, is not proper. Hence, prayed for dismissal of the present Miscellaneous Petition.

10.Considering the submissions and on perusal of the materials, from the impugned order, it is seen that the petitioner on three occasions set exparte and the petitioner was being represented by his power of attorney who is none other than his own father. The petitioner and the respondent had close relationship and they have been in communication between them



from the year 2002 to 2005. Only on 19.08.2005, the petitioner married one Usha in his native and out of their marriage, they blessed with three children as stated above. Prior to it, the petitioner was in relationship with the respondent. Whether that would be a valid marriage and their husband and wife relationship has to be decided only during trial. The petitioner in his counter in M.C.No.402 of 2010 at paragraph Nos.6 and 7 admitted about their close relationship and exchange of letters between them. Such being the position, the contra stand now taken by the petitioner has to be decided only during trial.

11.It is also seen that the trial Court on the *prima facie* material produced by the respondent and also finding that the petitioner not participated in the trial setting himself on *exparte* on three occasions, had passed the impugned order. Now, this impugned order has been challenged before this Court with delay of 1426 of days. It is also seen that the maintenance case has been filed on 03.09.2010 and it is almost thirteen years lapsed. All along, the petitioner took his stand as per his convenience and also attempted to take advantage of his work and stay at Bahrain.



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12. Thus, the narrative and sequence of events taken place would clearly show that the petitioner wantonly and deliberately avoided to participate in the trial and obtained exparte order. That being so, now the questioning the same, that too with an inordinate delay cannot be condoned. It is to be noted that the petitioner has not even paid a single pie towards maintenance amount to the respondent.

13. In view of the above, this Court is not inclined to entertain this Criminal Miscellaneous Petition and the same is dismissed. Accordingly, Crl.R.C.SR.No.52775 of 2023 stands rejected.

12.12.2023

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Internet: Yes/No

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To
The VI Additional Family Court at Chennai.

M.NIRMAL KUMAR, J.



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