

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937201

Crl.MC.No. 3452 of 2015 ()

**AGAINST THE ORDER IN C.M.P.NO. 4924/2010 IN M.C.NO.48/2010 of JUDICIAL FIRST
CLASS MAGISTRATE COURT-II, PALAKKAD, DATED 29-12-2010**

PETITIONER(S)/PETITIONER:

**GEETHA, AGED 28 YEARS,
W/O.LAKSHMANAN, LAKSHMI NIVAS, PANAMTHODI EAST,
CHOKKANATHAPURAM, PALAKKAD.**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S)/RESPONDENT/STATE:

**1. V.V.LAKSHMANAN, AGED 37 YEARS,
S/O.VENKITESWARAN, FLAT NO.G2, GROUND FLOOR,
NATARAJ HOMES, DOOR NO.17, PLOT NO.7,
BHARATHY STREET, RAMA NAGAR, AMPATTUR,
CHENNAI-53.**

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

R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26-06-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

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|--------------------|----------|--|
| ANNEXURE A1 | - | A TRUE COPY OF THE ORDER DATED DECEMBER 29, 2010 PASSED BY THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-II, PALAKKAD. |
| ANNEXURE A2 | - | A TRUE COPY OF THE ORDER DATED JANUARY 17, 2014 IN CRIMINAL APPEAL NUMBER 120/2013 OF THE COURT OF SESSION, PALAKKAD. |
| ANNEXURE A3 | - | A TRUE COPY OF CM.PNO.5867/2011 FILED BY THE PETITIONER. |
| ANNEXURE A4 | - | A TRUE COPY OF C.M.P.NO.5077/2013 FILED BY THE PETITIONER. |

RESPONDENT(S)' EXHIBITS

NIL

//True Copy//

P.A. To Judge

Bb

RAJA VIJAYARAGHAVAN V, J.

Crl.M.C.No.3452 of 2015

Dated this the 26th day of June, 2015

O R D E R

Distressed at the failure of the court to secure the fruits of the order passed in her favour, the petitioner has approached this court by invoking powers under Section 482 of the Code of Criminal Procedure.

2. The petitioner invoked the provisions of the Protection of Women from Domestic Violence Act, 2005 against her husband who is the 1st respondent herein. As per order dated 29.12.2010 in C.M.P.No.4924/10 in M.C.No.48/10, the learned Judicial First Class Magistrate - II, Palakkad had granted the following interim reliefs to the petitioner.

- i) *The respondent shall not commit any act of domestic violence.*
- ii) *The respondent shall pay Rs.4,000/- per month, from the receipt of the order.*

3. The said order was unsuccessfully challenged by the first respondent before the Sessions Court, Palakkad. As per order dated 17.01.2014, the appeal was dismissed.

4. The grievance of the petitioner is that, in spite of

passing of the interim order, the learned magistrate is not taking any effective action to enforce the order of maintenance by initiating coercive proceedings against the husband/first respondent on the ground that the statute has not conferred any such power. According to her, the arrears of maintenance have escalated to Rs.5,00,000/- and she is finding it difficult to make both ends meet .

5. I have heard the counsel for the petitioner and also the learned public prosecutor. In the nature of the order I propose to pass, notice to the first respondent does not appear to be necessary.

6. It is now settled that in respect of a proceeding under the Protection of Women from Domestic Violence Act, 2005 the Magistrate was governed by the provisions of the Code and is therefore competent to enforce an order of interim maintenance by following the procedure under Section 125(3) of the Code of Criminal Procedure. (See **Mini Shanmughan Vs. Shanmughan and Another 2012 (3) KHC 814**). It has also been held that the procedure to be adopted by the learned magistrate shall be governed by the provisions of the Code of Criminal procedure.

7. I do not see any justification on the part of the learned magistrate in not providing succor to the suffering wife.

In the result, the Criminal Miscellaneous Case is allowed and the Judicial First Class Magistrate - II, Palakkad is directed to expeditiously execute the order dated 29.12.2010 in C.M.P. No 4924/10 in M.C.No.48/10 in the file of the said court in accordance with law and in tune with the above observations.

Sd/-

RAJA VIJAYARAGHAVAN V, JUDGE.

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[True copy]

P.A to Judge