



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2023

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WEB COPY

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.O.P.(MD) No.21335 of 2022

VS.Jeevani

... Petitioner

Vs.

1. Indira Sarojinibai Backyam Charlotte
2. Antony Asir Daniel
3. C.H.Shajini
4. The District Collector,
Kanyakumari District, Nagercoil.

5. The Thasildar,
Agastheeswaram Taluk,
Kanyakumari District.

... Respondents

(Amended as per the order in Crl.M.P
(MD) No.2812 of 2023 in Crl.O.P(MD)
No.21335 of 2022 dated 24.02.2023)

PRAYER: (*)This Criminal Original Petition is filed under Sections 482 of Criminal Procedure Code, to direct the respondent No.5, the Thasildar, Agastheeswaram Taluk, to realize the amount of Rs.6,84,000/- payable to the petitioner herein from the first respondent's 1/3 share over the petition schedule properties and sell the share in the public auction for appropriation of the due amount of Rs.6,84,000/- by invoking the provision of Revenue Recovery Act based on the distraint warrant with order issued by the learned Judicial Magistrate No.1, (FAC), Tirunelveli, dated 21.12.2021 in Crl.M.P. No.7338 of 2019 in M.C. No.11 of 2016 connected with the proceedings passed in Roc.No.G3/3248/2022 by the respondent No.4, the District Collector, Nagercoil, dated 25.03.2022 within a time frame fixed by the Court to recover such payable amount till the date of realization.

For Petitioner : Ms.VS.Jeevani,
Party-in-person.

For R4 and R5 : Mr.Jeyaseelan.J.K.
Government Advocate (Civil side)

**ORDER**

(*) This Criminal Original Petition is filed under Sections 482 of Criminal Procedure Code, to direct the respondent No.5, the Thasildar, Agastheeswaram Taluk, to realize the amount of Rs.6,84,000/- payable to the petitioner herein from the first respondent's 1/3 share over the petition schedule properties and sell the share in the public auction for appropriation of the due amount of Rs.6,84,000/- by invoking the provision of Revenue Recovery Act based on the distraint warrant with order issued by the learned Judicial Magistrate No.1, (FAC), Tirunelveli, dated 21.12.2021 in Crl.M.P. No.7338 of 2019 in M.C. No.11 of 2016 connected with the proceedings passed in Roc.No.G3/3248/2022 by the respondent No.4, the District Collector, Nagercoil, dated 25.03.2022 within a time frame fixed by the Court to recover such payable amount till the date of realization.

2. **The facts in brief:**

The petitioner is the daughter of first respondent, sister of the second respondent and third respondent is the wife of the second respondent. The petitioner filed M.C. No.11 of 2016 before the learned Judicial Magistrate No.1, Tirunelveli, against all the above said persons, seeking various reliefs that maintenance, compensation, residential right, extra, that was ordered in part granting various reliefs.

3. The subject matter of this original petition is with reference to the payment of maintenance amount of Rs.10,000/-, it was ordered to be paid from the date of petition in M.C. No.11 of 2016 under Section 20 of Domestic Violence Act, against which, the appeal was filed by this petitioner and as well as her mother and brother. Both were heard by the III Additional District and Sessions Judge, Tirunelveli in C.A. No.64 of 2017 and 74 of 2018, a common judgment was passed on 07.01.2019, by which, maintenance amount was raised to Rs.12,000/-, apart from the compensation amount of Rs.3,00,000/-. and so far the appeal preferred by the mother and brother, it was dismissed. On the basis of the order of the appellate Court, this petitioner filed the execution petition under Section 128 of Cr.P.C in Cr.M.P.No.7338 of 2019 before the learned Judicial Magistrate No.1, Tirunelveli seeking recovery of arrear amount, that was also allowed and Distraint Warrant was ordered on 21.12.2021 to recover the arrear amount from the movable and immovable properties of her mother. Since the order of Distraint Warrant is not complied till now without any proper excuse, seeking direction, this petition has been filed by the petitioner.

4. On perusal of records, after hearing the petitioner / party-in-person and the learned Government Advocate (Civil side), the following order is passed.



(*) 5. The Dstraint Warrant was issued by the learned Judicial Magistrate No.1, Tirunelveli, for recovering the amount of maintenance that was ordered to the petitioner in Crl.MP No.7338 of 2019 in M.C. No.11 of 2016 dated 21.12.2021 and that was also delegated to the Tahsildar, Agastheeswaram Taluk, Kanyakumari District by the District Collector, now it is pending for execution. In the mean time, the mother of this petitioner filed revision before this Court against the order passed in C.A. No.64 of 2017 and 74 of 2018 on the file of the III Additional District and Sessions Judge, Tirunelveli, along with condone delay petition before this Court on 03.09.2021 to condone the delay of 343 days in preferring the revision. A conditional order was passed by this Court on 08.10.2021 directing the revision petitioner to deposit a sum of Rs.2,00,000/- to the credit of M.C. No.11 of 2016 on the file of the learned Judicial Magistrate No.1, Tirunelveli for considering admission, but that order was not complied. In the mean time, on 21.12.2021, the above said Dstraint Warrant was issued by the learned Judicial Magistrate No.I, Tirunelveli. Later, Cr.M.P. (MD) No.11767 of 2022 was filed by the mother seeking extension of time to comply the above said order, that petition was filed on 26.09.2022, much after expiry of the conditional period. But even that was considered by this Court, contention was raised by the mother stating that she is aged about 69 and only getting pension, so she is not in a position to comply the order, but that was rejected by this Court and directed the mother to comply the order on or before 31.01.2023. Even after expiry of the above said period, the conditional order was not complied by the mother.

6. Now the grievances of the petitioner is that inspite of several proceedings and several orders, she is not in a position to realise fruits of the order, on that ground, this petitioner is heard.

7. The learned Government Advocate (Civil Side) is also submitted that now the above said Dstraint Warrant is pending for further action. Since Dstraint Warrant is issued on 21.12.2021, the same may be executed by the Tahsildar, Agastheeswaram Taluk.

8. At that time of hearing, the learned Government Advocate (Civil Side) would submit that since the issue is between the mother and daughter, this matter can be referred to the Mediation Centre for settlement. Since the petitioner is not in a position to realise the fruits of the order, she can try for one time settlement. This petitioner / party-in-person would submit that it is long time issue between the mother, brother and herself. The mother and as well as her brother has not taken any care of her and even they are not visiting her, so there is no possibility of settlement even if the matter is referred to Mediation Centre. The opinion of this petitioner is also placed on record.



(*) 9. In view of the long time issue, the Dstraint Warrant is pending for very long period. No effort has been taken by the mother even to comply the conditional order that has been passed by this Court. Since the District Collector, Nagercoil, was directed to execute the Dstraint Warrant, that was also delegated to the Tahsildar, Agastheeswaram, for execution and till now it is pending. So, the Thasildar, Agastheeswaram Taluk, Kanyakumari District is hereby directed to execute the dstraint warrant within three months from the date of receipt of copy of this order. The compliance and other records shall be submitted before the learned Judicial Magistrate No.1, Tirunelveli, after completing the execution process.

10. With the above said direction, this Criminal Original Petition is disposed of.

(*) Corrected as per the order by this court dated 02/03/2023.

Sd/-

Assistant Registrar (RTI)

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/03/2023

Sub Assistant Registrar(CS)

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To

1 The Judicial Magistrate No.I, Tirunelveli.

2. The District Collector,
Kanyakumari District, Nagercoil.

3. The Thasildar,
Agastheeswaram Taluk,
Kanyakumari District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Crl.O.P. (MD) No.21335 of 2022
24.02.2023

MK(07.03.2023) 4P 5C