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Crl.R.C.Nos.1614 and 1615 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.Nos.1614 and 1615 of 2023

And

Crl.M.P.Nos.15086 and 15087 of 2023

Yashpal Sharma

... Petitioner in both the Crl.R.Cs.

Vs.

Poonam

... Respondent in both the Crl.R.Cs.

Prayer in Crl.R.C.No.1614 of 2023:

Criminal Revision Case filed under Section 397 read with 401 of Criminal Procedure Code, seeking to set aside the order dated 02.08.2023 passed in M.P.No.341 of 2023 in M.C.No.354 of 2018 on the file of the Hon'ble III Additional Principal Family Judge, V Additional Family Court (FAC), Chennai.

Prayer in Crl.R.C.No.1615 of 2023:

Criminal Revision Case filed under Section 397 read with 401 of Criminal Procedure Code, seeking to set aside the order dated 02.08.2023 passed in M.P.No.204 of 2023 in M.C.No.354 of 2018 on the file of the Hon'ble III Additional Principal Family Judge, V Additional Family Court (FAC), Chennai.

For Petitioner : Mr.Suyesh Palande
For Respondent : Mr.R.Nandakumar



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COMMON ORDER

Crl.R.C.No.1614 of 2023 has been filed seeking to set aside the order dated 02.08.2023 passed in M.P.No.341 of 2023 in M.C.No.354 of 2018 by the learned III Additional Principal Family Judge, V Additional Family Court (FAC), Chennai.

2.Crl.R.C.No.1615 of 2023 has been filed seeking to set aside the order dated 02.08.2023 passed in M.P.No.204 of 2023 in M.C.No.354 of 2018 on the file of the learned III Additional Principal Family Judge, V Additional Family Court (FAC), Chennai.

3.The learned counsel for the petitioner submitted that the petitioner is the husband and the respondent is the wife. There was matrimonial dispute between them and the petitioner filed H.M.O.P.No.24 of 2016 before the learned III Civil Judge, Senior Division, Osmanabad, Maharashtra and an exparte decree was passed in his favour on 01.09.2018. Subsequently, the respondent filed maintenance case under Section 125 of Cr.P.C. in M.C.No.354 of 2018 before the V Additional Family Court, Chennai and the same was allowed and an exparte order was passed on 13.06.2019 directing the



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petitioner to pay a sum of Rs.40,000/- per month (Rs.20,000/- to the respondent and Rs.20,000/- to their daughter) to the respondent towards maintenance.

4.The learned counsel for the petitioner further submitted that thereafter, the respondent filed Crl.M.P.No.1057 of 2019 seeking to direct the petitioner to pay the arrears of maintenance amount of Rs.4,80,000/- for the period from 20.08.2018 to August, 2019 and thereafter non bailable warrant was issued against the petitioner. Thereafter, the petitioner filed M.P.No.341 of 2023 under Section 70(2) of Cr.P.C. seeking to recall the warrant and also filed M.P.No.204 of 2023 under Order 126(3) of Cr.P.C. seeking to set aside the exparte order dated 13.06.2019 and the learned III Additional Principal Family Judge, V Additional Family Court (FAC), Chennai vide common order dated 02.08.2023 dismissed both the petitions.

5.The learned counsel for the petitioner further submitted that the inorder to give quietuss to the issue, the petitioner is ready to pay a sum of Rs.20,000/- (Rs.10,000/- to the respondent and Rs.10,000/- to their daughter) towards monthly interim maintenance



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and is also ready to deposit the entire arrears amount from the date of petition to till date and prayed that this Court may direct the Court below to restore the maintenance case on file and to dispose of the same within a time frame, after the petitioner deposits the entire arrears amount.

6.The learned counsel appearing for the respondent raise no serious objection.

7.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent.

8.In view of the consent view expressed by the learned counsel appearing on either side, the order dated 02.08.2023 passed in M.P.Nos.341 of 2023 and 204 of 2023 in M.C.No.354 of 2018 by the learned III Additional Principal Family Judge, V Additional Family Court (FAC), Chennai, is set aside on the following terms:

(i)The petitioner is directed to deposit the entire arrears amount at the rate of Rs.20,000/- per month from the date of petition in M.C.No.354 of 2018 to till date (03.07.2024) to the credit of M.C.No.354 of 2018 on the file of the V Additional Family Court,



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Chennai, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order.

(ii)After the petitioner deposits the entire arrears amount as modified by this Court, the V Additional Family Court, Chennai, shall restore M.C.No.354 of 2018 on its file and shall dispose of the maintenance case in M.C.No.354 of 2018, on merits and in accordance with law after hearing the parties, as expeditiously as possible.

(iii)The petitioner shall continue to pay a sum of Rs.20,000/- per month to the respondent as interim maintenance on or before 7th of every succeeding English Calender Month till the disposal of the maintenance case.

9.The criminal revision cases are disposed of on the above terms. Consequently, the connected miscellaneous petitions are closed.

03.07.2024

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

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1.The III Additional Principal Family Judge,
V Additional Family Court (FAC), Chennai.

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These revisions are listed today under the caption “For Clarification” on the request of the learned counsel for the petitioner.

2. It is submitted on behalf of the petitioner that in para-5 of the order dated 03.07.2024, this Court had observed that the petitioner is ready to pay a sum of Rs.20,000/- (Rs.10000/- to the respondent and Rs.10,000/- to the daughter), however, the learned counsel submits that the petitioner has not given any consent showing his readiness to pay the said sum and, therefore, to that extent the order passed by this Court may be modified accordingly.

3. This Court gave its consideration to the submission made by the learned counsel for the petitioner. In view of the aforesaid submission, paras-4 to 9 of the order dated 3.7.2024 are recalled and the same shall stand substituted with the following :-



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“4. It is borne out by record that to recall the exparte order passed in M.C. No.354/2018 and also as against the issuance of non-bailable warrant, the present revisions have been preferred. The non-bailable warrant had come to be issued by the learned Judge, Family Court in Crl. M.P. No.1057/2019 filed by the respondent herein for a direction to the petitioner herein to pay the arrears of maintenance amount of Rs.4,80,000/-. In view of the fact that the petitioner herein had not deposited the arrears of maintenance, the non-bailable warrant had come to be issued, while the petition filed to set aside the exparte order dated 13.6.2019 was also dismissed.

5. The learned counsel for the petitioner submits that the respondent filed Crl. M.P. No.1057/2019 seeking to direct the petitioner to pay the arrears of maintenance to the tune of Rs.4,80,000/- for the period from 20.08.2018 to



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August, 2019 as the same has not been paid in which non-bailable warrant was issued against the petitioner. Against the said directions, the petitioner filed M.P. No.204/2023 u/s 70 (2) of Cr.P.C. seeking to recall the warrant and also filed M.P. No.341/2023 seeking to set aside the exparte order dated 13.6.2019 and the court below, vide common order dated 2.8.2023 dismissed both the petitions. It is the further submission of the learned counsel as the said exparte order had been passed without hearing the petitioner herein, the issuance of non-bailable warrant is wholly unjustified and he therefore seeks the indulgence of this Court to pass appropriate orders.

6. This Court, with a view to give relief to the petitioner herein, had recorded his readiness to pay the arrears of maintenance, however, in view of the fact that the petitioner is not inclined to pay the arrears of maintenance, but is only canvassing his grievance against the exparte order passed in



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the maintenance case and also the non-bailable warrant issued, this Court is inclined to consider the case on merits and pass appropriate orders.

7. It is not in dispute that an ex parte order directing payment of maintenance had been passed and in view of the said order, arrears to the tune of Rs.4,80,000/- is due from the petitioner to the respondent, which the petitioner herein had not paid to the respondent. The fact remains that for non-compliance of the said direction, Crl. M.P. No.1057/2019 came to be filed in which non-bailable warrant has been issued against the petitioner herein.

8. It is to be pointed out that any direction passed by a court is to be complied with in the absence of any order of stay. Against the said order in M.C. No.354/2018, on the date when the non-bailable warrant came to be issued, the petitioner herein had not moved the appellate forum and, therefore, rightly the non-bailable



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warrant had come to be issued. Only thereafter, the petitioner had gone before the appellate forum assailing the exparte order as also the non-bailable warrant issued, which have come to be dismissed. The manner in which the said petitions have been dealt with by the Family Court is just and reasonable and cannot be found fault with.

9. In the aforesaid backdrop, the present revisions have been preferred by the petitioner. It is to be pointed out that it is the duty of the husband to maintain his wife and children and any infraction of the duty results in the order of passing of maintenance. In the case on hand, the petitioner herein had filed HMOP No.24/2016 and an exparte decree had come to be passed by the III Civil Judge, Senior Division, Osmanabad, Maharashtra and in consequence of the same, M.C. No.354/2018 was filed by the respondent herein u/s 125 Cr.P.C. The act of the respondent



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cannot be found fault with and so also the orders passed by the courts below.

10. In the aforesaid circumstances, as the facts stand, while this Court is not inclined to interfere with the orders passed, however, with a view to give a quietus to the issue which would rest the warring spouses at peace, this Court is inclined to pass the following directions :-

- i) On the petitioner depositing the arrears amount towards interim maintenance to the tune of Rs.4,80,000/- for the period 20.08.2018 to August, 2019, within a period of four weeks from the date of receipt of a copy of this order, the order dated and 02.08.2023 passed in M.P. No341/2023 in M.C. No.354/2018 shall stand set aside;
- ii) The petitioner is further directed to deposit the arrears of interim maintenance from September, 2019 to till date at the rate of Rs.20,000/- (Rupees Twenty Thousand only) within a period of two months from the date of deposit of the amount of Rs.4,80,000/-.
- iii) On such deposit of Rs.4,80,000/- being made by the petitioner within the period prescribed



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above, the non-bailable warrant issued against the petitioner shall stand recalled. Failure to deposit the amount within the period prescribed above, the court below shall take appropriate steps to have the non-bailable warrant executed against the accused.

- iv) On the petitioner depositing the entire arrears amount as ordered by this Court in S. No.s (i) & (ii) above, M.C. No.354/2018 shall stand restored on the file of the V Addl. Family Court, Chennai, and the court below shall take up the same and dispose of M.C. No.354/2018 on merits and in accordance with law after affording opportunity of hearing to the parties as expeditiously as possible.
- v) The petitioner shall continue to pay a sum of Rs.20,000/- per month to the respondent as interim maintenance on or before the 7th day of every English calendar month till the disposal of the maintenance case.

12. The criminal revision cases are disposed of with the aforesaid observations and directions.

Consequently, connected miscellaneous petitions are closed.”



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4. Registry is directed to carry out the aforesaid corrections and issue fresh order copy to the parties.

25.07.2024

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