



Crl.O.P.(MD).No.189 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **18.11.2024**

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).No.189 of 2023

and

Crl.M.P.(MD)No.157 of 2023

S.Selvamoni

... Petitioner

Vs.

B.Selvakumari

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating impugned order dated 12.10.2022 in R.P No. 34 of 2017 on the file of the learned District and Sessions Judge, Kanyakumari and set aside the same as illegal.

For Petitioner : Mr.M.Jerin Mathew

For Respondent : Mr. S.Karthikeyan

ORDER

This Criminal Original Petition has been filed challenging the proceedings of the learned District and Sessions Judge, Kanyakumari, in R.P No. 34 of 2017, dismissing the revision petition by order dated



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12.10.2022, on the ground that the petitioner failed to pay the arrears of maintenance inspite of granting several adjournments.

2. Heard the learned counsel on either side and perused the materials placed on record.

3. The respondent filed a maintenance petition before the Chief Judicial Magistrate, Nagercoil, in M.C.No.31 of 2019. The same was contested and by an order dated 23.08.2017, the petition was allowed and the petitioner was directed to pay a monthly maintenance of Rs.7,000/- from the date of petition.

4. Aggrieved by the above order, the petitioner filed revision petition in R.P.No.34 of 2017 before the District and Sessions Judge, Kanyakumari. During the pendency of the revision, the petitioner was directed to pay the arrears of maintenance. In spite of several adjournments granted, the petitioner did not pay any amount to the respondent. In view of the same, the Court below dismissed the revision petition, by order dated 12.10.2022, only on that ground.



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5. Aggrieved by the same, the present Petition has been filed under Section 482 Cr.P.C.

6. This Court carefully went through the order passed by the Chief Judicial Magistrate, Nagercoil, in M.C.No.31 of 2016, dated 23.08.2017. The Magistrate Court had taken into account the financial wherewithal of the petitioner and had fixed a very reasonable maintenance amount of Rs. 7,000/- per month payable to the respondent. The petitioner did not choose to pay any amount to the respondent. During the pendency of the revision, the Court below was insisting that the petitioner must atleast pay arrears of the maintenance. Since the same was not paid, the Court below has dismissed the revision petition.

7. The learned counsel for the petitioner submitted that non- payment of the arrears of maintenance itself will not take away the right of the petitioner to contest the revision petition on merits.



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8. In the considered view of this Court, matrimonial disputes cannot be dealt with on such hyper technicalities. The petitioner did not show any *bona fides* in this case and did not even pay a single pie to the respondent towards maintenance. Under such circumstances, the Court below was perfectly right in coming to a conclusion that the petitioner after being given opportunity, failed to pay the arrears of maintenance. This Court, exercising its jurisdiction under Section 482 Cr.P.C, does not find the order passed by the Court below to be illegal, warranting its interference.

9. The learned counsel for the respondent submitted that as on date, the arrears has piled up to more than Rupees Six Lakhs. It is left open to the respondent to recover the arrears of maintenance from the petitioner in accordance with law. In the alternative, if the petitioner deposits the entire arrears of maintenance before the Chief Judicial Magistrate, Nagercoil, to the account of M.C.No.31 of 2016 within a period of six weeks from the date of receipt of copy of this order, it is left open to the petitioner to produce the proof before the learned District and Sessions Judge, Kanyakumari, and in which event, the revision petition



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can be restored back on file and it can be decided after affording opportunity to the respondent.

10. In the result, this Criminal Original Petition is disposed of with the above terms. Consequently, connected Miscellaneous Petition is closed.

18.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

LS

To

1. The District and Sessions Judge,
Kanyakumari
2. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Chief Judicial Magistrate,
Nagercoil,

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N.ANAND VENKATESH,J.

LS

Order made in
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