

IN THE COURT OF III ADDITIONAL PRINCIPAL FAMILY COURT AT CHENNAI

Tmt. V. Thenmozhe, B.Sc., M.L.,

III Additional Principal Judge

Friday, the 19<sup>th</sup> day of July 2024

M.P.No. 226 of 2023

in

M.P.No. 731 of 2021

in

M.C.No.195 of 2021

1. Shilaja T R

... 1<sup>st</sup> Petitioner/De-facto

2. Shreya Ajeesh

... 2<sup>nd</sup> petitioner/De-facto

-Vs-

Ajeesh Kumar S

... Respondent/Accused

This petition coming on 18.07.2024 for final hearing before this court in the presence of the petitioner and the respondent, upon perusing the petition, counter and other connected material papers and having stood over for consideration till this day, this court delivered the following:-

**ORDER**

This petition has been filed under Section 195 (1) (b) (i) r/w Section 195 of the Code of Criminal Procedure, 1973, praying an order to conduct a preliminary enquiry in accordance with Section 195 (1) (b) (i) r/w Section 340 of the Code of Criminal Procedure, 1973 and refer to complaint to the jurisdictional first class judicial magistrate.

2) The averments contained in the petition, in brief, are as follows: -

The 1<sup>st</sup> petitioner submit that she has approached this court for divorce under the grounds of cruelty and the same has been numbered as O.P.No.2165

V. Anne  
19/7/24



of 2020 which is pending at the stage of enquiry. She unable to maintain herself and her daughter and filed a maintenance case and a interim maintenance case. The maintenance case came to be numbered as M.C.No.195 of 2021 and the counter has been filed by the respondent. The two miscellaneous applications are pending in the maintenance case which have been filed by the respondent. The interim maintenance case came to be numbered as M.P.No. 731 of 2021 in M.C.No.195 of 2021 and orders have been passed in the petition vide order dated 16.11.2022. This court was pleased to pass an order directing the respondent to pay a sum of Rs.30,000/- per month to the 1<sup>st</sup> petitioner complainant and a sum of Rs.15,000/- to the 2<sup>nd</sup> petitioner complainant. This court was pleased to direct the respondent to pay a sum of Rs.50,000/- towards litigation expenses. The respondent has filed a false frivolous application to cancel the said order which is pending on file of this court. The respondent is yet to pay a single penny towards the said order and she is filing separate applications towards enforcement of the order for interim maintenance.

The petitioner constrained to file this application for perjury as the respondent has deliberately mislead this court with an intent to interfere with the administration of justice by submitting false evidence and making false statements on oath in his affidavit of assets. She submit that a clear prima facie case has been made out as against the respondent and it has been recorded in the order passed this court in M.P.No. 731 of 2021 in M.C.No.195 of 2021. She further submit that in paragraph 9 of the order, this court has passed the following finding which is extracted herein below:-

“ Para 9: The respondent has also filed the documents along with the affidavit of assets and liabilities. On perusal of the same and the respondent is earning a sum of Rs.19,354/- whereas the 1<sup>st</sup> petitioner is working in farwood industries limited and earning a sum of Rs.70,000/- per month. The respondent has averred in his affidavit of assets and liabilities in para a that his total

V. Dhanu  
19/11/24

monthly expenses comes around Rs.1,71,495/-. When the respondent earns a sum of Rs.19,354/-, it is impossible to spend a sum of Rs.1,71,495/-. It clearly shows that the income disclosed by the respondent in his affidavit of assets it is not true and correct. The respondent has not filed his 3 years bank statement. The respondent filed his income tax statement for 2021-2022 where his total income showed is Rs.2,32,350/-. Based on income tax returns filed by the respondent, the maintenance cannot be ordered. The income tax returns is not conclusive proof, in order to evade paying the income tax the respondent would have showed his income minimally. Admittedly, the respondent has not filed his bank statement to show his monthly income and his sources. The respondent has stated that he is ready and willing to bare the expenses of the minor daughter. The respondent has alleged that the petitioner is employed and she is working but to prove the same has not produced any document before this court. The respondent has contended that the petitioner had suppressed her income and she is leading an adulterous life.

The question of adultery cannot be decided at this stage and the same will be decided in the main M.C. It is premature to decide the said point in this petition. The respondent is legally as well as morally bound to maintain the petitioners. On perusal of the entire averments made in the petition and counter it can be inferred that the petitioner is suffering immensely without any sufficient means of income. On the other hand, the respondent is earning enough money to support the petitioners financially. The petitioner has established the source of income of the respondent and his financial capacity. The respondent is having enough source of income to pay maintenance to the petitioners. The respondent escape from his liability. The respondent has neglected to maintain the petitioners. While awarding the interim maintenance the court has to consider the status of the parties which they have leads when they lived together. The respondent is duty bound to provide food, cloth, shelter,

V. Dinnu  
19/07/24

medical expenses, household expenses to the petitioner. The respondent has neglected to maintain the petitioners. Accordingly point 1 and 2 are answered.”

The petitioner submit that as rightly observed by this court the respondent has lied in his affidavit of assets about his income. An undertaking has been given by the respondent in his affidavit of assets that he consents to criminal prosecution if it is found that he is submitting false statements and evidence before this court. The respondent has voluntarily and deliberately played a fraud on this court by misleading this court and has in turn affected the administration of justice. The conduct of the respondent throughout the proceedings has been nothing but criminal. The respondent has given an undertaking in his affidavit of assets that he will be held liable for criminal prosecution if he fails to disclose the truth. A clear prima facie case has been established as against the respondent and hence she is constrained to file this petition before this court seeking reference to a first class judicial magistrate having jurisdiction to entertain this complaint. Hence the petition.

**3) The averments contained in the counter, in brief, are as follows: -**

The respondent denies all allegations and averments made in the petition thereupon except those that are specifically admitted hereunder and put the 1<sup>st</sup> petitioner strict proof of the same. He undertake to filing a revised/ updated affidavit of assets and liabilities reflecting the discrepancies through no fault of him but by the oversight of his previous counsel and he has only bonafide intentions towards this Hon'ble Court and to bring the true and circumstances before this Hon'ble Court.

The respondent submit that the statements made in Para 1, 2 and 3 are matters of record and need no specific denial unless the same is untrue and that which is admitted herein below. In para no.4 the 1st Petitioner has stated that she has filed O.P.No.2165 of 2020 for divorce on the grounds of cruelty and the

V. Dhanu  
19/11/24

said petition itself is not maintainable and that this Court does not have the jurisdiction to entertain the same and the correct jurisdiction is the Alandur Court wherein there is already a case pending as O.P. 1351 of 2021. The 1<sup>st</sup> Petitioner has stated that there are 2 Miscellaneous Petitions which has been filed by respondent and that he wish to bring it to knowledge of this Hon'ble that there is one I.A No. 114 of 2023 filed under section 127 of CRPC and puts the 1<sup>st</sup> Petitioner of strict proof of the second Miscellaneous Petition which is mentioned therein. The 1<sup>st</sup> Petitioner mentioned that respondent filed a false and frivolous application to cancel the interim order in M.P.No.731 of 2021 and he shall defend those averments in that application and reserve his right herein and wish not to mislead the court although it might be the intention of the 1st Petitioner. The 1st Petitioner stated that respondent yet to pay a single penny but he has paid Rs.3,00,000/- (Rupees Three Lakhs Only) until this date and due to the adulterous nature and valid second marriage of the 1st Petitioner, The respondent has filed a Petition under sec. 127 of CRPC, 1973 and the same is awaiting for orders.

In para No.5 the 1st petitioner has stated that respondent has filed false evidences and am making false payments on his oath in the Affidavit of Assets and Liabilities. M.P.No.731 of 2021 was not sent by his erstwhile counsel for his review and the signature on the document is not mine. Orders were passed in M.P.No.731 of 2021 on 16.11.2022 after lengthy arguments and he changed his counsel as his erstwhile counsel had filed an adaptation memo without respondent's consent. He further submit that the Order copy was submitted back to the Hon'ble Judge highlighting that the section mentioned in the Order was wrong and the date of filing the petition was incorrectly mentioned as 19.04.2021 whereas the M.P.No.731 of 2021 was filed only on 12.11.2021 and till date the order has not been modified reflecting the change in the period. The

V. Dhanu  
19/11/24

income calculations mentioned need clarification. The respondent is a small scale self employed businessman running business with the help of loans and he work in different verticals based on opportunities (Electrician, Plumber, Fabricator, Driver, Salesman, Milkman) to run his livelihood and repay to the debts incurred. He is only a school graduate and run a grocery store which is also running into losses as he has to keep it closed for a minimum of 10 days per month due to the multiple cases in different jurisdiction filed by the 1<sup>st</sup> Petitioner against respondent. He wish to bring to this Hon'ble Court's attention that my highest salary drawn in the year 2018 was Rs.63,000/- per month. He has not manipulated or suppresses his income tax returns and he has suffered heavy losses during the Covid period. He is a self-employed business person and not a salaried person and he suffered financially in 2020 and 2021 as he had to repay the bank loans after 6 months moratorium period and he relied heavily on private financiers who by paying high interest rates. He submit that since he am a self-employed business person my income is calculated only after deducting he expenses including business loans and not as a salaried person as envisioned by the 1st Petitioner. Rs.3,00,000/- paid by respondent in compliance with this Hon'ble Court's Order in M.P. 731 of 2021 was from a loan taken from Bajaj Finance and the 1st Petitioner has wantonly deceived this court by inflating his income and portraying respondent to have wealth in excess whereas He is struggling to even make both ends meet. He is only a stakeholder in the business and he is not the sole owner. The 1st Petitioner shows respondent in a bad light that he wilfully have suppressed my income and expenditures and he wish to state that he has no intention to do the same and undertake to filing a revised/ updated affidavit of assets and liabilities reflecting the discrepancies through no fault of mine but by the oversight of my previous counsel. He is herewith filing the relevant bank statements and income tax returns for the

V. D. D. D.  
19/1/24

attention of this court and he will file a revised/ updated affidavit of assets and liabilities in due course.

That this CrI.M.P. is filed under Section 195(1)(b)(i) r/w Sec.340 of CRPC 1973 and this section is not applicable to a private party but its applicable to prosecution for contempt of lawful authority of public servants for offences against public justices and for offences relating to documents given in evidence. That the object and scope of this section is to prevent the improper and reckless prosecutions by private persons for offences in connection with administration of public justice and those relating to the contempt of lawful authority of public servants. The respondent neither a public servant nor a lawful authority and neither administer the public justice. As per section 21 Of the IPC which defines Public Servant he submit that he do not fall any of the 12 categories and this only goes on to show that the 1st Petitioner is a habitual litigation monger and is set out to misuse the law on the only ground of the fact that she is considered by the law as socially weaker section of the society. He submit that he is harassed by needless applications and litigations not only before Court in Alandur and Kerala. It is also a fact that the nature of the 1st petitioner which is dubious and she cannot seek any legal remedies from the Hon'ble Courts when she herself is a guilty party and a bad parent to my 14 year old daughter who is unfortunately exposed to such litigations and the daily adulterous life of the 1st Petitioner. Therefore on these grounds alone this Petition needs to be dismissed with costs such that it a deterrent to the 1st Petitioner not to take the law into her own hands and moreover not to treat the legal system as a folly, since the remedy is available to those who deserve it, which is not the case for the 1st Petitioner. . He submit that his erstwhile advocate had not defended him to the fullest and although he submitted to him the correct details there upon and also his three years bank statements the same was not filed by him and that he was made to

V. Dhanu  
19/7/24

sign only on the declaration and this is the reason why he had to change his advocate in the hope that his case is defended to the fullest extent possible.

The respondent submit that that the 1st Petitioner has filed another vexatious case numbered as M.C. 27 of 2023 U/s 13(1) of the Protection of Women from Domestic Violence Act, 2005 against his mother, brother, brother's wife and respondent, in Pattambi, Kerala and the first hearing was on 09.05.2023 and he appeared but the 1<sup>st</sup> Petitioner remained absent. He submit that that the address mentioned for the 1<sup>st</sup> Petitioner in the summons and Petition is the same as the address mentioned in the passport of Mr.Harish Menon (second husband of the 1<sup>st</sup> Petitioner). It shows the adulterous and cruel nature and the misuse of the legal system by the 1<sup>st</sup> Petitioner. Hence the petition may be dismissed.

4) Point for consideration is :

Whether the complaint of the petitioner is to be referred to the jurisdictional Magistrate Court ?

5) On Point :-

The petition is to conduct a preliminary enquiry in accordance with Section 195 (1) (b) (i) r/w Section 340 of the Code of Criminal Procedure and refer to complaint to the jurisdictional first class judicial magistrate for the act of perjury allegedly committed by the respondent.

6) The petitioner/wife has filed the present petition. The respondent/husband was given an opportunity to resist the petition and he has filed counter denying the allegations against him.

V. Annu  
19/7/24

7) The contention of the petitioner/wife is that the respondent/husband has filed O.P.No.2165 of 2020 for divorce on the ground of cruelty and she has filed M.C.No. 195 of 2021 claiming maintenance. She would submit that she has filed M.P.No.731 of 2021 seeking interim maintenance and the respondent has filed adoption memo adopting the counter in M.C.No. 195 of 2021 as counter to the said M.P. She would submit that this court has granted interim maintenance Rs.30,000/- to her and Rs.15,000/- to her minor daughter. She would submit that the respondent has stated his monthly income as Rs.19,354/- and his monthly expenses as Rs.1,71,495/- in the Affidavit of Assets and Liabilities. She would submit that this court has recorded in the order passed in M.P.No. 731 of 2021 as "It clearly shows that the income disclosed by the respondent in his evidence of assets is not true and correct"

8) The petitioner/wife would submit that the petition for perjury is maintainable in law and as per Judgment of Honourable Supreme Court in Pritish Vs State of Maharashtra and the respondent has Locus Standi to be heard in the preliminary enquiry. She would submit that the respondent has made allegations of the earlier counsel that he has not signed the adoption memo filed before this court. She would submit that the respondent has stated during oral arguments that he has not signed the affidavit of assets and liabilities, however he has admitted in the counter that he has signed the affidavit of assets and liabilities. She would submit that the respondent's contention that that he intends to file additional affidavit of assets and liabilities shows that his averments in the Affidavit of Assets and liabilities are false. She would submit that additional Affidavit of assets and liabilities can be filed only in case of change of circumstances and hence the said contention of the respondent is liable to be rejected. She would submit that the respondent has committed act of perjury and prima facie case made out against him. She prayed that the complaint may be

V. Mune  
19/5/24

7) The contention of the petitioner/wife is that the respondent/husband has filed O.P.No.2165 of 2020 for divorce on the ground of cruelty and she has filed M.C.No. 195 of 2021 claiming maintenance. She would submit that she has filed M.P.No.731 of 2021 seeking interim maintenance and the respondent has filed adoption memo adopting the counter in M.C.No. 195 of 2021 as counter to the said M.P. She would submit that this court has granted interim maintenance Rs.30,000/- to her and Rs.15,000/- to her minor daughter. She would submit that the respondent has stated his monthly income as Rs.19,354/- and his monthly expenses as Rs.1,71,495/- in the Affidavit of Assets and Liabilities. She would submit that this court has recorded in the order passed in M.P.No. 731 of 2021 as "It clearly shows that the income disclosed by the respondent in his evidence of assets is not true and correct"

8) The petitioner/wife would submit that the petition for perjury is maintainable in law and as per Judgment of Honourable Supreme Court in Prithvi Vs State of Maharashtra and the respondent has Locus Standi to be heard in the preliminary enquiry. She would submit that the respondent has made allegations of the earlier counsel that he has not signed the adoption memo filed before this court. She would submit that the respondent has stated during oral arguments that he has not signed the affidavit of assets and liabilities, however he has admitted in the counter that he has signed the affidavit of assets and liabilities. She would submit that the respondent's contention that that he intends to file additional affidavit of assets and liabilities shows that his averments in the Affidavit of Assets and liabilities are false. She would submit that additional Affidavit of assets and liabilities can be filed only in case of change of circumstances and hence the said contention of the respondent is liable to be rejected. She would submit that the respondent has committed act of perjury and prima facie case made out against him. She prayed that the complaint may be

V. Dhanu  
19/01/24

forwarded to the jurisdictional Judicial Magistrate to try the offence against the respondent.

9) On the other hand the contention of the respondent is that he has not filed any false statement in the affidavit of assets and liabilities statement and he has given statement as per Income tax returns. He would submit that his earlier counsel has filed adoption memo and the signature in the adoption memo is not that of the respondent. He would submit that he has not understood the format of the assets and liabilities and his earlier counsel has not expressed about the same. He would submit that is the reason why he filed updated assets and liabilities.

10) Perusal of records reveals that M.C.No. 195 of 2021 was filed by the 1<sup>st</sup> petitioner/wife claiming maintenance for herself and the for the minor child. In the said petition the respondent/petitioners have filed M.P.No. 731 of 2021 claiming interim maintenance. After full fledged enquiry the said M.P.No. 731 of 2021 was ordered as follows:-

**“In the result the petition is partly allowed and the respondent is directed to pay a sum of Rs.30,000/- (Rupees Thirty Thousand only) per month to the 1<sup>st</sup> petitioner and Rs.15,000/- (Rupees Fifteen Thousand only) per month to the 2<sup>nd</sup> petitioner towards interim maintenance to be paid to the 1<sup>st</sup> petitioner towards interim maintenance from the date of filing of this petition .i.e. on 19.04.2021 till the disposal of O.P and Rs.50,000/- (Rupees Fifty Thousand only) towards litigation expenses to be paid to the petitioner by the respondent. The Respondent is further directed to pay the arrears of maintenance and litigation expenses to be paid to the petitioner**

V. Anne  
19/7/24

within 2 months from today. The respondent is directed to pay the maintenance amount to the petitioner on or before 5<sup>th</sup> of every succeeding English Calendar month. No costs”

11) During the enquiry in M.P.No. 731 of 2021 the respondent had represented that the adoption memo filed by for M.P.No. 731 of 2021 adopting the counter in M.C. as Counter in M.P.No.731 of 2021 was not filed by him. However he has proceeded with the enquiry in M.P.No.731 of 2021 without filing any separate counter and allowed the said petition to be disposed off on merits.

12) The respondent has levelled allegations against his erst while assisting Advocate. But strangely the respondent has not proceeded against his erstwhile Assisting Advocate till today.

13) This petition has been filed stating that in Affidavit of Assets and Liabilities the respondent has given false particulars about his income. The respondent has stated that he has mentioned the income as per IT statement of 2021-2022. In the IT statement produced by the respondent along with Affidavit of Assets and Liabilities the income of the respondent for 2021-2022 is Rs.2,32,250/-. If it is so monthly income is Rs. 19354/-. The respondent has stated the said sum of Rs.19,354/- as his monthly income in his Affidavit of Assets and Liabilities.

14) This court observed order in M.P.No. 731 of 2021 as follows:-

“The respondent has averred in his affidavit of assets and liabilities in para a that his total monthly expenses comes around Rs.1,71,495/-. When the respondent earns a sum

V. Anne  
19/07/24

of Rs.19,354/-, it is impossible to spend a sum of Rs.1,71,495/-.

**It clearly shows that the income disclosed by the respondent in his affidavit of assets it is not true and correct.”**

The petitioners have filed this petition by quoting the above findings of this court. The respondent states that his erstwhile Assisting Advocate has filed Affidavit of Assets and Liabilities with incomplete particulars and hence he has filed updated Affidavit of Assets and Liabilities subsequently.

15) In the subsequent Affidavit of Assets and Liabilities filed on 18.04.2022 by the respondent he has stated in Column I as follows:-

I. Self employed persons/ Professionals / Businesspersons/ Entrepreneur

1.	Brief description of nature of business/profession/vacation /self employed/work activity	I am one of the Directions in Contro Labs India Pvt Limited and proprietor of Mathukkal Stores. Right now due to the multiple litigations filed by the 1 <sup>st</sup> petitioner I am unable to run the stores which require my physical presence. Contro labs is a water fountain engineering business and a distributor of FMCG
2.	Whether the business/Profession/self employment is carried on as an individual, sole proprietorship concern, patnership concern, LLP, company or association of persons, HUF, joint family business or any other form? Give particulars of Applications share in the partnership/business/professional association/self employment. In case of partnership, specify the share in the profit/lossess of the partnership	Private limited company incorporated U29100TN2017PTC118313. I am one of the Directors having 49 % of share in profit and loss.

V. Omme  
19/7/24

3.	Net income from the business/profession/partnership/self employment	In 2019-2020 (1,31,550/-) In 2020-2021 (61,277) In 2021-2022 I was unable to compile my balance sheets due to the multiple litigation and now exposed to penalty from ROC
4.	Business/Partnership/self employment liabilities, if any, in case of such activity	Stated above in business liabilities
5.	In case of business of company, provide brief details of last audited balance sheet in indicate profit and loss of the company in which such party is in business in the company	FY 2020-2021 we overcame loss of previous year of loss and now running the business in breakeven.
6.	In case of a patnership firm, provide details of the filing of the last income Tax Return of partnership	N.A
7.	In case of self employed individual, provide the filings of the last income tax return from any such professional/business/vocational activity	

16) The respondent has not reiterated the column "F" in Affidavit of Assets and Liabilities filed on 18.04.2022. He has given a different version Now.

17) In view of the above circumstances this court is of the view that prima facie case is made out against the respondent.

V. Anne  
19/7/24

In the result the petition is allowed and the material records are directed to be forwarded to the Learned VII Metropolitan Magistrate Court, Chennai for further action. No costs.

Dictated directly to the Steno-Typist, typed by him, corrected and Pronounced by me in open court, this the 19<sup>th</sup> day of July, 2024.

V. Omme 19/7/24

III Additional Principal Judge,  
III Additional Family Court,  
Chennai-600 104.

Witness examined on the side of the petitioner: Nil

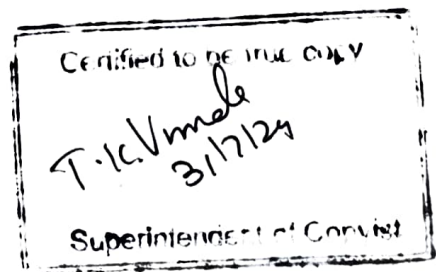
Exhibits marked on the side of the petitioner: Nil

Witness on the side of the respondent: Nil

Exhibits on the side of the respondent: Nil

V. Omme 19/7/24

III Additional Principal Judge,  
III Additional Family Court,  
Chennai-600 104.



**Draft/Fair order in**

M.P.No. 226 of 2023

in

M.P.No. 731 of 2021

in

M.C.No.195 of 2021

Date : 19.07.2024

III Addl. Family Court

MP NO 731/2021

FAMILY COURT CHENNAI

C.A. No..... 6989/24 ..... 20  
G.P. No. MC 195/2021 20  
Application made on.. 6/7/24 20  
Stamps called for on.. 29/7/24 20  
Stamp papers  
deposited on.. 29/7/24 20  
Addl. stamps  
called for on..... 20  
Addl. stamp papers  
deposited on..... 20  
Copy made Ready on.. 30/7/24 20  
Copy Delivered on..... 9/8/24 20

  
Superintendent.