



CrI.O.P.No.30450 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.O.P.No.30450 of 2024

Kannan

... Petitioner

Vs.

1. Chitra

2. Manivasagam

3. Santhosh Kumar

... Respondents

Prayer: Criminal Original Petition filed under Section 528 of B.N.S.S. to direct the learned Judicial Magistrate, Thittagudi to dispose the case in CrI.M.P.No.1514 of 2024 in M.C.No.02 of 2021 as expeditiously as possible within time frame.

For Petitioner : Mr.D.Ashok Kumar

ORDER

This Criminal Original Petition has been filed by the petitioner to direct the learned Judicial Magistrate, Thittagudi to dispose the case in



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CrI.M.P.No.1514 of 2024 in M.C.No.02 of 2021 as expeditiously as possible

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within time frame.

2. The petitioner is respondent in M.C.No.02 of 2021 on the file of the Judicial Magistrate, Thittagudi. The respondents 1 to 3 herein had filed the Maintenance Case against the petitioner herein seeking maintenance in which, ex-parte order was passed on 30.05.2022 directing the petitioner to pay Rs.5,000/- each to the respondents 1 and 3 towards their medical expenses and Rs.5,000/- to the respondents 1 and 3 towards their monthly maintenance and in total Rs.15,000/- was ordered to be paid to the respondents 1 and 3. Subsequently, the respondents herein, filed an execution petition in CrI.M.P.No.309 of 2022 on 27.01.2023 in which, the petitioner has filed counter and also filed a set aside petition in CrI.M.P.No.1514 of 2024 and still both the petitions are pending. Therefore, the present petition is filed to dispose the case in CrI.M.P.No.1514 of 2024 filed by the petitioner to set aside the ex-parte order.



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3. A perusal of records shows that the respondents filed the maintenance case in M.C.No.02 of 2021 before the Judicial Magistrate, Thittagudi in which, notice was served on the petitioner and the petitioner also entered appearance through counsel. However, till 30.05.2022, the petitioner did not file any counter. Therefore, the learned Magistrate passed ex-parte order on 30.05.2022.

4. The Hon'ble Supreme Court time and again has reiterated that the Magistrates/Family Court Judges have to decide the maintenance case based on the statement of Assets and Liability filed by the parties. Since the maintenance case is a summary proceedings, it does not need any elaborated trial/investigation/enquiry.

5. Admittedly, in this case, the petitioner did not file either counter or Statement of Assets and Liability for about nine months and therefore the Magistrate has passed the ex-parte order. The petitioner is working in Highways Department and he is a salaried person. Though the 1st respondent is



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a poor lady, in the petition itself, the age of the respondents 2 and 3 is mentioned as 25 and 22 years respectively. Even though it is an ex-parte order, the Magistrate should have applied his mind and passed the order.

6. Since the petitioner did not file any counter and also the Statement of Assets and Liability, in order to give an opportunity to the petitioner, the petitioner is directed to deposit the arrears amount of maintenance before the Magistrate within a period of 30 days from the date of receipt of a copy of this order and on such deposit, the Magistrate is directed to dispose of the petition to set aside the ex-parte order in CrI.M.P.No.1514 of 2024 filed by the petitioner, in accordance with law after giving opportunity to both the parties. Failing to deposit the arrears of amount within the stipulated period, this Criminal Original Petition itself shall stand dismissed automatically and the Magistrate shall proceed with the execution petition filed by the respondents to execute the order of the Magistrate dated 30.05.2022 i.e. the so called ex-parte order.



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7. With the above directions, this Criminal Original Petition is disposed

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of.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

The Judicial Magistrate, Thittagudi



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P.VELMURUGAN. J.

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