

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

Crl.MC.No. 3081 of 2015 (A)

**CMP NO.1147/2015 IN CRL.R.P.NO.33/2015 OF COURT OF SESSION,
KOZHIKODE**

PETITIONER/REVISION PETITIONER :-

**SHAMSUDHEEN, AGED 36 YEARS, S/O.MOIDU,
CHEKKUM VALAPPIL HOUSE, PALAYATT NADA,
PUTHUPPANAM AMSOM DESOM, VADAKARA TALUK.**

BY ADV. SMT.K.DEEPA

RESPONDENTS/RESPONDENTS :-

**1. THAHIRA, AGED 31 YEARS, D/O.ABDURAHIMAN,
VANIYAMVEETIL HOUSE, KEEZHAL(PO)
MEMUNDA AMSOM DESOM, VADAKARA TALUK.**

**2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF EKRALA, ERNAKULAM.**

R2 BY SMT.SHEEBA M.T., PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 26-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

rkj

Crl.MC.No. 3081 of 2015 (A)

APPENDIX

PETITIONER(S)' ANNEXURES :-

**ANNEXURE -1 :- CERTIFIED COPY OF THE ORDER DATED 23-03-2015 IN C.M.P.NO.
1147/2015 IN CRL RP NO 33/2015 OF THE COURT OF
SESSION, KOZHIKODE DIVISION.**

RESPONDENT(S)' ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

rkj

P.UBAID, J.

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Crl.M.C.No.3081 of 2015
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Dated this the 26th day of November, 2015

ORDER

The petitioner herein is the revision petitioner in Crl.R.P.No.33 of 2015 before the Court of Session, Kozhikode. He has brought the said revision against an order passed by the learned Judicial First Class Magistrate Court, Vadakara in MC No.59 of 2014, which is a proceeding brought under Section 3 of the Muslim Woman (Protection of Right on Divorce) Act, 1986. On an application made by the petitioner, the learned Sessions Judge granted stay of execution of the order on condition of deposit of ₹2,00,000/- within thirty days. The petitioner is aggrieved by the said condition, and it is sought to be set aside under Section 482 Cr.P.C. The order passed by the learned Magistrate is not seen produced in Court. It is submitted that the total

amount awarded by the learned Magistrate is ₹4,80,000/- by way of maintenance during iddat, reasonable and fair provision, value of dower etc. When the total amount payable is ₹4,80,000/-, the learned Sessions Judge thought of directing the revision petitioner to deposit ₹2,00,000/- as a condition for stay.

2. On hearing the learned counsel, and on a perusal of the impugned order, I find that some slight modification can be made in the impugned order. As regards the amount payable by way of maintenance during iddat, and reasonable and fair provision, the husband cannot have any dispute except a plea of discharge. It is the unconditional and the unqualified right of a divorced muslim woman to get fair provision, and also maintenance during iddat. As regards the other claims like value of property, value of dower etc, evidence will have to be adduced to prove the right to relief. So far as the relief of provision and maintenance is concerned, the court's function is only to fix the reasonable amount in a case where discharge is not pleaded. It is not known whether the petitioner has pleaded such a discharge

in the proceeding. In the particular facts and circumstances, I feel that direction to deposit 1/5th of the amount payable under the impugned order will be quite reasonable, and such an amount will be the adequate amount as a condition for granting stay. To that extent, the order passed by the Court of Session can be modified.

3. It is submitted that a process of mediation is going on at the Mediation Sub Centre, Vadakara. If at all the parties come to terms in mediation, the modification made by this Court will be subject to such terms arrived at. If the petitioner wants stay of execution pending such proceedings, he will have to deposit the amount as ordered, inclusive of the amount ordered on 4.6.2015.

In the result, this Crl.M.C. is disposed of as follows;

a) The stay order passed by the court below on CMP No.1147 of 2015 in Crl.R.P.No.33 of 2015 will stand modified, that as a condition for stay, the petitioner shall make deposit of 1/5th of the amount payable under the order passed by the learned Magistrate, inclusive of the amount ordered on 4.6.2015.

b) Such deposit shall be made within thirty days from this date.

c) If the parties come to terms on mediation or otherwise, the parties can act accordingly despite this order.

Sd/-
P.UBAID
JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE