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CrI.R.C.No.84 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.02.2024
PRONOUNCED ON : 01.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.84 of 2024 and
CrI.M.P.No.683 of 2024

R.David @ Tamilvanan

... Petitioner

Vs.

1.G.Premalatha

2.Baby Tamil Smitha,

Rep. by her Mother and Next friend Tmt.G.Premalatha,

D/o.Gajendran,

Both are residing at,

No.7, Kamarajar Nagar,

Thirumangalam, Anna Nagar West,

Chennai 600 040.

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 28.08.2022 in M.P.No.685/2021 in M.C.No.526/2019 on the file of learned III Additional Principal Family Court at Chennai.

For Petitioner : Mr.S.L.Venkatesan

For Respondents : Mr.K.Shankar

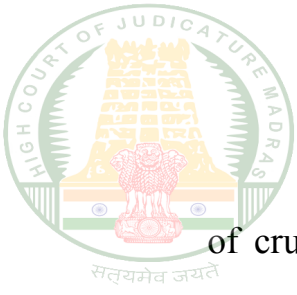


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ORDER

WEB COPY The petitioner filed this criminal revision case to set aside the order, dated 28.08.2022 in M.C.No.685 of 2021 in M.C.No.526 of 2019 passed by the learned III Additional Principal Judge, III Additional Principal Family Court at Chennai.

2.The case is that on 12.05.2011, the petitioner between the petitioner and the 1st respondent was solemnized as per Christian Marriage Act. Thereafter, they were living as husband and wife in the petitioner's house. The 1st respondent was unable to withstand the ill-treatment given by the petitioner's mother. Despite the same, the 1st respondent tolerated to protect the matrimonial life. The 1st respondent got conceived and she went to her parental home for delivery of the child, the 2nd respondent viz., Baby Tamil Smitha was born to them on 29.01.2012. The petitioner informed that he would find a new home and would take the respondents, since it was not possible for the respondents to live in a cordial atmosphere with the petitioner's mother. The petitioner filed divorce petition in I.D.O.P.No.42 of 2014 before the learned Principal District Judge, Thiruvallur on the ground



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of cruelty. The 1st respondent denied the allegations and also sought for reunion. During the month of July 2016, the petitioner informed the 1st respondent that he would withdraw the divorce case and take back the respondents along with him immediately after identifying a separate home. In the meanwhile, the petitioner was visiting the respondents occasionally and later, the petitioner failed to visit them and take care of them. The respondents went to the petitioner's house where they were prevented by the petitioner's mother informing that there is no relationship between them as husband and wife and an exparte order in I.D.O.P.No.42 of 2014 was decreed on 29.01.2016.

3.The 2nd respondent is now studying in M/s.Jessy Moses School, Anna Nagar and the 1st respondent had to meet out the fee around one lakh apart from uniform, books and transport charges and others expenses. The 1st respondent having no source to support the 2nd respondent, filed a maintenance petition in M.C.No.526 of 2019. The petitioner is employed in Southern Railway as Senior AC Technician having monthly income of Rs.55,000/- to Rs.60,000/-. In the said maintenance case, the petitioner was set exparte on 03.02.2020. The Family Court awarded the decree against the



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petitioner directing to pay maintenance of Rs.15,000/- per month from 30.08.2019. Thereafter, the respondents filed a petition seeking attachment of the petitioner's salary in M.P.No.380 of 2022. On 14.10.2022, the attachment was ordered. In the meanwhile, the petitioner filed M.P.No.685 of 2021 under Section 126(2) Cr.P.C., to set aside the exparte order in M.C.No.526 of 2019, dated 30.02.2022. The Family Court passed conditional order on 23.12.2021 directing the petitioner to pay a sum of Rs.2,25,000/- on or before 27.01.2022. But this conditional order was not complied with. Instead the petitioner filed a petition to set aside the conditional order. Since the conditional order was not complied, the request of the petitioner was rejected by order, dated 28.08.2022, against which, the petitioner filed the above Criminal Revision Case.

4.The learned counsel for the petitioner submitted that the Family Court not considered the COVID-19 period and the delay in complying with the order. Added to it, the petitioner met with an accident on 06.12.2021 and took treatment at Government Hospital, Poonamallee and thereafter for further treatment at MIOT International Hospital as inpatient. To substantiate the same, the petitioner produced the copy of the FIR in Crime



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No.967 of 2021 and the medical records of MIOT International Hospital to show that the petitioner took treatment as inpatient from 06.12.2021 to 22.12.2021 and also continued treatment as outpatient.

5.The learned counsel further submitted that the petitioner was not aware about the exparte order passed in M.C.No.526 of 2019 and no notice was served to him. On 02.08.2021, the 1st respondents along with four others trespassed into the house of the petitioner, threatened the petitioner's parents and his brother and forced them to settle the house property of the petitioner and also demanded Rs.25,00,000/- immediately leaving the 2nd respondent in the petitioner's house and lodged a complaint as though the petitioner kidnapped the minor child. At that time only, the petitioner came to know about the exparte maintenance order. On 03.08.2021, he lodged a complaint to the Police and CSR assigned. The petitioner and the respondents called for enquiry and both were advised to approach the Family Court to seek their remedy. After gaining knowledge about the exparte order in M.C.No.526 of 2019, the petitioner filed Crl.M.P.No.685 of 2021 to set aside the exparte order and the order came to be passed on 23.12.2021. In the meanwhile, as stated above, the petitioner met with an accident and



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took treatment as inpatient from 06.12.2021 to 22.12.2021. For that reason only, the petitioner could not comply with the conditional order.

6.He further submitted that on 20.12.2023, the petitioner deposited the cheque bearing No.662448, dated 20.12.2023 for a sum of Rs.1,00,000/- Due to the injury sustained, his routine life is in a disarray, the petitioner was not sure about the balance in his bank account. When the petitioner received information from the bank, there is no sufficient funds to honour the cheque of Rs.1,00,000/-. Immediately, on 21.12.2022, the petitioner took a demand draft bearing No.869457 for Rs.1,00,000/- and presented the demand draft before the Family Court. The Family Court refused to receive the same since the cheque of the petitioner earlier got dishonoured and finding, the order of the Family Court not complied with. The petition of the petitioner dismissed. The petitioner unable to comply with the conditional order due to mistake not by wanton which was not considered by the Family Court.

7.He further submitted that the petitioner filed divorce petition in I.D.O.P.No.42 of 2014 on the ground of cruelty and an exparte order passed on 29.01.2016. Challenging the same, the 1st respondent filed CMA with a



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delay of 1,078 days and this Court, by judgment, dated 17.07.2019

dismissed the same and the divorce granted attains finality as on date. The petitioner produced the pay slip showing that his gross pay is around Rs.73,967/- and recoveries including the Court attachment of Rs.25,000/- is Rs.56,380/-.

8.It is further submitted the petitioner is in need of continuous medical treatment for the head injury suffered due to accident and sustained huge expenditure. Added to it, the petitioner has to take care of his aged parents and meet their expenditure. He also availed loan from his salary and after deduction from salary and the expenditures, he is getting a meager income. If the attachment of his salary continues, the petitioner will receive meager income and it will be difficult for him to maintain his day to day life. If the exparte order is set aside, he can put forth his case and explain the reasons for the respondents' voluntarily leaving the matrimonial home. He further submitted that the Family Court passed the conditional order setting aside the exparte order in the maintenance case for the reason that the petitioner to be given a fair chance to defend his case. In view of the above, the petitioner's fair chance is denied. Hence, prayed for setting aside the order



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passed in M.P.No.685 of 2021 in M.C.No.526 of 2019, dated 23.12.2021
and 28.08.2022.

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9. The learned counsel for the respondents submitted that the petitioner filed this criminal revision case with a delay of 146 days. At the stage of admission, the learned counsel for the respondents narrated the sequence of events and submitted that the petitioner had been deliberately and wantonly delayed the payment of the maintenance amount. The petitioner in a deceitful manner obtained ex parte order of divorce and taking advantage of the same, he completely disowned both the respondents. He further submitted that the 1st respondent filed a petition in M.P.No.380 of 2022 in M.C.No.526 of 2019 seeking to attach the petitioner's salary for non-compliance of the maintenance order. On 14.10.2022, the Family Court ordered attachment of salary, thereafter only, the petitioner filed the present petition. The 1st respondent is not averse to set aside the ex parte order provided petitioner's complies to the conditional order. This Court, by order, dated 05.01.2024 directed the petitioner to deposit Rs.1,00,000/- by way of demand draft and the 1st respondent to withdraw the same. It is reported that the petitioner complied with the order of this Court, dated 05.01.2024.



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11.Considering the submissions and on perusal of the materials, it is seen that the petitioner met with an accident on 06.12.2021 and took treatment as inpatient in MIOT International Hospital from 06.12.2021 to 22.12.2021 and further visits hospital for continuous treatment due to serious head injury which needs regular medical care. Though there was some delay in compliance with the conditional order by the petitioner, in view of the above, the same is condoned. In this case, the petitioner already deposited Rs.1,00,000/-.

12.In view of the above, the petitioner is directed to deposit the balance amount of Rs.1,25,000/- within a period of two months, from the



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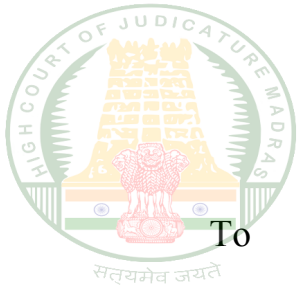
date of receipt of a copy of this order. The exparte order passed in M.C.No.526 of 2019, dated 03.02.2020 is hereby set aside and consequential orders passed thereto are also set aside. The petitioner is directed to pay a sum of Rs.5,000/- each to the 1st & 2nd respondents in total Rs.10,000/- towards interim maintenance every month on or before 5th day of every English calender month till the final order is passed in M.C.No.526 of 2019. Of course, after giving opportunity to both the petitioner and the respondents to put forth their case.

13.In the result, this Criminal Revision Case stands allowed. The learned III Additional Principal Judge, III Additional Principal Family Court at Chennai is directed to complete the maintenance case in M.C.No.526 of 2019 as expeditiously as possible. The petitioner and the respondents are directed to cooperate for speedy disposal of the maintenance case. Consequently, the connected Miscellaneous Petition is closed.

01.03.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

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The III Additional Principal Judge,
III Additional Principal Family Court at Chennai.

M.NIRMAL KUMAR, J.

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