

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.O.P.No.20505 of 2011

Magitha

... Petitioner

Vs.

R.Mohan

... Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to direct the learned Judicial Magistrate, Udagamandalam the Nilgiris to set aside the dismissal order in CMP No.509/2010 dated 06.05.2010 and consequently restore the CMP No.509/2010 in MC No.1/2006 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.1/2006 dated 01.11.2007 by the order or orders or direction whichever this Court thinks deem fit in the interest of justice.

For Petitioner : Mr.N.Damodharan

O R D E R

This Criminal Original Petition has been filed challenging the order of dismissal in CMP No.509 of 2010 dated 06.05.2010 passed by the learned Judicial Magistrate, Udagamandalam, The Nilgiris District.

2. The case of the petitioner is that the petitioner is the wife and the respondent is the husband and their marriage was performed on 22.05.2002 at Kinnakorai Village, Nilgiris as per the customs of Badugar Community and lived together till 28.09.2005. At the time of marriage, 30 sovereigns of gold ornaments, house hold articles and cash of Rs.1,50,000/- were given to the petitioner. Thereafter, there was a matrimonial

dispute in the matrimonial house and therefore, the petitioner was forced to lodge a criminal case and the same was registered in Crime No.124 of 2005 by the All Women Police Station (Central Wing), Coimbatore for the offences punishable under Sections 498A and 385 of IPC. Thereafter, the petitioner filed a maintenance petition in M.C No.1 of 2006 before the learned Judicial Magistrate, Udagamandalam and the same was allowed directing the respondent to pay Rs.1,500/- per month as monthly maintenance amount from the date of petition and also directed to pay the future maintenance on or before 5th of every English calendar month. Aggrieved by the said order, the respondent filed a criminal revision petition in CrI.R.C No.12 of 2007 and the learned Sessions Judge, Nilgiris dismissed the said criminal revision petition on 28.02.2008, since the respondent did not pay the maintenance amount as directed by the learned Judicial Magistrate, Udagamandalam and confirmed the order of the Judicial Magistrate, Udagamandalam. Hence, the petitioner was forced to file a petition by invoking Section 128 of Cr.P.C and pleaded the trial Court to direct the respondent to pay the entire arrears of monthly maintenance amount from 01.11.2008 to 31.10.2009 and future monthly maintenance amount as per its order dated 01.11.2007 and the same was numbered as CMP No.509 of 2010 in M.C No.1 of 2006. Similarly, the petitioner has also filed a petition in CMP No.9698 of 2008 seeking for monthly maintenance amount and future maintenance amount. Due to the non-appearance of the petitioner and the counsel, the said petition was dismissed for non-prosecution on 06.05.2010. Aggrieved by the said order of dismissal, the petitioner filed a Criminal Revision petition Nos.4 and 5 of 2010 and the said petitions were also dismissed on 29.03.2011. Challenging the aforesaid order, the present Criminal Original Petition is filed.

3.The learned counsel appearing for the petitioner would submit that without giving opportunity, the petition was dismissed and no application was filed under Section 126(2) of Cr.P.C.

4. Considering the facts and circumstances of the case and that the petitioner filed a petition seeking for maintenance amount and the said petition was dismissed on the ground of non-appearance of the petitioner and without giving opportunity, the aforesaid dismissal order has been passed by the learned Judicial Magistrate, Udagamandalam is unreasonable and hence, for giving one more opportunity, this Court is inclined to restore the CrI.M.P No.509 of 2010 for effective adjudication and the learned Judicial Magistrate, Udagamandalam is directed to pass appropriate orders after hearing the parties.

5. In view of the above, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

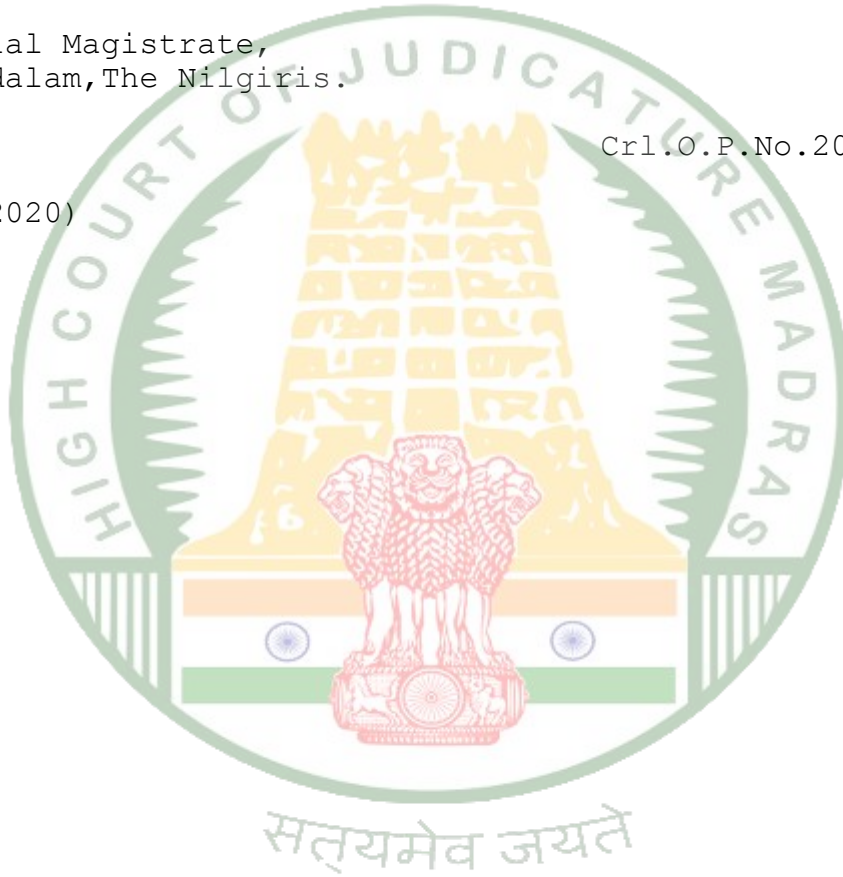
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To

The Judicial Magistrate,
Udagamandalam, The Nilgiris.

Crl.O.P.No.20505 of 2011

GMR (CO)
CB(04/02/2020)



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