

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1150 of 2020

and

Crl.M.P.No.8096 of 2020

J.Mohan ..Petitioner/Respondent

Vs.

1.P.Dhanalakshmi @ Lakshmi

2.Minor M.Jayasri ..Respondents/Petitioner
D/o.J.Mohan

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. to set aside the order dated 09.01.2020 passed in M.C.No.26 of 2017 on the file of the Judicial Magistrate Court, Gudiyatham.

For Petitioner : Mr.S.T.Raja
for G.S.Dhanalakshmi

O R D E R

This criminal revision petition has been filed seeking to set aside the order dated 09.01.2020 passed in M.C.No.26 of 2017 on the file of the Judicial Magistrate Court, Gudiyatham.

2. Dhanalakshmi got married to Mohan on 15.02.2009 and they have a child, Jayasri. On account of marital discord, they got estranged, resulting in Dhanalakshmi filing H.M.O.P.No.24 of 2016 in the Subordinate Court, Gudiyatham, for restitution of conjugal rights.

3. Since Mohan was not paying her any maintenance, Dhanalakshmi filed M.C.No.26 of 2017 in the Court of Judicial Magistrate, Gudiyatham, under Section 125 Cr.P.C., claiming

maintenance for herself and her daughter Jayasri. On receipt of the notice, Mohan entered appearance and filed his counter.

4. Before the trial Court, Dhanalakshmi examined herself as PW1 and marked four exhibits. For the reasons best known to Mohan, he has not cross-examined Dhanalakshmi and also not adduced any evidence from his side. Therefore, the trial Court, by order dated 09.01.2020 in M.C.No.26 of 2017, passed an ex parte order awarding a sum of Rs.6,000/- per month to Dhanalakshmi and Rs.4,000/- per month to Jayasri, as maintenance, from the date of filing of that petition.

5. Aggrieved by the same, Mohan has filed the present criminal revision petition under Section 397 r/w 401 Cr.P.C.

6. Heard Mr.S.T.Raja, learned counsel representing Mrs.G.S.Dhanalakshmi, learned counsel on record for the petitioner.

7. The learned counsel for the petitioner submitted that on account of communication gap between the petitioner and his counsel, the petitioner was unable to diligently take part in the proceedings in M.C.No.26 of 2017. He further submitted that only after Dhanalakshmi filed execution proceedings under Section 128 Cr.P.C., Mohan came to know about the ex parte order and thereafter, approached this Court for setting aside the same.

8. This Court brought to the notice of the learned counsel for the petitioner that under Section 126 (2) Cr.P.C., an ex parte order can be set aside by the trial Court itself. However, the period of three months fixed therein is elapsed.

9. If this revision petition is admitted and interim stay is granted, it will cause undue prejudice to Dhanalakshmi, inasmuch as, she and her child will be left high and dry financially.

10. The learned counsel for the petitioner submitted that the petitioner is willing to deposit the amount prescribed by this Court and an opportunity be given to Mohan to contest the proceedings in M.C.No.26 of 2017.

11. With a view to provide speedy justice to Dhanalakshmi, this Court issues the following directions:

i.	The petitioner shall deposit a sum of Rs.2,75,000/- on or before 31.12.2020 in the Court of Judicial Magistrate, Gudiyatham, to the credit of M.C.No.26 of 2017;
ii.	On such deposit, the order dated 09.01.2020 in M.C.No.26 of 2017 passed by the Judicial Magistrate Court, Gudiyatham, will stand set aside and not before the same;
iii.	Upon such deposit, Dhanalakshmi would be entitled to withdraw the amount unconditionally;
iv.	On such deposit being made, the trial Court shall permit Mohan to participate in the proceedings in M.C.No.26 of 2017 and thereafter, a fresh order may be passed on merits;
v.	Mohan shall appear before the trial Court on 31.12.2020 at 10.30 a.m. and execute a bond for a sum of Rs.10,000/- under Section 88 Cr.P.C. without sureties; and
vi.	On the failure of Mohan to deposit the sum of Rs.2,75,000/- on or before 31.12.2020, CrI.R.C.No.1150 of 2020 will stand automatically dismissed and the execution proceedings in M.C.No.26 of 2017 filed by Dhanalakshmi can be proceeded with.

With the above directions, this criminal revision petition is disposed of. Connected CrI.M.P. is closed.

सत्यमेव जयते

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

nsd

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To

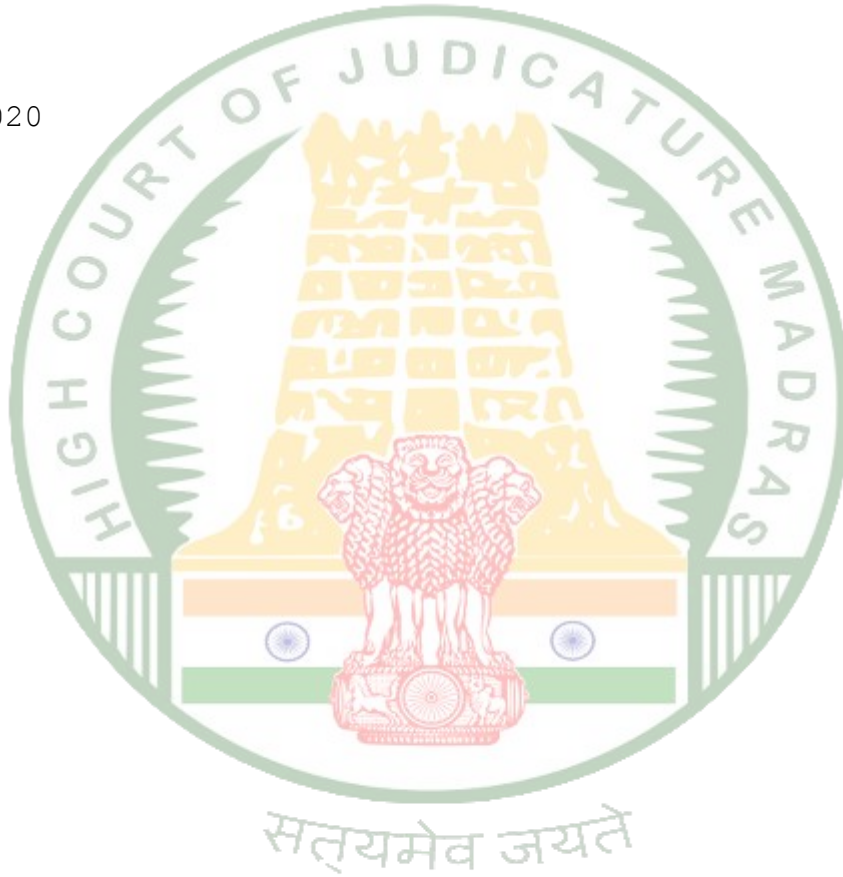
1.The Judicial Magistrate,
Gudiyatham.

2.The Chief Judicial Magistrate Vellore

+1 cc to Mrs.G.S.Dhanalakshmi Advocate sr40631

Cr1.R.C.No.1150 of 2020

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