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Crl.R.C.(MD).No.28 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	26.09.2023
Pronounced on	:	22.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC.(MD).No.28 of 2022

Muthuraj

... Petitioner

Vs.

Lakshmi

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.91 of 2018, in M.C.No.27 of 2008, dated 05.10.2021, filed by the respondent on the file of the Family Court, Nagercoil.

For Petitioner : Mr.S.Mohan Gandhi

For respondent : Mr.S.Xavior Rajini

ORDER

The Criminal Revision Case has been filed against the order passed in Crl.M.P.No.91 of 2018 in M.C.No.27 of 2008, dated 05.10.2021 filed by the respondent on the file of the Family Court, Nagercoil.



2. The petitioner who is the husband filed this Criminal Revision Case, challenging the order passed in Crl.M.P.No.91 of 2018, in M.C.No. 27 of 2008, to enforce the arrears of amount.

3. The respondent/wife filed a maintenance petition in M.C.No.27 of 2008, on the file of the learned Chief Judicial Magistrate, Nagercoil, and the same was allowed by order dated 05.03.2009, granting a sum of Rs.3,000/- as monthly maintenance. Thereafter, the petitioner did not pay any maintenance amount as per the order dated 05.03.2009. Therefore, the respondent herein filed a petition in Crl.M.P.No.579 of 2009 in M.C.No.27 of 2008, for enforcement of order of maintenance. However, the petitioner herein did not make any payment for maintenance. Thereafter, the respondent herein filed C.M.P.No.91 of 2018 in M.C.No. 27 of 2008 and as per the order of the learned Judge, Family Court, Nagercoil, the petitioner herein was produced on 05.10.2023, for execution of N.B.W, issued by the Court below. On that day, the learned Judge, Family Court, Nagercoil, convicted the petitioner and sentenced him to undergo 11 months of Simple Imprisonment under Section 125(3) of Cr.P.C., for his failure to pay the maintenance amount to the



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respondent as per the order passed under Section 125 of Cr.P.C.

Aggrieved over the same, the petitioner herein filed this Criminal Revision Case before this Court.

4. The learned counsel for the petitioner submitted that as per Section 125(B), the learned trial Judge has no jurisdiction to impose 11 month simple imprisonment. He has a jurisdiction only to impose one month of simple imprisonment and the execution petition filed by the respondent for more than a period of one year is not maintainable, for which, he relied on the judgment of the Hon'ble Supreme Court in the case of *Shjahada Khatoon and others Vs. Amjad Ali and others* reported in *1999 SCC(Crl.) 1029* and in the case of *Mehboob Basha Vs. Nannima @ Hajara Bibi and another* reported in *2005 (1) law weekly (Crl.) 384*, and in the case of *R.Rajesh Vs. Kalaiyarasi* reported in *2017 (3) MWN (Cr.) 216*. On the basis of that, he submitted that imposing imprisonment of 11 months is not in accordance with law and he seeks to allow this Case.



5. The learned counsel for the respondent submitted that the learned trial Judge considering the conduct of the petitioner, passed the impugned order of imposing the sentence of 11 months simple imprisonment and he also stated that the impugned order passed by the Court below was in accordance with law.

6. This Court considered the rival submissions made on either side and perused the materials available in records and also the precedents relied upon by them.

7. The marriage was held between the petitioner and the respondent/wife on 23.05.2004 as per the Hindu Rights and Customs. Due to some disputes between them, the respondent started to live separately from 25.12.2004. Thereafter, in the year of 2007, the petitioner filed a divorce petition in H.M.O.P.No.135 of 2007 before the Subordinate Court, Thoothukudi. During the pendency of the divorce petition, the respondent filed a maintenance case in M.C.No.27 of 2008 under Section 125 of Cr.P.C., before the learned Chief Judicial Magistrate, Nagercoil. The learned Judicial Magistrate, passed the order



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on 05.03.2009 and awarded a sum of Rs.3,000/- per month to the respondent for monthly maintenance and directed the petitioner to pay the monthly maintenance to the respondent from 25.11.2008 onwards. However, the petitioner did not make any payment. Therefore, the respondent herein filed a petition in Crl.M.P.No.579 of 2009 before the learned Chief Judicial Magistrate, Nagercoil. The learned trial Judge, passed the following order, dated 18.05.2009:

The above named petitioner humble submits as follows:

(1) The petitioner and the respondent are husband and wife. The petitioner filed a petition before this Court as M.C.No.27 of 2008 praying for maintenance under Section 125 of Cr.P.C.

(2) After the full and effective adjudication of the case, on 05.03.2009, this Court passed an order directed the respondent to pay a sum of Rs. 3,000/- per month to the petitioner.

(3) The Hon'ble Court was pleased to pass the following order:

முடிவாக இம்மனு அனுமதிக்கப்பட்டு மனுதாரருக்கு மாதம் ஒன்றுக்கு ரூ.3000 வீதம் மனு தேதியான 25.11.2008 முதல் எதிர்மனுதாரர் கொடுத்திட வேண்டுமென்று உத்தரவிடப்படுகிறது.



உத்தரவிடப்பட்ட தொகையை ஒவ்வொரு மாதம் முடிந்தும் அடுத்து வரும் மாதம் முதல் ஏழு நாட்களுக்குள் எதிர்மனுதாரர் மனுதாரருக்கு பணவிடை முலமாக அனுப்பி வைக்க வேண்டும் என்றும் உத்தரவிடப்படுகிறது.

(4) *The petitioner stated that the respondent has got the knowledge of the contention of the order passed by this court dated 05.03.2009 but he has purposely evading to pay the maintenance amount and not complied the order of the Court even after the lapses of more than 2 months time. There is no appeal or stay against the order of this Court.*

(5) *The respondent is having sufficient income and having considerable movable and immovable properties for his own to pay maintenance. The respondent is a business man and money lender earning more than Rs.25,000/- per month but he is wantonly and willfully not paying the maintenance award passed by this Court.*

(6) *In the above circumstances, it is most humbly prayed that this Court may be pleaded to direct the respondent to pay the arrears of*



maintenance at the rate of Rs.18,000/- (ie., from 25.11.2008 to 24.05.2009) and further maintenance of Rs.3,000/- per month if the respondent fails to pay the amount hence, this Court may be pleased to pass an order of arrest of the respondent and realize the said amount from him and his assets. Otherwise, I will be put to irreparable loss and injury which can not compensated in any manner.

(7) Hence, it is most humbly prayed that this Court may be pleased to pass an order direct the respondent to pay the arrears of maintenance of Rs.18,000/- and future maintenance Rs.3,000/- per month. If he fails to pay the amount pass an order of arrest of the respondent and realize the amount from him and his assets thus render justice.

8. Despite the order passed by the learned trial Judge, the petitioner did not comply with the direction. Therefore, the respondent herein filed a petition in Cr.M.P.No.91 of 2018, in which, the petitioner did not receive the notice and the same was returned as unclaimed. Hence, Non Bailable Warrant was issued on 29.04.2010. The said



warrant was executed only on 29.08.2017. On that day, he paid a sum of Rs.18,000/- and at his request, the case was adjourned for payment of balance amount on 08.09.2017. But the petitioner did not appear before the trial Court. Therefore, on 28.09.2017, non-bailable warrant was issued, pursuant to which, the petitioner was produced on 05.10.2021 and on the same day, the learned trial Judge passed the following order:

The respondent is produced on execution of N.B.W issued by this Court. This petition to recover the arrears of maintenance amount has been filed by the petitioner on 18.05.2009 under Section 125(3) and 128 of Criminal Procedure Code to recover the maintenance arrears of Rs.18,000/- between the period of 25.11.2008 and 24.09.2009 as per the order of the Chief Judicial Magistrate, Nagercoil in M.C.No.27 of 2008 dated 05.03.2009 and also the future maintenance at the rate of Rs.3,000/- per month as per the above order of the Chief Judicial Magistrate, the respondent so far paid Rs.28,000/- only. He has to pay the remaining arrears of Rs. 4,32,000/-. The petitioner is unable to give any valid explanation for the non payment of arrears. This petition is filed within one year from the date on which the amount was due. When the respondent



failed to pay the arrears claimed in the execution petition there is no legal necessity for the petitioner to file successive execution petitions as she claimed future maintenance also in this petition itself. The records reveals that already respondent was arrested and produced before the Court on 08.09.2017 and he paid Rs.18,000/- on that date and agreed to pay the remaining amount shortly. Believing his representation he was released, but he failed to fulfil his promise. Thereafter the respondent failed to pay any money to the petitioner. Considering the facts and circumstances, the respondent is sentence to undergo imprisonment for a period of 11 months under Section 125(3) of Cr.P.C., for his failure to pay the maintenance amount to the petitioner as per the order passed under Section 125 Cr.P.C.

The same was challenged by the petitioner before this Court, by way of filing this Criminal Revision Case.

9. Now the question is whether the Court below is right in ordering that the petitioner is to undergo imprisonment for a period of 11 months under Section 125(3) Cr.P.C., for his failure to pay the maintenance amount?



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10. The said question is no longer res integra in view of the pronouncement of the following judgments:

11. Even before that the Hon'ble Supreme Court in the case of ***Smt Kuldip Kaur Vs. Surinder Singh and another*** reported in (1989) 1 SCC 405 has held as follows:

6. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a “mode of enforcement”. It is not a “mode of satisfaction” of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. Be it also realised that a person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance “without sufficient



cause” to comply with the order. It would indeed be strange to hold that a person who “without reasonable cause” refuses to comply with the order of the court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail. A sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears. Monthly allowance is paid in order to enable the wife and child to live by providing with the essential economic wherewithal. Neither the neglected wife nor the neglected child can live without funds for purchasing food and the essential articles to enable them to live. Instead of providing them with the funds, no useful purpose would be served by sending the husband to jail. Sentencing to jail is the means for achieving the end of enforcing the order by recovering the amount of arrears. It is not a mode of discharging liability. The section does not say so. Parliament in its wisdom has not said so. Commonsense does not support such a construction. From where does the court draw inspiration for persuading itself that the liability arising under the order for maintenance would stand discharged upon an effort being made to recover it? The order for monthly allowance can be discharged



only upon the monthly allowance being recovered. The liability cannot be taken to have been discharged by sending the person liable to pay the monthly allowance, to jail. At the cost of repetition it may be stated that it is only a mode or method of recovery and not a substitute for recovery. No other view is possible. That is the reason why we set aside the order under appeal and passed an order in the following terms:

Heard both the sides.

The appeal is allowed. The order passed by the learned Magistrate as confirmed by the High Court in exercise of its revisional jurisdiction to the effect that the amount of monthly allowance payable under Section 125 of the CrPC is wiped out and is not recoverable any more by reason of the fact that respondent No. 1, Surinder Singh, was sent to jail in exercise of the powers under Section 125 of the CrPC is set aside. In our opinion, respondent No. 1, husband of appellant, is not absolved from his liability to pay the monthly allowance by reason of his undergoing a sentence of jail and the amount is still recoverable notwithstanding the fact that the respondent No.1 husband who is liable to pay he



monthly allowance has undergone a sentence of jail for failure to pay the same. Our reasons for reaching this conclusion will follow.

So far as the amount of monthly allowance awarded in this particular case is concerned, by consent of parties, we pass the following order in regard to future payments with effect from 15th August, 1986.

We direct that Respondent No. 1, Surinder Singh shall pay Rs. 273 (Rs.200 for the wife and Rs. 75 for the child) as and by way of maintenance to the appellant Smt. Kuldip Kaur commencing from August 15, 1986. The amount of Rs. 275 shall be paid by the 15th of every succeeding month. On failure to pay any monthly allowance for any month hereafter on the part of respondent No. 1, Surinder Singh, the learned Metropolitan Magistrate shall issue a warrant for his arrest, cause him to be arrested and put in jail for his failure to comply with this Court's order and he shall not be released till he makes the payment.

With regard to the arrears which have become due till August 15, 1986, learned Counsel for the appellant states that having regard to the fact that respondent



No. 1, has agreed to the aforesaid consent order, the appellant will not apply for the respondent being sent to jail under Section 125 of the CrPC but will reserve the liberty to realize the said amount (Rs.5090 plus the difference between the amount that became due and the amount actually paid under the interim order) under the law except by seeking an order for sending respondent No. 1 to jail.

The appeal will stand disposed of accordingly.

In the case of ***Shantha v. B.G. Shivananjappa***, reported in (2005) 4 SCC

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8. We are, therefore, of the view that in the peculiar circumstances of the case, the bar under Section 125(3) cannot be applied and the High Court has erred in reversing the order of the Sessions Judge. It must be borne in mind that Section 125 CrPC is a measure of social legislation and it has to be construed liberally for the welfare and benefit of the wife and daughter. It is unreasonable to insist on filing successive applications when the liability to pay the maintenance as per the order passed under Section 125(1) is a continuing liability.



Further, in the case of **Poongodi v. Thangavel**, reported in (2013) 10

SCC 618 the Hon'ble Supreme Court has held as follows:

4. A reading of the order dated 21-4-2004 [Thangavel v. Poongodi, Criminal Revision No. 620 of 2003, order dated 21-4-2004 (Mad)] passed by the High Court would go to show that the proviso to Section 125(3) CrPC has been construed by the High Court to be a fetter on the entitlement of the claimants to receive arrears of maintenance beyond a period of one year preceding the date of filing of the application under Section 125(3) CrPC. Having considered the said provision of the Code we do not find that the same creates a bar or in any way affects the entitlement of a claimant to arrears of maintenance. What the proviso contemplates is that the procedure for recovery of maintenance under Section 125(3) CrPC, namely, by construing the same to be a levy of a fine and the detention of the defaulter in custody would not be available to a claimant who had slept over his/her rights and has not approached the court within a period of one year commencing from the date on which the entitlement to receive maintenance has accrued. However, in such a situation the ordinary remedy to



recover the amount of maintenance, namely, a civil action would still be available.

5. The decision of this Court in Kuldip Kaur v. Surinder Singh [(1989) 1 SCC 405 : 1989 SCC (Cri) 171] may be usefully recalled wherein this Court has held the provision of sentencing under Section 125(3) to be a “mode of enforcement” as distinguished from the “mode of satisfaction” of the liability which can only be by means of actual payment. Para 6 of the Report to the above effect, namely, that the mode of enforcement i.e. sentencing to custody does not extinguish the liability may be extracted below: (SCC p. 409, para 6)

“6. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a ‘mode of enforcement’. It is not a ‘mode of satisfaction’ of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to



jail is not to wipe out the liability which he has refused to discharge. Be it also realised that a person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance 'without sufficient cause' to comply with the order. It would indeed be strange to hold that a person who 'without reasonable cause' refuses to comply with the order of the court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail. A sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears. Monthly allowance is paid in order to enable the wife and child to live by providing with the essential economic wherewithal. Neither the neglected wife nor the neglected child can live without funds for purchasing food and the essential articles to enable them to live. Instead of providing them with the funds, no useful purpose would be served by sending the husband to jail. Sentencing to jail is the means for achieving the end of enforcing the order by recovering the amount of arrears. It is not a mode of discharging liability. The section does not say so. Parliament in its wisdom has not said so. Commonsense does not support such a construction.



From where does the court draw inspiration for persuading itself that the liability arising under the order for maintenance would stand discharged upon an effort being made to recover it? The order for monthly allowance can be discharged only upon the monthly allowance being recovered. The liability cannot be taken to have been discharged by sending the person liable to pay the monthly allowance, to jail. At the cost of repetition it may be stated that it is only a mode or method of recovery and not a substitute for recovery. No other view is possible. That is the reason why we set aside the order under appeal and passed an order in the following terms”

6. In another decision of this Court in Shantha v. B.G. Shivananjappa [(2005) 4 SCC 468 : 2005 SCC (Cri) 1089] it has been held that the liability to pay maintenance under Section 125 CrPC is in the nature of a continuing liability. The nature of the right to receive maintenance and the concomitant liability to pay was also noticed in a decision of this Court in Shahada Khatoon v. Amjad Ali [(1999) 5 SCC 672 : 1999 SCC (Cri) 1029] . Though in a slightly different context, the remedy to approach the court by means of successive



applications under Section 125(3) CrPC highlighting the subsequent defaults in payment of maintenance was acknowledged by this Court in Shahada Khatoon [(1999) 5 SCC 672 : 1999 SCC (Cri) 1029] .

7. The ratio of the decisions in the aforesaid cases squarely applies to the present case. The application dated 5-2-2002 filed by the appellants under Section 125(3) was in continuation of the earlier applications and for subsequent periods of default on the part of the respondent. The first proviso to Section 125(3), therefore did not extinguish or limit the entitlement of the appellants to the maintenance granted by the learned trial court, as has been held by the High Court.

8. In view of the above, we are left in no doubt that the order passed by the High Court needs to be interfered with by us which we accordingly do. The order dated 21-4-2004 [Thangavel v. Poongodi, Criminal Revision No. 620 of 2003, order dated 21-4-2004 (Mad)] of the High Court is set aside and we now issue directions to the respondent to pay the entire arrears of maintenance due to the appellants commencing from the date of filing of the maintenance petition (MC No. 1 of 1993) i.e.



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4-2-1993 within a period of six months and current maintenance commencing from the month of September 2013 payable on or before 7-10-2013 and thereafter continue to pay the monthly maintenance on or before the 7th of each successive month. If the above order of this Court is not complied with by the respondent, the learned trial court is directed to issue a warrant for the arrest of the respondent and ensure that the same is executed and the respondent taken into custody to suffer imprisonment as provided by Section 125(3) CrPC.

This Hon'ble Court Division Bench reported in **2019 (1) MLJ (Crl) 513** in the case of ***M.Rajkumar @ Muthaiah vs. Commissioner, Madurai City and others*** (H.C.P.(MD).SR No.31625 of 2018).

33. Thus, in the light of the above judgment of the Honourable Full Bench of the Gujarat High Court, the legal position is very clear that the Magistrate can entertain separate applications from the person entitled to receive such maintenance or even entertain a common application for several months of default and pass appropriate order and, if found necessary,



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sentence a defaulting person upto a maximum one month for each month of default.

34. In the case on hand, the mother of the minor respondents 3 and 4 filed a petition on 26.03.2010 under Section 125 Cr.P.C., in M.C.No. 33 of 2010 seeking maintainance for the minor respondents 3 and 4 and the learned Judge, Family Court, Madurai, by order dated 23.02.2017, directed the petitioner to pay a sum of Rs.3,000/- (Rupees Three Thousand only) each per month towards 36 maintenance to the minor respondents 3 and 4. However, the petitioner committed default in paying the maintenance of Rs.3,000/- (Rupees Three Thousand only) each per month to the minor respondents 3 and 4 for 83 months. Hence, the mother of the minor respondents 3 and 4 had filed a petition under Section 128 Cr.P.C., for recovery of arrears of maintenance for 83 months well within the limitation period of one year from the date on which it became due, viz., 23.02.2017, on which date, the award of maintenance came to be passed in M.C.No.33 of 2010 and the learned Judge, Family Court, Madurai, thought it fit to impose a



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sentence of 15 days for each month's default and accordingly, by order dated 29.06.2017 ordered the petitioner to undergo 15 days simple imprisonment for one month's default, totalling 41 ½ months for non-payment of arrears for 83 months and thus, in the light of the judgment of the Honourable Full Bench of the Gujarat High Court in Suo Motu v. State of Gujarat reported in II (2009) DMC 197 (FB), we find no infirmity in the impugned order dated 29.06.2017 passed by the learned Judge, Family Court, Madurai, in Cr.M.P.No.97 of 2017 in M.C.No.33 of 2010, in and by which, the petitioner was ordered to undergo 15 days simple imprisonment for one month's default, totalling 41 ½ months for non-payment of arrears for 83 months. Therefore, Point No.(i) is answered accordingly.

Further, the learned Judge of this Court, in Crl.R.C.(MD).No.581 of 2022 also held as follows:

10. There is no doubt on that, as mentioned earlier, the execution petition can be filed within a year from the date of the order of the original petition. Here, as mentioned earlier, there is no bar of limitation. But the argument that only one



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month maximum period can be imposed is completely out of place and not acceptable in view of the change of views. More particularly, we can refer the decision of the Division Bench of this court in the case of M.Rajkumar Vs. Commissioner, Madurai City, Madurai & others (HCP (MD)SR No.31625 of 2018, dated 09/01/2019). After elaborate discussion, that judgment was rendered in a Habeas Corpus Petition. After considering all the relevant judgments including the judgment that has been cited by the learned counsel appearing for the petitioner in the case of Shahada Khatoon and anothers Vs. Amjad Ali and others [(1999)5 SCC 672). so we need not trouble much this order upon the above said controversy, since it has been now well settled by the Division Bench of this court. The view that has been expressed by this court prior to the Division Bench decision in the case of R.Kumaravadivel Vs. Lakshmi and others (CDJ 2007 MHC 1600), now it cannot be taken advantage by this petitioner.



12. From the above law laid down by the Hon'ble Supreme Court and this Court and various High Courts, it is clear that

(i) The Court has power to impose the sentence of imprisonment against the husband who commit default in making the payment of arrears of maintenance till the payment is made.

(ii) The wife need not file a successive application to enforce the maintenance award. She can file an application to enforce the entire arrears of maintenance.

13. Hence, in view of the above Hon'ble Division Bench judgment, this Court is unable to accept the contention of the petitioner, on the basis of the judgment reported in **2017 3 MWN Crl.216** that the Court has no jurisdiction to impose the punishment of 11 months simple imprisonment.

14. Earlier, the learned counsel for the petitioner would submit that the petitioner herein is ready to deposit the entire arrears of monthly maintenance amount and prayed to suspend the sentence. On the basis of the undertaking given by the petitioner, this Court granted the suspension



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of sentence and also directed the petitioner to deposit the entire arrears of amount. Subsequently, he filed modification petition and the same was modified. Even after, he did not make any payment. In the said circumstances, on factual aspects, the petitioner has failed to comply with the maintenance amount. Therefore, the petitioner herein is directed to pay the entire arrears of amount within a period of two weeks from the date of receipt of a copy of this order. On his failure, the jurisdictional police are directed to secure the petitioner and confine in prison till the payment of entire arrears of amount.

15. Accordingly, this Criminal Revision Case stands dismissed.

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NCC :Yes / No
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Internet :Yes / No

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To

The Family Court,
Nagercoil.

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