

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

Crl.MC.No. 1347 of 2015 ()

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CMP. NO.363/2015 IN CRL.RP. NO.10/2015 OF V ADDITIONAL SESSIONS COURT,
KOZHIKODE.**

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PETITIONER/PETITIONER IN CRL.RP. NO.10/2015:

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K.MOHAMED SHAFI,
S/O.LATE C.AHAMMED KOYA,
KALATHINKAL HOUSE, FEROKE, CHUNGAM,
KOZHIKODE, NOW RESIDING AT KALATHINKAL HOUSE,
KOTTA, KUTTIPALAKKAL, POST MUKKAM,
KOZHIKODE DISTRICT.**

**BY ADVS.SRI.K.M.FIROZ,
SMT.M.SHAJNA,
SRI.S.KANNAN.**

RESPONDENTS/STATE AND RESPONDENT IN CRL.RP. NO.10/2015:

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- 1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
 - 2. SHAMSIYA, D/O.SAITHALI,
KALATHINKAL HOUSE, MANIYATTUPARAMBU,
BEPUR P.O., KOZHIKODE-673 015.**

R1 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 04-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE A1** COPY OF THE ORDER IN CRL.MC. NO.4031/2012 DATED 06/05/2014 PASSED BY THE HIGH COURT OF KERALA.
- ANNEXURE A2** COPY OF THE ORDER DATED 21/11/2014 ISSUED BY HONOURABLE HIGH COURT OF KERALA IN CRL.MA. NO.10694/2014.
- ANNEXURE A3** COPY OF THE ORDER DATED 01/12/2014 IN CMP. NO.5626/2014 IN MC. NO.9/2007 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT-V, KOZHIKODE.
- ANNEXURE A4** COPY OF THE DEPOSITION OF THE RESPONDENT HEREIN IN CMP. NO.5626/2014 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE COURT-V, KOZHIKODE.
- ANNEXURE A5** COPY OF THE DEPOSITION OF THE PETITIONER HEREIN IN CMP. NO.5626/2014 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-V, KOZHIKODE.
- ANNEXURE A6** COPY OF THE DEPOSITION OF SRI.ABDUL LATHEEF V. IN CMP. NO.5626/2014 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE COURT-V, KOZHIKODE.
- ANNEXURE A7** COPY OF THE REVISION PETITION NO.10/2015 FILED BY THE PETITIONER BEFORE THE SESSIONS COURT, KOZHIKODE.
- ANNEXURE A8** COPY OF THE STAY PETITION IN CMP. NO.363/2015 FILED BY THE PETITIONER BEFORE THE SESSIONS COURT, KOZHIKODE.

RESPONDENT'S ANNEXURES:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

B. KEMAL PASHA, J.

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Crl.M.C. No.1347 of 2015
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Dated this the 4th day of March, 2015

ORDER

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A claim was filed by the 2nd respondent under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The claim was entertained by the Judicial First Class Magistrate's Court-V, Kozhikode and an order was passed. It was taken up in revision by the petitioner herein before the Sessions Court through Crl.R.P.18/2011. The learned First Additional Sessions Judge concurred with the findings entered by the trial court and dismissed the revision. The present petitioner did not stop there. The matter was taken up before this Court through Crl.M.C.4031/2012. This Court, after considering the matter, had upheld the orders passed by the courts below with a slight modification in the amount of maintenance to be payable during the period of *Iddath* and

the amount payable as reasonable and fair provision and maintenance. Even though the courts below has ordered an amount of ₹6,600/- to be paid as maintenance during the period of *Iddath*, this Court had found that the amount payable is only ₹6,000/-. The courts below had ordered reasonable and fair provision and maintenance of ₹3,00,000/-. This Court had modified it as ₹2,24,000/-. All the said amounts were ordered to be paid and the gold concerned was ordered to be returned within a period of three months, vide order dated 06.05.2014.

2. Thereafter, it seems that the petitioner, instead of making the payments and returning the gold involved, has taken up a strange contention that 5 sovereigns of gold ornaments were returned to the 2nd respondent herein; at the same time, without any documents. The said contention was liable to be thrown to the dust bin as the same could not have been believed at all. Even then the petitioner had filed a CMP before the trial court as CMP.5626/2014. The

learned Magistrate has chosen to dismiss the application at the threshold. The petitioner came up before this Court through Crl.M.A.10694/2014 in Crl.M.C.4031/2012. It seems that the petitioner could get an order thereby directing the court below to take evidence in the matter relating to discharge. Complying with the said direction, the trial court has recorded evidence and once again found that the contentions taken by the petitioner regarding such discharge and return are false. The CMP was dismissed. The learned Magistrate has chosen to issue warrant to the petitioner for the due execution. The petitioner did not stop there. He filed a Crl.R.P. before the Sessions Court challenging the said order, which is presently pending as Crl.R.P.10/2015. In that Crl.R.P., a stay petition was moved. Smelling rat, the learned Sessions Judge has not taken up the stay petition for consideration. The petitioner has rushed to this Court through this Crl.M.C. for a direction to the Sessions Court to take up and consider the stay petition in the matter and also

for recalling the warrant issued by the learned Magistrate.

3. This Court has taken aback to notice the travesty of justice that has been meted out towards a divorced wife. This is a perfect example and illustration as to how unnecessary litigations can be taken up for flouting lawful orders passed by various courts. The divorced wife had to run from pillar to post to get an order to which she is entitled under Section 3 of the Act. The order was challenged up to this Court. Even though the order has become final and the petitioner was directed to comply with the order within three months from 06.05.2014, the said direction was flouted. Again, unnecessary litigations have been resorted to by the petitioner. A plea which is liable to be thrown out at the threshold has unnecessarily been entertained and evidence has been recorded. Even though the said plea was rightly denied by the learned Magistrate, a revision was once again filed. May be smelling rat, the learned Sessions Judge has not entertained the stay petition.

4. The procedure through the CrI.M.P. and the consequent criminal revision are not legally sustainable. The warrant issued by the learned Magistrate is not liable to be recalled. The learned Magistrate is directed to take immediate necessary steps to get the order executed. The learned Sessions Judge is directed to take note of these observations and to dispose of the Criminal revision.

In the result, this CrI.M.C. is dismissed.

The Registry shall send a copy of this order to the learned Magistrate and the learned Sessions Judge.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/04/03

// True Copy //

PA to Judge