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Crl.M.P.No.9381 of 2023 in
Crl.R.C.SR.No.30294 of 2023

M.NIRMAL KUMAR., J.

This Criminal Miscellaneous Petition has been filed to condone the delay of 146 days in filing the Criminal Revision Case against the order, dated 28.08.2022 in M.P.No.685 of 2021 in M.C.No.526 of 2019 passed by the learned III Additional Principal Judge, III Additional Principal Family Court at Chennai.

2.This Court vide order, dated 11.12.2023 passed the following order:

"*The petitioner, who is an employee of Southern Railways, has neglected to take care of his wife and minor daughter, for which the respondents filed maintenance case in M.C.No.526 of 2019 and the same was ordered by the Trial Court on 03.02.2020. According to the petitioner, he was set exparte, he was not aware about the proceedings before the Lower Court and only when attachment was ordered during January 2023, he came to know about the same and filed the above revision but with a delay of 146 days.*

2.The learned counsel for the respondents submits that attachment order was effected from June 2023 and the attachment amount was Rs.20,000/- per month which the respondent was receiving after June 2023. He would further submit that as on date the petitioner is in arrears of

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Rs.2,25,000/- which is yet to be paid.

3.The learned counsel for the petitioner submits that to show his bonafide the petitioner shall deposit a sum of Rs.1,00,000/- within a period of two weeks.

4.The learned counsel for the respondents submits that in the event of the petitioner depositing a sum of Rs.1,00,000/-, he has got no objection for condoning the delay.

5.In view of the above, the petitioner is directed to deposit a sum of Rs.1,00,000/- on or before 21.12.2023 to the credit of M.C.No.526 of 2019 before the III Additional Principal Family Court, Chennai.

6.Post the matter on 22.12.2023"

3.In continuation and conjunction to the above order, dated 11.12.2023, this Court is passing the following order.

4.The learned counsel for the petitioner submitted in compliance to the order of this Court, a cheque bearing No.662448, dated 20.12.2023 drawn on Canara Bank for a sum of Rs.1,00,000/- was produced before the III Additional Principal Family Court at Chennai on 20.12.2023 along with a

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memo and the same was received. Thereafter on 21.12.2022, the petitioner was informed about funds not sufficient to honour the cheque, hence, he immediately made arrangements, took corrective steps, deposited the amount, took demand draft bearing No.869457 for Rs.1,00,000/- from Canara Bank, Egmore Branch favouring the Principal Family Court, Chennai. When the same was produced before the Family Court, the Family Court not received the same and returned. Today, the learned counsel for the petitioner produced the copy of the demand draft and the return of the Family Court, from which, it is seen that the dishonoured cheque returned to the party/petitioner *vide* Disc.No.5404 of 2023 on 21.12.2023 and the demand draft dated 22.12.2023 produced before the Family Court on 02.01.2024 and it was returned for the reason that as per the order of this Court, the deposit ought to have made on or before on 21.12.2023. For this reason, the petitioner is unable to comply with the conditional order passed by this Court on 11.12.2023.

5.The learned counsel for the respondents who are the petitioners in the maintenance case submitted that the petitioner is an employee in Southern Railways, who is well placed receiving sufficient income. The 1st respondent is a house wife and she needs support to maintain herself as well as minor

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daughter/2nd respondent. The petitioner neglected and failed to maintain them. Only after salary attachment order obtained, some amount is received for subsistence. The amount of Rs.1,00,000/- is only a condition to condone the delay. The petitioner's act amounts to playing fraud on the Court which cannot be brushed aside easily.

6.The learned counsel for the petitioner submits that the petitioner is a Railway Employee due to unforeseen reason sufficient amount not available to honour the cheque. Once the mistake notice immediately, he took demand draft for Rs.1,00,000/- to comply the condition. The mistake happened to be condoned. If any adversity is recorded, it would affect his carrier. He further submits that he has got serious objection with regard to maintainability of the case projected by the respondents. If the petitioner is given an opportunity, he can explain and prove to this Court with justifiable reasons about the falsity of the respondents' case. Further, the morality of the 1st respondent and paternity of 2nd respondent are questionable.

7.In view of the above, this Court is inclined to condone the delay and the same is condone. Registry is directed to number the Criminal Revision Case, if it is otherwise in order.

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8.The petitioner's mistake is condoned and he is directed to produce the demand draft of Rs.1,00,000/- before the III Additional Principal Family Court at Chennai on or before 12.01.2024.

9.The learned III Additional Principal Judge, III Additional Principal Family Court at Chennai is directed to receive the demand draft of Rs.1,00,000/- from the petitioner. The respondents are permitted to withdraw the said amount without notice to the petitioner/husband.

10.In the result, this Criminal Miscellaneous Petition is ordered.

05.01.2024

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