

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Crl.MC.No. 3219 of 2015 ()

M.C.NO. 370/2015 of FAMILY COURT, ATTINGAL

PETITIONER/RESPONDENT:

**VARADARAJAN NAIR, AGED 55 YEARS,
S/O.MADHAVAN NAIR, SINDU BHAVAN, AVANAVANCHERY,
ATTINGAL, THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS.SRI.JOSEPH SEBASTIAN (KOLLAM)
SRI.LIJU. M.P**

RESPONDENTS/RESPONDENTS:

- 1. KALAMALINI, AGED 45 YEARS,
W/O.VARADARAJAN, SINDU BHAVAN, THATTATHUVILAKOM,
AVANANAVANCHERRY, ATTINGAL, THIRUVANANTHAPURAM.**
- 2. SINDU NAIR,, AGED 23 YEARS,
D/O.VARADARAJAN NAIR, SINDU BHAVAN, THATTATHUVILAKOM,
AVANANAVANCHERRY, ATTINGAL, THIRUVANANTHAPURAM.**
- 3. SUNIL KUMAR, AGED 19 YEARS,
S/O.VARADARAJAN, SINDU BHAVAN, THATTATHUVILAKOM,
AVANANAVANCHERRY, ATTINGAL, THIRUVANANTHAPURAM.**

**R1-R3 BY ADV. SMT.PREETHY R. NAIR
R BY PUBLIC PROSECUTOR SMT. SHEEBA M.T.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
15-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 3219 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS:

**ANNEXURE A : TRUE COPY OF THE PETITION IN MC.NO.370/2015 ON THE FILE OF
FAMILY COURT, ATTINGAL.**

**ANNEXURE B : TRUE COPY OF THE OBJECTION IN MC.NO.370/2015 ON THE FILE OF
FAMILY COURT, ATTINGAL.**

**ANNEXURE C : CERTIFIED COPY OF THE ORDER DATED 12-3-2015 PASSED IN
M.C.NO.370/2014 ON THE FILE OF FAMILY COURT, ATTINGAL.**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A. TO JUDGE

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P.UBAID, J.

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Crl.M.C.No.3219 of 2015
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Dated this the 15th day of October, 2015

ORDER

An interim maintenance order under Section 125 Cr.P.C. is under challenge in this proceeding brought under Section 482 Cr.P.C. The petitioner herein is the respondent in MC No.370 of 2014 of the Family Court, Attingal. The Family Court has directed to him to pay interim maintenance to the wife at the rate of ₹2,500/- per month, and at the same rate to the unmarried daughter. This Court has settled the legal position as regards interim maintenance order passed under Section 125 Cr.P.C., that a revision will not lie against the said order, under Section 19(4) of the Family Court's Act. When that legal position is settled, it would be inappropriate and illegal to exercise jurisdiction under Section 482 Cr.P.C. to grant a relief which is not otherwise normally possible as a direct remedy. This Court has settled the legal position with an object. This

Court has settled that an interim maintenance order under Section 125 Cr.P.C. is always subject to appropriate modification or cancellation, and it is subject to the final orders passed in the main proceeding. Any person aggrieved by such an order can either make application for appropriate modification or cancellation before the trial court itself, or wait till the matter is finally decided by the trial court. If the High Court interferes under Section 482 Cr.P.C. in the case of such an interim order which is not amenable to revision, that will definitely amount to a situation defeating the every object of the position settled by the High Court. The petitioner's grievance is that one of the petitioners is not entitled to claim maintenance for the reason that she is a major daughter, and that she has her own source of income. If the second petitioner has her own source of income, or if she is not entitled for maintenance on the ground of majority, that will have to be considered by the trial court appropriately. The petitioner can file an application before the trial court itself for appropriate modification or cancellation, or he can even wait till final decision is taken. Thus, the remedy available to him is before the trial court itself. The impugned order was passed by the court below without properly and effectively hearing the petitioner. If an application for

cancellation or modification comes, it will have to be properly and legally considered, when the impugned order is practically an ex-parte order. This Court cannot interfere under Section 482 Cr.P.C., and quash the interim order of maintenance, in view of the settled position that even revision is not maintainable against such an order. If this application is allowed, it will go against the purport and object of the law settled by the High Court, as regards interim maintenance order is passed under Section 125 of Cr.P.C.

In the result, this Crl.M.C. is dismissed, without prejudice to the right of the petitioner to approach the trial court itself for appropriate modification or cancellation, whichever is possible.

Sd/-
P.UBAID
JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE