



WEB COPY



Crl.O.P.(MD)No.3563 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : **12.04.2023**

Delivered on : **07.06.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE **R.THARANI**

Crl.O.P.(MD) No.3563 of 2020

A.Gopinath ... Petitioner / 1st respondent
Vs.

Sakthibala ... Respondent/ Petitioner

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the Cr.M.P.No.3671 of 2018 in D.V.No.6 of 2016, on the file of the Judicial Magistrate No.1, Sivakasi and to quash the same.

For Petitioner : Mr.S.Jeyasingh
For Respondent : Mr.A.Mohan

ORDER

This petition is filed to quash the Cr.M.P.No.3671 of 2018 in D.V.No.6 of 2016, on the file of the Judicial Magistrate No.1, Sivakasi.

2. The case against the petitioner is that the respondent filed a petition in D.V.No.6 of 2016 for maintenance from the petitioner and the petition was ordered on 19.02.2018, directing the petitioner to pay a sum of Rs.10,000/- per month as maintenance to the respondent. The



petitioner filed a Criminal Appeal against the order in D.V.No.6 of 2016 with a delay excuse petition and that the delay excuse petition is pending. In the above circumstances, the respondent filed a petition in Cr.M.P.No. 3671 of 2018 for the execution of the order in D.V.No.6 of 2016 and the petitioner has come forward with this petition to quash the above said petition.

3. On the side of the petitioner, it is stated that the income of the petitioner is only Rs.8,500/- per month. The education of the petitioner is 9th standard fail, he is working as an office boy in Match splints industry, Ernakulam. His salary is insufficient even for his food and shelter, whereas, the respondent is a B.Sc. (Computer Science) graduate, she is taking tuition for school children and she is getting an income of Rs.20,000/- per month, she is capable of maintaining herself. Without the knowledge of the petitioner and without issuing notice to the petitioner Cr.M.P.No.3671 of 2018 was filed and that warrant was issued, a sum of Rs.48,000/- was collected from the petitioner on 24.09.2019. Subsequently, he paid Rs.2,000/- on .05.12.2019 and Rs.2,000/- on 31.12.2019. The respondent is not having any right to collect the amount from the petitioner and the Crl.M.P petition is not maintainable and the same is to be quashed.



CrI.O.P.(MD)No.3563 of 2020

4. On the respondent, it is stated that the petitioner is liable to pay Rs.10,000/- per month towards maintenance and a total sum of Rs.6,29,000/- is still pending payment. To avoid paying the maintenance amount, the petitioner attempted to file a criminal appeal, which was not yet numbered. Quashing a petition on the basis of pendency of a delay excuse petition is not proper and prayed the petition to be dismissed.

5. The prayer of the respondent is for maintenance. The salary of the petitioner or that of the respondent cannot be decided by this Court. An order of a Court is to be obeyed. Pendency of the delay excuse petition cannot be a ground for quashing a petition for executing an order of maintenance. The maintenance order is passed to meet out the day to day expenses of the wife. It is seen that the petitioner has not paid the amount and there is a huge balance to be paid.

6. In the above circumstances, the reasons stated in the petition are not satisfactory. Hence, this Petition is dismissed.

NCC : Yes/No
Index : Yes/No
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Crl.O.P.(MD)No.3563 of 2020

R.THARANI. J.

Ls

To

- 1.The Judicial Magistrate No.1,
Sivakasi.
2. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
Crl.O.P.(MD)No.3563 of 2020

07.06.2023