

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

**CrI.MC.No. 3116 of 2015 ()
M.P.No.356/2014 IN M.C.No.145/2014 OF THE FAMILY COURT, ERNAKULAM
=====**

PETITIONER/RESPONDENT IN M.P.NO.356/2014 IN M.C.NO.145/2014:

**MAJU PETER, NANAKKAL HOUSE
GLASS FACTORY ROAD, KALAMASSERY PO
ERNAKULAM, KOCHI 683 104**

**BY ADVS.SMT.P.F.ROSY
SRI.V.M.SYAM KUMAR
SMT.KRIPA ELIZABETH MATHEWS**

RESPONDENTS/PETITIONERS IN M.P.NO.356/2014 IN M.C.NO.145/2014 AND STATE:

- 1. PHILLY MAJU @ KOCHUTHRESSIA PHILLY
NANAKKAL HOUSE, GLASS FACTORY ROAD, KALAMASSERY PO
ERNAKULAM, KOCHI 683 104**
- 2. ERICSSON (MINOR) S/O.MAJU PETER,
NANAKKAL HOUSE, GLASS FACTORY ROAD, KALAMASSERY PO
ERNAKULAM, KOCHI 683 104**
- 3. JUDE (MINOR), S/O.MAJU PETER
NANAKKAL HOUSE, GLASS FACTORY ROAD, KALAMASSERY PO
ERNAKULAM, KOCHI 683 104**
- 4. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, COCHIN 682 031.**

**R1 BY ADV. SMT.P.K.PRIYA
R4 BY PUBLIC PROSECUTOR SRI. JUSTIN JACOB**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19-10-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE 1- TRUE COPY OF THE ORDER DATED 3.5.2013 IN C.M.P. NO.1448 OF 2012
OF THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT, ALUVA**

**ANNEXURE II- TRUE COPIES OF THE SOME OF THE BILLS PAID BY THE PETITIONER
TOWARDS HOUSEHOLD EXPENSES AND OTHER RELATED EXPENSES
EXPENDED BY THE PETITIONER FOR THE RESPONDENTS**

**ANNEXURE III- TRUE COPIES OF THE RECEIPTS DATED 14.5.2015 AND 18.5.2015
ISSUED BY GOVERNMENT HIGHER SECONDARY SCHOOL,
KALAMASSERY AND TECHNICAL HIGHER SECONDARY SCHOOL,
ALUVA RESPECTIVELY TO THE 3RD AND 2ND RESPONDENTS
RESEPECTIVELY**

**ANNEXRUE IV- TRUE COPY OF THE OBJECTION DATED 20.6.14 FILED BY THE
PETITONER IN M.P.NO.356 OF 2014 IN M.C.NO.145 OF 2014 BEFORE
THE FAMILY COURT, ERNAKULAM.**

**ANNEXURE V- TRUE COPY OF THE ORDER DATED 20.6.2014 IN M.P.NO.356 OF 2014 IN
M.C.NO.145 OF 2014 PASSED BY THE FAMILY COURT , ERNAKULAM**

RESPONDENTS' EXHIBITS

NIL

TRUE COPY

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.3116 of 2015

Dated this the 19th day of October, 2015

O R D E R

The petitioner herein is aggrieved by an order of interim maintenance passed by the Family Court, Ernakulam under Section 125 Cr.P.C. He is the respondent in M.C.No.145/2014. Along with the main petition, his wife and children brought M.P.No.356/2014 for interim maintenance. On M.P.No.356/2014 the learned trial Judge passed orders on 20.06.2014 directing the petitioner to pay interim maintenance to his wife and children at the rate of Rs.10,000/- per month.

2. This Court has settled the legal position that a revision will not lie against an order granting interim maintenance under Section 125 Cr.P.C. An interim order granting maintenance under Section 125 Cr.P.C. is always subject to appropriate modification by the trial court itself, and this modification will include even cancellation. In appropriate cases where the aggrieved person does not proceed to challenge the interim order, he can even wait till final decision is taken by the trial court in the main proceeding. What is not possible directly by recourse to ordinary procedure, cannot be

granted indirectly by the court by exercising the powers under Section 482 Cr.P.C. Exercise of powers under Section 482 Cr.P.C. has an object. Such exercise of powers cannot defeat the interest of justice including the position settled by the High Court otherwise as regards a legal issue. This Court has discouraged revision against interim order of maintenance under Section 125 Cr.P.C. with an object. The said object is to avoid unnecessary petitions challenging interim maintenance granted by the court under Section 125 Cr.P.C., because such an order will always be subject to appropriate modification by the trial court itself, and will be subject to final orders passed by the trial court in the main proceeding. If such an order is interfered with or quashed by the High Court under Section 482 Cr.P.C., it will definitely defeat the very object of the position of law settled by the High Court. Here, I find that the petitioner's remedy will lie in the trial court itself. Of course, it is true that the impugned order was passed by the court below without hearing him properly and effectively. When the Family Court orders interim maintenance under Section 125 Cr.P.C., it is just and appropriate that the respondent be properly and effectively heard. Only after hearing both sides, the court can

take a decision regarding the prayer for interim maintenance. This will have to be considered by the learned trial Judge when an application comes from the petitioner for modification or cancellation.

In the result, this petition is dismissed in limine, without being admitted to files, however without prejudice to the right of the petitioner to approach the trial court itself for appropriate modification as regards the order passed in MP No.356/2014.

Sd/-

P. UBAID, JUDGE

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// True Copy //

P.A. to Judge