



Crl.R.C.(MD).No.129 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.04.2024

CORAM
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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O.Palpandi

... Petitioner

Vs.

1.N.Vaitheeshwari

2. Minor P.Sevanammal @ Sathana
(the minor 2nd respondent is represented
through his mother, natural guardian/the
1st respondent herein)

3.The Executive Engineer,
TANGEDCO,
Theni,
Theni District.

... Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to revise the order passed in Cr.M.P.No.149 of 2021 in M.C.No.2 of 2021 dated 19.11.2022, by the Family Court, Theni District, forthwith.

For Petitioner : Mr.C.Prithviraj

For Respondents : Mr.M.Shakul Hameed (for R1 and R2)

Mr.B.Ramanathan (for R3)



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ORDER

The petitioner/husband filed this revision challenging the salary attachment order passed in Cr.M.P.No.149 of 2021 in M.C.No.2 of 2021 dated 19.11.2022, by the Family Court, Theni District, filed under Section 128 Cr.P.C.

2.The petitioner is working Wireman in the third respondent department. The petitioner married the first respondent on 13.02.2014. During subsistence of the marriage, the second respondent was born on 11.11.2014. Thereafter, due to matrimonial discord, they are living separately and the petitioner herein filed a petition in H.M.O.P.No.209 of 2015 before the Sub Court, Theni, seeking the relief of restitution of conjugal rights and the same was closed on the ground that there was a compromise between them. Thereafter, the petitioner and the first respondent were living together. All of a sudden, the first respondent left the matrimonial home with the second respondent. Several mediation talks were carried out for the reunion of the petitioner and the first respondent and the same went in vain. Therefore, the petitioner filed divorce petition in H.M.O.P.No.185 of 2019. In spite of several notices, the first respondent has not made appearance. During the pendency of the proceedings in H.M.O.P.No.185 of 2019, the first respondent filed a maintenance case in M.C.No.2 of 2021 before



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the learned Family Court, Theni, claiming maintenance of Rs.20,000/- for her and her female child/second respondent. Thereafter, the said H.M.O.P.No.185 of 2019 was allowed by the Sub Court, Theni, by order dated 01.04.2021. The learned trial Judge, passed an ex-parte maintenance order in M.C.No.2 of 2021, by order, dated 09.09.2021 and granted the maintenance amount of Rs.8,000/- as a monthly maintenance to the first respondent herein and Rs.3,000/- to the second respondent herein. Further, the petitioner has filed a set aside application to restore the M.C.No.2 of 2021 and the same is pending before the learned Family Court, Theni. Subsequently, the first respondent filed a petition in Cr.M.P.No.149 of 2021 under Section 128 of Cr.P.C., and the learned trial Judge had passed the impugned order attaching the salary of the petitioner/husband, by order dated 19.11.2022. Challenging the same, the present petition has been filed by the petitioner/husband.

3.The learned counsel appearing for the petitioner on instructions, submitted that he seeks to set aside the exparte maintenance order passed in M.C.No.2 of 2021 dated 09.09.2021 and pass the order on merits and he is ready to pay a sum of Rs.11,000/- as monthly maintenance as ordered by the learned trial Judge and also requested to dismiss the order of attachment of salary.



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4.The learned counsel appearing for the respondents 1 and 2 has no objection to consider the said request of the petitioner. But, he requested this Court to complete the proceedings, within the prescribed period and to issue further direction and to pay the maintenance of Rs.11,000/- as agreed before this Court till the disposal of the M.C.No.2 of 2021 on merits.

5. This Court considered the above submissions made by the learned counsel appearing on either side and perused the materials available on records.

6. The maintenance proceedings was initiated during the pendency of the divorce petition filed by the petitioner. In the divorce petition in H.M.O.P.No.185 of 2019, she has not appeared. Earlier, the petitioner filed the H.M.O.P.No.209 of 2015 seeking relief of restitution of conjugal rights and the same was closed as there was a compromise to live together. Thereafter, the first respondent left the matrimonial home and the several mediation ended in failure. Therefore, the divorce petition in H.M.O.P.No.185 of 2019 has been filed by the petitioner and the same was allowed on 01.04.2021. Subsequently, she filed the M.C.No.2 of 2021 to claim maintenance and exparte order dated 09.09.2021 was passed with



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direction to pay monthly maintenance of Rs.8,000/- to the first respondent and Rs.3,000/- to the second respondent. Challenging the same, the petitioner filed the petition to set aside the exparte maintenance order. The respondents also filed execution proceedings. In the execution proceedings, the learned trial Judge had passed the Garnishee order for attachment of salary of the petitioner. When the petition to set aside the ex-parte award is pending, attachment of the salary without issuing a direction to the petitioner to pay the maintenance is not correct. Before this Court, the petitioner undertakes to pay a sum of Rs.11,000/- per month till the decision of the Court below in M.C.No.2 of 2021 on merits. Therefore, this Court is inclined to dispose of the revision case on terms.

7. Accordingly, this Criminal Revision Case stands disposed of with the following terms:

(i) the order passed in Cr..M.P.No.149 of 2021 in M.C.No.2 of 2021 dated 19.11.2022, by the Family Court, Theni District, is hereby set aside on condition to pay a sum of Rs.88,000/- on or before 30.08.2024.

(ii) the expate order passed in M.C.No.2 of 2021 dated 09.09.2021 is hereby set aside; with condition to pay monthly maintenance of Rs.11,000/- to the respondents.



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(iii) the learned Judge, Family Court, Theni District is hereby directed to dispose the case in M.C.No.2 of 2021 within a period of six months from the date of receipt of a copy of this order.

(iv)The petitioner is directed to appear before the trial Court and cooperate for disposal of the above maintenance in M.C.No.2 of 2021.

(v) in the event of failure to comply with the condition, the exparte order passed in M.C.No.2 of 2021 dated 09.09.2021 and the salary attachment order passed in Cr.M.P.No.149 of 2021 dated 19.11.2022 will be restored.

17.04.2024

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

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To

1. The Family Court,
Theni District.
2. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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