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Crl.R.C.No.1846 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1846 of 2023 and
Crl.M.P.No.17431 of 2023

K.Naresh

... Petitioner

Vs.

1.N.Mangaiyarkarasi
2.Minor N.Aswath
3.Minor N.Dheekshith

... Respondents

Prayer: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the order dated 26.9.2023 passed in M.P.No.712 of 2023 in M.C.No.262 of 2018, by the I Additional Judge, Family Court, Chennai.

For Petitioner : Mr.G.Viswanathan for
Mr.R.Kamaraj

For Respondents : Mr.A.G.Prabukumar

ORDER

This Criminal Revision Case has been filed to set aside the order, dated 26.09.2023 in M.P.No.712 of 2023 in M.C.No.262 of 2018 passed by the learned I Additional Principal Judge, Chennai.



2.The learned counsel for the petitioner submitted that the 1st respondent, estranged wife of the petitioner filed a Maintenance Case in M.C.No.262 of 2018. The case of the 1st respondent in the said maintenance case is that the petitioner neglected to maintain the 1st respondent and two children (respondents 2 & 3), hence, she filed a Maintenance Case for monthly maintenance of Rs.30,000/-. The petitioner filed counter in the said Maintenance Case denying the same, thereafter, proof affidavit filed and the case was adjourned for cross examination of PW1. In the meanwhile, COVID-19 pandemic intervened and there was total disarray in the petitioner's family and life. The petitioner for these reasons could not appear before the lower Court. In the meanwhile, the petitioner also misplaced the case bundle. After returning from his native, during the month of January 2023, the petitioner was informed that he was set exparte and maintenance of Rs.24,000/- was ordered in M.C.No.262 of 2018. The learned counsel further submitted that the petitioner is a daily wager, from the month of January 2023, the petitioner is getting Rs.350/- per day as daily wage. The petitioner hardly makes an earning of Rs.10,000/- per month as income. The respondent wrongly approached the lower Court as



though the petitioner is earning around Rs.50,000/- per month, which makes the lower Court to pass such exparte order. Hence, with delay of 400 days, the petitioner filed condone delay petition before the lower Court in M.P.No.712 of 2023 in M.C.No.262 of 2018. The lower Court was pleased to condone the delay of exparte order, dated 01.12.2021, but with the condition that the petitioner to pay part payment of arrears of maintenance amount of Rs.1,00,000/- on or before 14.09.2023 which the petitioner could not make payment before the stipulated date. Thereafter, when the petitioner made ready to deposit the amount and approached the lower Court, the lower Court failed to receive the same and passed the impugned order on 26.09.2023 in Crl.M.P.No.712 of 2023 in M.C.No.262 of 2018. Challenging the same, the present Criminal Revision Case.

3.The learned counsel for the respondents submitted that the 1st respondent with her two minor children are suffering without any maintenance amount not paid by the petitioner. The 1st respondent is able to sustain herself and children by help of her family members and also from outside loans. Despite the petitioner having sufficient income, failed and



neglected to maintain the respondents. He further submitted that now, Rs.16,00,000/- is the maintenance amount and payment of Rs.1 lakhs is only a pittance.

4.Considering the submissions and on perusal of the materials, it is seen that earlier, when the present Criminal Revision Case came up for hearing, the petitioner was directed to pay Rs.1,00,000/- which was ordered by the lower Court in Crl.M.P.No.712 of 2023 in M.C.No.262 of 2018, dated 14.08.2023. Today, the learned counsel for the petitioner filed memo showing the demand draft No.265393, dated 27.11.2023 for a sum of Rs.1,00,000/- deposited to the credit of M.C.No.262 of 2018. Now, the petitioner has complied with the order of this Court, dated 22.11.2023 depositing Rs.1,00,000/- in M.C.No.262 of 2012, but of course after 14.09.2023. All the points raised by the learned counsel for the petitioner and the learned counsel for the respondents to be decided in the Maintenance Case independently.



Crl.R.C.No.1846 of 2023

5.In view of the same, this Court condones the delay of 400 days considering the deposit of Rs.1,00,000/- in M.C.No.262 of 2018 by the petitioner. Accordingly, this Criminal Revision Case is allowed setting aside the order, dated 26.09.2023 in M.P.No.712 of 2023 in M.C.No.262 of 2018.

6.The lower Court is directed to further proceed with the Maintenance Case in M.C.No.262 of 2018 as per its order, dated 14.09.2023 and conclude the same within a period of three months from the date of receipt of a copy of this order. The 1st respondent is given liberty to withdraw Rs.1,00,000/- which has been deposited by the petitioner, without any notice to the petitioner.

29.11.2023

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

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To

The I Additional Principal Family Court at Chennai.



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CrI.R.C.No.1846 of 2023

M.NIRMAL KUMAR, J.

vv2

CrI.R.C.No.1846 of 2023

29.11.2023