

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.20514 of 2011

Mrs.Magitha,  
W/o.R.Mohan.

... Petitioner

Vs.

Mr.R.Mohan,  
S/o.Raman.

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the dismissal order in C.M.P.No.9698 of 2008 dated 30.04.2010 and consequently restore the C.M.P.No.9698 of 2008 in M.C.No.1 of 2006 on its file and direct the respondent herein to pay the balance maintenance amount as well as the future maintenance amount immediately to the petitioner herein as per the orders passed by the Learned Judicial Magistrate, Udagamandalam, the Nilgiris in M.C.No.1 of 2006 dated 01.11.2007.

For Petitioner : Mr.N.Damodaran

For Respondent : Mr.R.Babu

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O R D E R

This Criminal Original Petition is filed seeking to set aside the dismissal order in C.M.P.No.9698 of 2008 dated 30.04.2010 and consequently restore the C.M.P.No.9698 of 2008 in M.C.No.1 of 2006 on its file and direct the respondent herein to pay the balance maintenance amount as well as the future maintenance amount immediately to the petitioner herein as per the orders passed by the Learned Judicial Magistrate, Udagamandalam, the Nilgiris in M.C.No.1 of 2006 dated 01.11.2007.

2.The learned counsel for the petitioner and the learned counsel for the respondent are present.

3.The contention of the learned counsel for the petitioner is that the petitioner had married the respondent on 22.05.2002. The petitioner and the respondent belong to the Badugar

community. As per their customs they lived together till 28.09.2005. During the marriage, the petitioner's parents have given "Sreedhana" articles and presented jewels and they were happy for sometime.

4.Further the learned counsel for the petitioner stated that the respondent and his family members started demanding her to bring more dowry and in pursuant to this she was driven out from her matrimonial home, which forced her to give a complaint in Crime No.124 of 2005 before the All Women Police Station, Coimbatore for the offences under Sections 498A and 385 of the Indian Penal Code against the respondent and his family members.

5.Since the petitioner was forcibly driven out from her matrimonial home and hence, she has filed a Maintenance Petition before the Learned Judicial Magistrate, Udagamandalam, Nilgiris, which was taken on file and numbered as M.C.No.1 of 2006. The petitioner was pleased to allow the M.C.No.1 of 2006, directing the respondent herein to pay a sum of Rs.1,500/- (Rupees One Thousand Five Hundred Only) per month as monthly maintenance. Against which, the respondent had preferred a Criminal Revision Petition before the Learned Sessions Judge of Nilgiris in CrI.R.C.No.12 of 2007, which came to be dismissed on 28.02.2008.

6.Thereafter also the respondent failed to make the entire monthly maintenance, hence, the petitioner had filed a petition by invoking section 128 of the Code of Criminal Procedure, for seeking arrears of monthly maintenance for the period from 17.02.2006 to 31.08.2008. The above said petition under Section 128 of the Code of Criminal Procedure was numbered as C.M.P.No.9698 of 2008 in M.C.No.1 of 2006, which came to be dismissed, since the petitioner and respondent have been absenting for several hearings. Hence, the Learned Judicial Magistrate, Udagamandalam has dismissed the C.M.P.No.9698 of 2008 for non-prosecution.

7.Thereafter, against which the petitioner had preferred a CrI.R.C.No.4 of 2010 before the Learned Sessions Judge of Nilgiris at Udagamandalam, which came to be dismissed on 29.03.2011. Aggrieved against the same, the petitioner had filed the above Criminal Original Petition.

8.Now, it is submitted by both the learned counsel for the petitioner and the respondent that both the petitioner and the respondent have buried their difference and separated themselves. Further, it is submitted that both the petitioner and the respondent have married again and they are living separately with their respective families.

9.In view of the above, it is submitted that nothing survives for adjudication. Further, it is seen that the

petitioner herein had filed the above said Criminal Original Petition against the order of dismissal of Criminal Revision by the learned Sessions Judge, Udhagamandalam, Nilgiris, challenging the order of the learned Judicial Magistrate, Udagamandalam, Nilgiris. Hence, this Criminal Original Petition is filed amounts to second revision.

9.The Hon'ble Supreme Court of India in the case of Rajathi Vs. C.Ganesan reported in (1999) 6 SCC 326, wherein it has been held that the bar of second revision after dismissal of first one by the Sessions Court -- Inherent powers of High Court cannot be utilised as a substitute for second revision.

10.On the contentions of the petitioner and the respondents and on a perusal of the documents, it is found that no new ground and special circumstances warrants permitting the above Criminal original Petition. In view of this petition being in the nature of the second revision, which is not permissible in law.

11.Thus, the Criminal Original Petition is dismissed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ah/vv2

To

- 1.The Sessions Judge of Udagamandalam,  
Nilgiris.
- 2.The Judicial Magistrate,  
Udagamandalam.
- 3.The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.N.Damodaran, Advocate, S.R.No.64354  
+1cc to Mr.B.Vijayakumar, Advocate, S.R.No.63774

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rrs 08/10/2018