



*Crl.M.P.No.870 of 2024
in Crl.RC.No.105 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.870 of 2024
in
Crl.RC.No.105 of 2024

M.Rumeshkumar

... Petitioner

Vs.

R.Anitha @ Varsha

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 482 of Cr.P.C to suspend the distress warrant passed by the learned Judicial Magistrate No.I at Poonamallee in C.M.P.No.7361 of 2023 in M.C.No.2 of 2022 on 23.11.2023 and release the petitioner on bail pending disposal of the above revision petition.

For Petitioner : Ms.C.Shyaamala

For Respondent : Mr.S.Silambuselvan



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner to suspend the distress warrant passed by the learned Judicial Magistrate No.I, Poonamallee in C.M.P.No.7361 of 2023 in M.C.No.2 of 2022 on 23.11.2023 and release the petitioner on bail pending disposal of the above revision petition.

2.The case against the petitioner is that the marriage between the petitioner and the respondent took place on 10.11.2019 which is an arranged marriage. Within two weeks of marriage, the respondent expressed that she has to visit her mother's house regularly during her monthly menstrual cycle and it will be convenient for her to be with her mother during that time. Further, she had stomach pain and haemoglobin drop due to profused bleeding. The petitioner had taken a health policy considering her health condition. This being so, on 28.05.2020 the respondent's mother took the respondent to her house and thereafter, on 30.05.2020 all the jewels of the respondent and her belongings were taken by them. Thereafter, the



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petitioner filed a petition for restitution of conjugal rights in H.M.O.P.No.3014 of 2020 before the Family Court, Chennai and as a counter blast, the respondent filed a domestic violence complaint in DVC.No.26 of 2021 before the Additional Mahila Court, Egmore, Chennai. Further, a maintenance case was filed in M.C.No.1 of 2021 before the learned Judicial Magistrate No.II, Thiruvallur and later, the case was transferred to Judicial Magistrate No.I, Poonamallee on the orders of this Court in Tr.C.M.P.No.471 of 2021 and H.M.O.P.No.3014 of 2020 was transferred from the file of the Principal Family Court, Chennai to Sub Court, Poonamallee to be taken along with the divorce petition in H.M.O.P.No.351 of 2020. Now all the cases are pending before the Sub Court, Poonamallee.

3.The complaint of the respondent in the divorce petition is that the marriage was not consummated since the petitioner was impotent. On 08.07.2022 proceedings in the maintenance case commenced and evidences were recorded before the learned Judicial Magistrate No.I, Poonamallee. Thereafter, case was posted for cross examination in very short dates on



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19.07.2022, 26.07.2022, 29.07.2022 and 05.09.2022. When the case was posted on 05.09.2022, the junior counsel asked for passed over in the morning but the Lower Court during the middle of the day, closed the cross examination. The petitioner having left with no other option, filed a petition under Section 311 Cr.P.C. to recall P.W.1 for cross examination on 09.09.2022, but there was a boycott on that day and thereafter, the recall petition was filed on 12.09.2022. The said petition was posted for check and call on 03.10.2022 and thereafter, the case was periodically called. On 07.12.2022, the cross examination of P.W.1 was permitted and the case was posted on 12.12.2022. When the case was posted on 12.12.2022, P.W.1/respondent herein was present and since the petitioner was not present, he was set exparte. Finally, orders were passed in M.C.No.2 of 2022 on 20.12.2022 directing the petitioner to pay Rs.10,000/- as maintenance and Rs.10,000/- to the maintenance of her health, in total Rs.20,000/- was paid to be on or before 5th day of every Calendar month from the date of filing of the petition i.e., 01.03.2022. Since the petitioner has not complied with the order and the maintenance amount was not paid, the respondent filed a petition in Crl.M.P.No.7361 of 2023 and on



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23.11.2023, the impugned order was passed. Further, warrant of imprisonment on failure to pay maintenance was issued on 19.12.2023, the petitioner was remanded on 04.01.2024 and now he is confined in Central Prison, Puzhal, Chennai.

4.The learned counsel for the petitioner submitted that according to the petitioner, the total maintenance amount to be paid from 01.03.2022 to January 2024 is Rs.4,60,000/- and to show his bonafide, now she is ready with the demand draft for a sum of Rs.2,30,000/- [50% of the maintenance amount to be paid till date]. She would further submit that the said demand draft may be accepted by the respondent and the petitioner be released on bail.

5.The learned counsel for the respondent submitted that according to the respondent, the maintenance amount to be paid till date comes to around Rs.6,80,000/- and not Rs.4,60,000/- as submitted by the learned counsel for the petitioner. He would further submit that the petitioner is evading in making payment and he has been filing one petition after another but the



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petitioner has not challenged the order passed in M.C.No.2 of 2022 dated 20.12.2022. In such circumstances, no leniency can be shown to the petitioner and he has to pay the entire amount due.

6.The learned counsel for the petitioner submits that already a revision petition was filed in Crl.RC.No.1533 of 2023 which is pending before this Court. She would further submit that a transfer petition was also filed in Crl.O.P.No.2674 of 2023 seeking transfer of maintenance case from the file of Sub Court, Poonamallee to the file of Additional Mahila Court, Egmore, Chennai where DVC.No.26 of 2021 is pending and it can be heard comprehensively.

7.In reply, the learned counsel for the respondent submitted that he is not aware of filing of such petition.

8.Considering the submissions made and on perusal of the materials, it is seen that today the petitioner has produced the demand draft for a sum of Rs.2,30,000/- drawn in favour of the respondent in State Bank of India,



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Siruvallur Road Branch vide DD.No.563138 dated 29.01.2024 and the

respondent who is present before this Court received the demand draft.

Hence, this Court is inclined to suspend the sentence of Imprisonment till the disposal of the revision petition.

9. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall execute own bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) before the Superintendent of Prison, Central Prison, Puzhal, Chennai and the petitioner is directed to be released forthwith.

10. Accordingly, this Miscellaneous Petition is ordered.

11. Post the main case for further hearing on 26.02.2024 along with Crl.RC.No.1533 of 2023.

29.01.2024

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Note: Issue order copy on 29.01.2024

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M. NIRMAL KUMAR, J.

cse

To

- 1.The Judicial Magistrate No.I,
Poonamallee
- 2.The Superintendent,
Central Prison, Puzhal,
Chennai.

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