

Crl.O.P.(MD) No.3921 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2025

CORAM

THE HONOURABLE MR.JUSTICE P.DHANABAL

CRL. OP(MD). No.3921 of 2025

and

Crl.M.P(MD)No.2758 of 2025

M.Subramanian

... Petitioner

Vs.

S.Ananthi

... Respondent

PRAYER: Criminal Original Petition filed under Section 528 of BNSS to call for the records relating to the set aside the order dated 30.09.2024 in Crl.R.c.No.12 of 2023 on the file of the learned II Additional District and Sessions Judge, Thoothukudi confirmed by the order dated 24.05.2023 in Cr.M.P.No.5791 of 2023 in M.C.No.02 of 2022 on the file of the learned Judicial Magistrate No.II, Kovilpatti and set aside the same as illegal and consequently direct the learned Judicial Magistrate No.II, Kovilpatti to restore MC No.2 of 2022

For Petitioner : Mr.M.Prabu

For Respondent : Mr.P.Ramesh



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ORDER

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This petition has been filed to set aside the order passed by the learned Additional District and Sessions Judge, Thoothukudi in Crl.R.C.No.12 of 2023 by confirming the order passed by the learned Judicial Magistrate No.II, Kovilpatti in Cr.M.P.No.5791 of 2023 in M.C.No.02 of 2022 dated 24.05.2022

2. The learned counsel appearing for the petitioner would submit that the petitioner is the husband of the respondent and their marriage was solemnized on 04.09.2019 and after marriage a male child was born to them on 11.04.2021. Due to some dispute between the petitioner and the respondent the respondent made a complaint before the respondent police and the petitioner also filed a case in HMOP No.320 of 2021 and the same is pending before the Sub Court, Kovilpatti. Whiles the respondent filed a case in M.C.No.2 of 2022 before the Judicial Magistrate Court No.II, Kovilpatti seeking maintenance and the Court has also directed the petitioner to pay a sum of Rs.30,000/- as maintenance to the respondent and her son by setting the petitioner exparte. Due to jaundice the petitioner was unable to participate in the MC proceedings, thereby the



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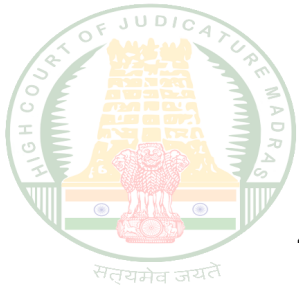
learned Magistrate No.II, Kovilpatti passed order by directing the petitioner to pay a sum of Rs.30,000/- as monthly maintenance to the respondent and her son . The petitioner also filed petition in Cr.M.P.No. 5791 of 2023 in MC No.2 of 2022 with a delay of 150 days seeking to set aside the exparte order passed by the learned Judicial Magistrate No.II, Kovilpatti and the learned Magistrate allowed the petition on condition to pay half of the amount as per the order passed in MC No.2 of 2022. The said order was challenged before the II Additional District and Sessions Judge, Thoothukudi in CrI.R.C.No.12 of 2023 and the learned Judge also confirmed the order passed by the learned Magistrate on 24.05.2023. Now the petitioner is challenging the said order. Infact the trial court passed an exparte order without hearing the petitioner and no any opportunity was given to the petitioner and the petitioner is unable to pay the huge amount and he is only running tea stall and his income his below Rs.10000/- per month, therefore payment of Rs.30,000/- per month is too high. The learned Magistrate without considering the same directed to deposit 50% of the amount and the Sessions Court also without considering the capacity of the petitioner dismissed the petition by confirming the payment of 50% of the amount. The petitioner has already paid Rs. 3,60,000/- for the pending arrears amount. While so the respondent filed



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petition before the learned Judicial Magistrate No.II, Kovilpatti, therefore the order passed by the trial court is liable to be set aside.

3. The learned counsel appearing for the respondent would submit that the petitioner deserted the respondent and her son and had not given any maintenance, thereby she filed a maintenance case in MC No. 2 of 2022 before the trial court and the same was allowed and the trial Court passed order directing the petitioner to pay a sum of Rs.30,000/- per month for the respondent and her son. The respondent also filed application in Cr.M.P.No.2051 of 2023 to execute the order passed by the learned Magistrate. after issuance of warrant against the petitioner he filed petition in Cr.M.P.No.5791 of 2023 for condoning the delay of 130 days in filing the said application to set aside the exparte order and the trial Court also ordered to pay 50% of the amount and allowed the petition. Against the same the petitioner filed revision before the Sessions Court and the same was also dismissed and as on date the arrears of amount is Rs.11,10,000/-and the petitioner already paid a sum of Rs.3,60,000/-and the remaining amount is Rs.7,50,000/- and therefore the petition is liable to be dismissed



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4. Heard both sides and perused the materials available on record.

5. According to the petitioner the respondent filed maintenance case in MC No. 2 of 2022 and the same was allowed by setting the petitioner set exparte. Therefore the petitioner filed petition to set aside the order along with Section 5 application to condone the delay of 130 days and the same was allowed on condition to deposit 50% of the amount and the petitioner has already paid a sum of Rs.3,60,000/- and the same was also admitted by the respondent . The trial Court has also directed to deposit 50% of the arrears amount and the arrears of amount is Rs.11,10,000/-.As per the direction of the trial Court Rs.5,50,000/- has to be paid by the petitioner and already the petitioner has paid a sum of Rs.3,60,000/-

6. Since the order passed by the trial Court is an exparte order and the trial Court has ordered to pay the entire maintenance amount as sought for by the respondent and the petitioner has already paid a sum of Rs.3,60,000/-, therefore it is appropriate to allow the petition by directing the petitioner to pay another sum of Rs.40,000/-, in total a sum of Rs.4,00,000/- to the respondent.



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7. Accordingly, this petition is partly allowed and the order passed by the learned Magistrate in Cr.M.P.No.5791 of 2023 as confirmed by the II Additional District and Sessions Judge, Thoothukudi in Crl.R.C. No.12 of 2023 is modified in respect of quantum of money to the effect that the petitioner shall deposit a total sum of Rs.4,00, 000/- after deducting the payment of Rs.3,60,000/- already deposited before the trial Court i.e.,Rs. 40,000/- within a period of two months from the date of receipt of a copy of this order. Consequently connected miscellaneous petition stands closed.

17.04.2025

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

To

1. The Additional District and Sessions Judge, Thoothukudi
2. The Judicial Magistrate No.II, Kovilpatti
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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