



Crl.M.P.(MD)No.6564 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.02.2025

Pronounced on : 14.02.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.M.P.(MD)No.6564 of 2024
in Crl.R.C.(MD)SR.No.19553 of 2024
and
Crl.R.C.(MD)SR.No.19553 of 2024

M.Palanikumar

... Petitioner

Vs.

1.P.Kalaiselvi

2.Minor P.Gowshikan

represented by her mother the first respondent
as his Guardian

...Respondents

Prayer in Crl.M.P.(MD)No.6564 of 2024 : The Criminal Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 974 days of filing the present criminal revision petition against the order made in M.C.No.76 of 2016 dated 08.07.2019 on the file of the learned Family Court, Madurai.



Crl.M.P.(MD)No.6564 of 2024

WEB COPY

Prayer in Crl.R.C.(MD)No.SR19553 of 2024 : The Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records and set aside the order dated 08.07.2019 in M.C.No.76 of 2016 on the file of the learned Family Court, Madurai and to allow the criminal revision petition.

(in both cases)

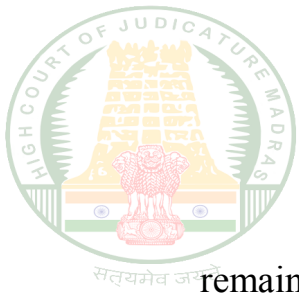
For Petitioner : Mr.P.Aju Tagore

For Respondents : Mr.S.Balasubramanian

COMMON ORDER

The Criminal Miscellaneous Petition has been filed seeking orders to condone the delay of 974 days in filing the criminal revision, challenging the order made in M.C.No.76 of 2016 dated 08.07.2019 on the file of the Family Court, Madurai.

2. It is not in dispute that the marriage between the petitioner and the first respondent was solemnized on 05.06.2011 and due to their wedlock, they were blessed with a son/second respondent herein. It is also not in dispute that the petitioner has earlier filed a petition seeking restitution of conjugal rights in H.M.O.P.No.36 of 2013 on the file of the Subordinate Court, Ramanathapuram and since the first respondent

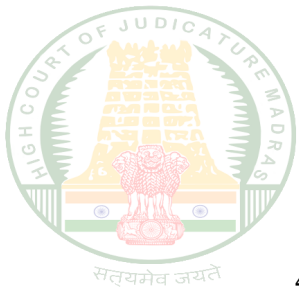


Crl.M.P.(MD)No.6564 of 2024

WEB COPY

remained *ex-parte*, an *ex-parte* order came to be passed on 23.03.2013 and that subsequently the petitioner filed a divorce petition in H.M.O.P.No.115 of 2014 on the file of the Subordinate Court, Ramanathapuram, wherein also, since the first respondent remained *ex-parte*, an *ex-parte* order came to be passed on 26.08.2015. It is also not in dispute that subsequently the respondent has filed an application for setting aside the *ex-parte* order passed in H.M.O.P.No.115 of 2014 and the same came to be allowed and that thereafter since the petitioner has not turned up, the divorce petition came to be dismissed for default.

3. The first respondent has then laid a maintenance claim in M.C.No.76 of 2016 before the Family Court, Madurai for herself and on behalf of her minor son under Section 125 Cr.P.C. and that the petitioner has entered into appearance and filed his counter affidavit. Since the petitioner remained *ex-parte*, subsequently, the learned Judge of Family Court has passed an order dated 08.07.2019 directing the petitioner to pay monthly maintenance of Rs.5,000/- to the first respondent and Rs.3,000/- to the second respondent, totalling Rs.8,000/- from the date of petition.

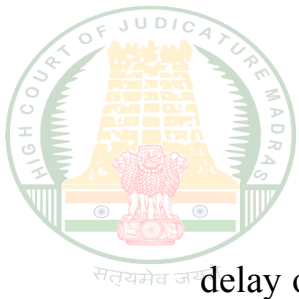


Crl.M.P.(MD)No.6564 of 2024

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4. It is also not in dispute that since the petitioner has not paid the maintenance amount as directed by the Family Court, Madurai, the respondents have filed a petition in Crl.M.P.No.14 of 2020 under Section 128 Cr.P.C., that since the petitioner has failed to appear before the Court, Bailable Warrant, Dstraint Warrant and Non-Bailable Warrant came to be issued and subsequently he was arrested and subsequently came out on bail on payment of Rs.1,00,000/- and filed an affidavit undertaking to pay remaining amount on or before 15.03.2024 and that since the petitioner has not appeared in the subsequent hearings, Non-Bailable Warrant was ordered to be issued again and is pending as of now.

5. The case of the petitioner is that after the *ex-parte* order passed in the maintenance case, entire world put into Covid-19 infection and hence, the State and Central Government had passed several restrictions for transportation and other things and as such, he was unable to contact his Advocate to proceed with the case, that subsequently Thiruvadanai Police arrested him by executing the warrant issued in Crl.M.P.No.14 of 2020 and at that time, he came to know that he was set *ex-parte*, that there occurred delay of 974 days in filing the revision challenging the said order, that the



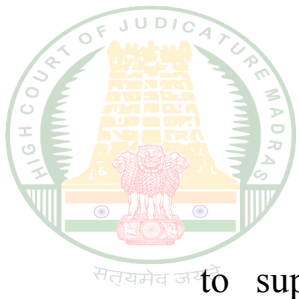
Crl.M.P.(MD)No.6564 of 2024

WEB COPY

delay occurred is neither willful nor wanton and that the petitioner will be put to irreparable loss and hardship, if the delay is not condoned.

6. The first respondent has filed an elaborate counter narrating everything what had happened till now.

7. The defence of the respondents is that the petitioner has not shown any valid reasons or grounds for filing the revision with an inordinate delay of 1664 days, that the petitioner alone had abandoned his wife and minor son without giving any maintenance to them and filed the above petition to escape from the clutches of law that is pending Non-Bailable Warrant against him before Thiruvadanai Police Station and only to drag on the proceedings and to avoid the payment of arrears even after the expiry of 5 years since the date of order, that the petitioner contracted second marriage by suppressing his first marriage and is living comfortably with the second wife in his native place, that the first respondent and her minor son, who is now studying 6th standard, are suffering as it was unable to afford to their day to day livelihood and maintenance, that the first respondent's aged parents are not in a position



Crl.M.P.(MD)No.6564 of 2024

WEB COPY

to support them, that total arrears of maintenance calculated upto November 2024 comes to Rs.7,24,000/- and that therefore the above petition is liable to be dismissed.

8. It is evident from the records that the petitioner after his arrest paid sum of Rs.1,00,000/- and thereafter he has not paid anything. It is pertinent to note that though the petitioner has filed an affidavit undertaking to pay the balance amount on the next hearing date, he has failed to appear for the subsequent hearing dates and hence, the Family Court has issued Non-Bailable Warrant and the same is pending execution.

9. When the matter came up for hearing on 05.02.2025, this Court queried whether the petitioner was willing to deposit any portion of the amount due. The learned counsel appearing for the petitioner sought time to obtain instructions. However, when the matter was taken up for hearing on 07.02.2025, the learned counsel appearing for the petitioner submitted that the petitioner was not willing to pay the balance amount due.

10. According to the learned counsel appearing for the respondents,



Crl.M.P.(MD)No.6564 of 2024

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the petitioner has not chosen to file any application for setting aside the *ex-parte* order passed in the maintenance case before the Family Court and after the delay of more than five years, he approached this Court with the present revision along with delay condonation petition. Except Covid-19, the petitioner has not offered any other valid reason or ground for the delay, which is inordinate.

11. Considering the above facts and circumstances and taking note of the conduct of the petitioner and in the absence of any valid reason or explanation for the inordinate delay, this Court has no hesitation to hold that the above petition is absolutely devoid of merits and the same is liable to be dismissed.

12. In the result, this Criminal Miscellaneous Petition is dismissed. Consequently, CrI.R.C.(MD)SR.No.19553 of 2024 is rejected at SR stage itself.

14.02.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
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Crl.M.P.(MD)No.6564 of 2024

K.MURALI SHANKAR,J.

csn

To
1.The Judge, Family Court,
Madurai.

Pre-Delivery Order made in
Crl.M.P.(MD)No.6564 of 2024
in Crl.R.C.(MD)SR.No.19553 of 2024
and
Crl.R.C.(MD)SR.No.19553 of 2024

Dated : 14.02.2025