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CrI.O.P.No.16448 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

CrI.O.P.No.16448 of 2024

1.Lathasri Subburaj
2.Prathyusha

... Petitioners

Vs.

R.Surrendar

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleased to direct the Judicial Magistrate -II, Poonamallee to entertain the unnumbered CrI.M.P.Sr.No.3656 of 2023 on the file of the Judicial Magistrate -II, Poonamallee filed under Section 125(3) Cr.P.C. dated 28.07.2023 in accordance with law.

For Petitioners : Mr.J.Saravanel

ORDER

This Criminal Original Petition is filed to direct the Judicial Magistrate to take up the petition filed under Section 125(3) Cr.P.C.

2. The learned counsel appearing for the petitioners states that the petition seeking maintenance was filed before the Judicial



Crl.O.P.No.16448 of 2024

Magistrate-II, Poonamallee and taken up for consideration in M.C.No.16 of 2019. After due consideration of the parties, on 28.02.2023 passed the following order :-

“In the result, this petition is ordered directing the respondent to pay a sum of Rs.10,000/- to the petitioner and Rs.10,000/- to the maintenance of her daughter, totally Rs.20,000/-, as maintenance, on or before 5th day of every calendar month, from this date has to be paid by the respondent to the petitioners from the date of filing of this petition that is on 14.06.2019 and the respondent should pay the arrears of maintenance to the petitioners from the period of 14.06.2019 to 28.02.2023 within 3 months from the date of this order.”

Since the respondent has failed to pay the arrears as per the order passed, the petitioner filed Crl.M.P.Sr.No.3656 of 2023 under Section 125(3) Cr.P.C., on 28.07.2023 stating that the Judicial Magistrate has ordered to the respondent to pay the arrears of maintenance from July 2019 to February 2023 within three months from the date of order. While so,



CrI.O.P.No.16448 of 2024

even after expiry of three months, the respondent had failed to pay the arrears which has forced the petitioner and her minor daughter to file petition under Section 125(3) Cr.P.C., for issuance of warrant for non payment of arrears of maintenance amount to the tune of Rs.9,80,000/-. While this petition been filed inconsonance with order passed by the Judicial Magistrate, the Registry without application of mind has returned the petition posing a question that how the petition is maintainable citing point of limitation. Inspite of referring the judgment of the Hon'ble Supreme Court which has clearly stated that there cannot be a bar to seek arrears of maintenance pursuant to the Court direction even if it exceeds more than one year, the Registry has returned the petition without numbering. Hence seek for intervention of this Court.

3. This Court on perusing the record finds that the Judicial Magistrate-II, Poonamallee has not properly understood the dictum of the Hon'ble Supreme Court as well as the provision that when there is a specific order passed by the Court, the Judicial Magistrate while considering the petition under Section 125(3) Cr.P.C., directing the respondent to pay arrears of maintenance from the date of petition till the



Crl.O.P.No.16448 of 2024

date of disposal of the Maintenance Case and in future the limitation for claiming of arrears will commence only from the date of order and not from the date of entitlement.

4. The learned Judicial Magistrate failed to understand the law. So, it is necessary to direct the Judicial Magistrate to take up the petition for consideration and decide it on merits. The petitioner is directed to represent the petition along with order copy and on such representation, the Judicial Magistrate is directed to number it and dispose it in accordance with law within a period of 3 months from the date of representation.

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

15.07.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

The Judicial Magistrate -II, Poonamallee



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Crl.O.P.No.16448 of 2024

Dr.G.JAYACHANDRAN,J.

rpl

Crl.O.P.No.16448 of 2024

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