

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

Crl.MC.No. 397 of 2015 ()

**CMP.NO.1447/2014 IN MC.NO.35/2012 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT-1, KOCHI**

PETITIONER/PETITIONER:

**NOORJAHAN P.A., AGED 56 YEARS,
W/O.MOHAMMED ASHRAF K.I., RESIDING AT KAKKAT HOUSE,
THOPPIL, EDAVAKKAD P.O., ERNAKULAM-682 502.**

**BY ADVS.SRI.ASHIK K.MOHAMMED ALI
SMT.SAJNA T.UMMER
SMT.V.RAIMA RAMESH**

RESPONDENT(S)/RESPONDENT & STATE:

- 1. MOHAMMED ASHRAF K.I, AGED 62 YEARS,
S/O.IBRAHIM HAJI, S.B.NILAYAM, THAYYEZHATHU LANE,
NAYARAMBALAM, NAYARAMBALAM VILLAGE.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADVS. SRI.T.H.ABDUL AZEEZ
SRI.V.A.AJMAL**

R2 BY PUBLIC PROSECUTOR SRI.JIBU P. THOMAS

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 05-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 397 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX-A1:** TRUE COPY OF THE PETITION FILED BEFORE THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS-I, KOCHI AS MC NO.35 OF 2012.
- ANNEX-A2:** TRUE COPY OF THE COMMON ORDER DATED 28.10.2013.
- ANNEX-A3:** TRUE COPY OF THE ORDER DATED 27.1.2014 IN CRL.M.C.NO.496 OF 2014 OF THIS HONOURABLE COURT.
- ANNEX-A4:** TRUE COPY OF THE PETITION DATED 1.3.2014 IN MC NO.35 OF 2012 AS CRL.M.P.NO.920A OF 2014.
- ANNEX-A5:** TRUE COPY OF THE ORDER DATED 2.7.2014 IN CRL.APPEAL NO.593 OF 2013.
- ANNEX-A6:** TRUE COPY OF THE CMP NO.1447 OF 2014 FILED BY THE 1ST RESPONDENT.
- ANNEX-A7:** CERTIFIED COPY OF THE COMMON ORDER DATED 5.11.2014 IN CMP NOS.1447 OF 2014.
- ANNEX-A8:** TRUE COPY OF THE INTERIM ORDER DATED 19.11.2014 IN CRL.M.A.NO.6085 OF 2014 IN CRL.R.P.NO.1676 OF 2014.
- ANNEX-A9:** TRUE COPY OF THE INTERIM ORDER DATED 18.12.2014 IN CRL.R.P.NO.1676 OF 2014.

RESPONDENT(S)' ANNEXURES: NIL

/TRUE COPY/

P.A.TO.JUDGE

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B.KEMAL PASHA, J.

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Crl.M.C No. 397 of 2015

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Dated this the 5th day of March, 2015.

ORDER

In a petition filed under Section 12 of the Domestic Violence Act ('DV' Act for short), the Judicial First Class Magistrate's Court-I, Kochi has passed an order directing the first respondent to pay maintenance at the rate of Rs.50,000/- per month. The same was taken up in the appeal and the Sessions Court has modified the said order as per Annexure A5 by limiting the maintenance to an amount of Rs.20,000/- per month. Again, it seems that the first respondent herein had approached the learned Magistrate and filed an application under Section 127 Cr.P.C for modification of the order by pointing out that the petitioner was, in the meantime, divorced by the first respondent by pronouncing Talaq.

2. By taking note of those aspects, it seems that Annexure A7 order is passed by the learned Magistrate

which is prima facie not maintainable. It seems that without taking note of the true legislative intend behind the provisions of the DV Act , the learned Magistrate has taken a view that when Talaq is pronounced or divorce is effected the divorced wife is not entitled to maintenance under the DV Act and by making some unnecessary observations which are not legally sustainable, the learned Magistrate has concluded that maintenance at the rate of Rs.20,000/- need only be paid for the period from 28-10-2013 till 1-3-2014. From where the learned Magistrate has got that proposition of law cannot be understood from the order.

3. All the said observations are incorrect and not legally sustainable. In the result, the said modified order passed by the learned Magistrate by limiting the payment of maintenance from the period from 28-10-2013 to 1-3-2014, is set aside.

Crl.M.C is allowed to that extent.

B.KEMAL PASHA, J.
(Judge)

