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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2024

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 35631 of 2023

And

W.M.P.No. 35577 of 2023

R.Karthik

... Petitioner

..Vs..

1. The District Collector
Office of the District Collector
Salem 636 001
Salem District.

2. Revenue Divisional Officer
Revenue Divisional Office
Sooramangalam Post
Salem – 635 005
Salem District.

3. G.Rathinavelu

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records pertaining to the order dated 29.11.2022 in proceeding Na.Ka.No.3832/2022/A1 passed by the second respondent, against the petitioner, quash the same.



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For Petitioner	:: Mr. R.Dhilip
For RR 1 & 2	:: Mr. M.R.Gokul Krishnan Additional Government Pleader
For 3 rd Respondent	:: Mr. N.Vijaya Baskar for M/s. Law Vision

ORDER

The Writ Petition has been filed in the nature of a Certiorari calling for the records relating to an order dated 29.11.2022 in proceedings Na.Ka.No. 3832/2022/A1 passed by the second respondent, Revenue Divisional Officer, Sooramangalam Post, Salem District and quash the same.

2. The petitioner is the son of the third respondent. The mother of the petitioner had unfortunately died of cancer. The petitioner is the only son. The third respondent has nobody else to look after him.

3. In the affidavit filed in support of the Writ Petition, it had been stated that in the order impugned, the second respondent had stated that the petitioner should pay monthly maintenance of Rs.9,000/- to the third respondent. It had also been stated that if the amount is not paid, necessary proceedings will be initiated under the provisions of the Maintenance and Welfare of Parents and Senior



Citizens Act 2007. The petitioner further stated that the third respondent had worked in the Highways Department and after retirement, he is getting a monthly pension of Rs.11,000/-. Further, the third respondent had lodged a complaint as against the petitioner and the wife of the petitioner alleging that they had both taken away a sum of Rs.25,00,000/- and also gold jewelery from the house of the third respondent and in this case FIR in Cr.No. 789 of 2022 had been filed by the Sulur Police Station.

4. The petitioner and his wife and three others had filed Crl.O.P.No. 32562 of 2022 seeking anticipatory bail. A learned Single Judge of this Court had directed the parties to examine whether the issues could be settled through mediation. In the mediation proceedings, an agreement had been entered into between the petitioner and the third respondent wherein, the petitioner had undertaken that he would pay a sum of Rs.6,000/- every month to the third respondent. He had also undertaken that if he gets a job, he will enhance the maintenance and he had also agreed that he would settle a sum of Rs.5,00,000/- which to be paid to one Jaiprakash, Advocate. He had also undertaken to give a gold attigai weighing 5 sovereigns claimed by the third respondent to the third respondent. Since that particular agreement had been reached between the parties.



Anticipatory bail had been granted to the petitioner herein.

Thereafter, complaining that suppressing these facts, the third respondent had given a complaint seeking maintenance to the second respondent, who had also passed the impugned order, by which the petitioner was directed to pay monthly maintenance of Rs.9,000/- to the third respondent, the present Writ Petition has been filed.

5. The learned counsel for the writ petitioner took the Court through the compromise effected between the petitioner and the third respondent relating to the complaint given by the third respondent as against the petitioner and his wife and other family members. It was contended that till date, the petitioner is honouring the commitment to pay a sum of Rs.6,000/- every month. It is further contended on behalf of the petitioner that the amount of Rs.5,00,000/- had also been paid to the third respondent, who had acknowledged receipt of the same. It is contended that since the petitioner has been paying the monthly maintenance of Rs.6,000/-, the direction by the second respondent to pay further maintenance of Rs.9,000/- has to be interfered with and set aside by this Court. The learned counsel for the petitioner also stated that the petitioner is at present not employed and therefore expressed difficulty in effecting payment of Rs.9,000/- every month.



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6. Notice had been directed to the third respondent and the learned counsel had also entered appearance. The learned counsel pointed out that after the death of the wife of the third respondent, at a particular time when the third respondent was not in the house, the petitioner and his wife are alleged to have taken away cash of Rs.25,00,000/- and gold jewelery weighing 35 sovereigns. The original sale title deeds of the property of the wife of the third respondent had also been taken away. It was under those circumstances that the third respondent had given a complaint and later FIR in Crime No. 784 of 2022 was registered by the Sular Police Station. It had been contended that any compromise effected was only with respect to the said complaint and not to other issues.

7. The third respondent stated that out of the pension amount of Rs.11,000/-, the third respondent is still paying a sum of Rs.5,500/- every month towards the educational loan taken for and on behalf of the petitioner herein. It is also contended that since the amount of Rs.5,00,000/- had not been repaid, proceedings had been initiated against the third respondent in S.T.C.No. 168 of 2020 and Judgment of conviction had also been passed. It had been contended that the third respondent had no other option but to give a complaint under



the Act and that after providing necessary opportunity to all the parties and after examining all the circumstances, the impugned order had been passed.

8. Heard arguments also advanced on behalf of the respondent Nos. 1 and 2.

9. The learned Additional Government Pleader stated that the impugned order had been passed in accordance with law. He also stated that subsequently, further proceedings have also been initiated to put the order into effect. The said order directed the petitioner to pay monthly maintenance of Rs.9,000/- to the third respondent. It had been urged that the Writ Petition should be dismissed.

10. I have carefully considered the arguments advanced.

11. This is an unfortunate case where the only sole surviving members of a family, namely, the third respondent and his son, the petitioner are still fighting with each other. The petitioner had benefitted in his education owing to the employment of the third respondent in the highways Department. The petitioner further benefitted owing to the educational loan acquired by the third



respondent which loan is still being discharged by the third respondent to a sum of Rs.5,500/- every month. It is the specific case of the third respondent that the petitioner and his wife had taken away a sum of Rs.25,00,000/- and about 35 sovereigns of gold from the house of the third respondent. It is only owing to such allegation that a criminal complaint had been lodged. Any settlement reached was only to examine whether the petitioner could be granted anticipatory bail or not. It was only a settlement to examine whether the petitioner's conduct would inspire confidence with the Court. It is for that reason, in an application seeking anticipatory bail, parties are referred to the mediation process. Any settlement reached would only be with respect to allegations in that particular complaint.

12. In the instant case, the complaint was that the petitioner and his wife and other family members had entered into the house of the third respondent and had taken away a sum of Rs.25,00,000/- and 35 sovereigns of gold. The learned counsel for the third respondent had produced the bank statement of the petitioner and it reflects that the petitioner cannot be termed as a person in penury. He has sufficient amounts in his bank account. It is contended that this statement was not brought to the knowledge of the mediate at the time of mediation process and had in been brought, a larger amount



would have been determined as the monthly maintenance. The fact is that in accordance with the agreement reached, which agreement breached would entitle the Court to cancel the anticipatory bail granted, the petitioner is paying a sum of Rs.6,000/- every month to the third respondent. I am informed that after investigation, the respondent police have also closed the complaint as a mistake of fact. The third respondent has filed a protest petition. The closure of the complainant would also give a leverage to the petitioner to not even pay the said sum of Rs.6,000/-. The petitioner must realise that he is always obliged to pay monthly maintenance to the third respondent.

13. The second respondent had passed an order directing the petitioner to pay monthly maintenance of Rs.9,000/-. The petitioner cannot raise any grievance that since he is paying a sum of Rs.6,000/-, he need not pay the maintenance of Rs.9,000/- as directed. As stated earlier, the amount of Rs.6,000/- is distinct and is paid as a condition for grant of anticipatory bail. The amount of Rs.9,000/- is distinct and separate and is paid on an application filed under Sections 4 and 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. This enactment gives the right to a senior citizen or to a parent to seek maintenance from any of their children. The petitioner is the son of the third respondent. Naturally, he has to maintain the third



14. The obligation of the petitioner to pay monthly maintenance amount irrespective of the fact whether there is any other source of income for the third respondent. The monthly pension which is paid is for services already rendered as employee in the Revenue Department. It is not a gratuitous payment but a right of the third respondent. It is only because of such employment that the petitioner was provided with education. The petitioner has to pay maintenance. The authority has determined the quantum at Rs. 1000/- . No argument had been advanced before this Court that the said quantum is high or is low or is not apt.

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the petitioner is paramount and if not paid, the second respondent is at liberty to proceed further in manner known to law to recover the amount together with arrears. I am not inclined to grant any relief to the petitioner herein. The Writ Petition stands dismissed. Consequently, connected Miscellaneous Petition stands closed.

05.12.2024

vsg
Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order

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C.V.KARTHIKEYAN, J.,
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