

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

Cr1.MC.No. 3222 of 2009 ()

AGAINST THE JUDGMENT IN CRRP 55/2005 of DIST & SESSIONS COURT,
ALAPPUZHA

AGAINST THE JUDGMENT IN MC 51/2003 of J.M.F.C.-I, ALAPPUZHA

PETITIONER:

SAJAN, S/O.ABDUL VAHAB, `SAYOOJYAM'
PUTHEPALAM, ANAD, NEDUMANGAD
THIRUVANANTHAPURAM
REPRESENTED BY POWER OF ATTORNEY HOLDER, ABDUL VAHAD
S/O.MOHAMMED KANNU, AGED 66 YEARS, RESIDING AT
SAYOOJYAM, PUTHENPALAM, ANAD
NEDUMANGAD

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN

RESPONDENT(S) :

1. RAMSHA.M.R., D/O.MUHAMMED SHA,
JAMRATH-AL-USTHA, ALISSERY WARD, ALAPPUZHA
REPRESENTED BY HER MOTHER AND
POWER OF ATTORNEY HOLDER RAMLATH BEEVI
W/O.MUHAMMED SHA.

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

R, BY ADV. PUBLIC PROSECUTOR SMT SEENA RAMAKRISHNAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 25-
05-2015, ALONG WITH CRMC 2532 OF 2009 & CRRP 422 OF 2011, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:

P.D.RAJAN, J

.....
Crl.MC.3222 of 2009,
Crl.M.C.2532 of 2009 &
Crl.R.P No.422 of 2011
.....

Dated 25th May, 2015

ORDER

These petitions are filed under Section 482 Cr.P.C to quash the order passed in M.C.51 of 2003 of the Chief Judicial Magistrate I, Alappuzha. Crl.M.C.3222 of 2009 and Crl.R.P.422/2011 have been filed against the order in M.C.No.51 of 2003 passed by Judicial First Class Magistrate -I, Alappuzha, which was confirmed by the order in Crl.R.P.65 of 2005 and Crl.R.P.55/2005 of Sessions Judge, Alappuzha. Crl.M.C.2532 of 2009 has been filed against the order in C.M.P.No.12621 of 2008 and C.M.P.No.3908 of 2009 of Judicial First Class Magistrate -I, Alappuzha. M.C.51 of 2003 was filed under Section 3(1)(a) and 3(1)(b) of the Muslim Women Protection of Rights on Divorce Act, 1986 (hereinafter referred to as the 'Act') by the wife.

2. The petitioner married the first respondent as per muslim customary rites on 30.9.1998. In that wedlock, a

child was born to them on 24.12.1999. Due to difference of opinion, the respondent pronounced 'talak' on 25.5.2001. After that, both parties are living separately. Subsequently, on 6.7.2003, first respondent preferred M.C.51 of 2003 before Judicial First Class Magistrate-I, Alappuzha claiming maintenance under Section 3(1)(a) and 3(1)(b) of the Act, in which the learned Magistrate directed the petitioner to pay an amount of Rs.1,08,000/- under Section 3(1)(a) and to pay a sum of Rs.17,500/- as maintenance under Section 3(1)(b) of the Act. Aggrieved by that, petitioner preferred CrI.R.P.65 of 2005. CrI.R.P.422 of 2009 was preferred by the wife against the order in CrI.R.P.65 of 2005 of Sessions Judge, Alappuzha against the common order in CrI.R.P.55 of 2005 and 65 of 2005. The wife filed CrI.R.P.55 of 2005 before Sessions Judge, Alappuzha for enhancing the amount awarded under Section 3(1)(5) of the Act from Rs.17,500/- and the revisional court granted Rs.60,000/-.

3. Learned counsel appearing for the petitioner in CrI.M.C.2532/2009, CrI.M.C.3222 of 2009 and

CrI.R.P.422/2011 contended that there was an agreement between the petitioner and first respondent on 30.6.2006. After execution of Annexure B agreement, first respondent has to go only according to the conditions laid down in that agreement and petitioner paid Rs.2,00,000/- to her which was endorsed in that agreement and renewed in the year 2007. Even after receipt of the agreed amount, first respondent failed to comply with the directions and she is entitled to get further maintenance as per Annexure B agreement. Therefore issuance of distress warrant without recording the compliance of the order is unsustainable in law.

4. Learned counsel appearing for the first respondent wife in all the petitions submitted that as per Annexure B agreement, a sum of Rs.2,00,000/- was deposited in the Family Court, Alappuzha in his name. The arrears will come to more than that amount and no illegality is there in issuing distress warrant.

5. It is true that the petitioner has the responsibility to deposit the arrears of maintenance as per

the direction issued by Judicial First Class Magistrate-I, Alappuzha. Petitioner later approached the court for alteration of the amount which was declined by the revisional court and that petition alone was considered in Annexure E. It is true that for proof of change of circumstances of any person receiving monthly allowance for maintenance or interim maintenance ordered under Section 125 Cr.P.C, the Magistrate can make alteration as he think fit on the basis of such proof. The contention advanced by the petitioner was not convincing and the lower court dismissed it. When there is arrears of maintenance, trial court can issue distress warrant on the basis of execution petition filed by the first respondent. CMP 12621 of 2008 was filed for realising the due amount from the petitioner husband. He also filed CMP 3908 of 2009 to recall such warrant. A close scrutiny of the averment shows that the directions issued by the learned Magistrate in the M.C and in the revision petition were not properly complied by the husband and the learned Magistrate declined to recall the distress warrant. I find

no illegality in the above order.

6. According to Section 3(1)(a) the divorced woman shall be entitled to get reasonable and fair provision of maintenance which is to be paid to her within the iddat period by her former husband. According to Section 3(1)(b), where she herself maintains the child born to her before or after her divorce, a reasonable and fair provision and maintenance is to be paid by her former husband for a period of two years from the respective date of birth of such children. Therefore, a divorced woman is entitled to get reasonable and fair provision and maintenance from her husband which has to be paid by the husband within the iddat period. Talaq in this case was pronounced on 25.5.2001.

7. The first respondent approached Judicial First Class Magistrate-I, Alappuzha and filed M.C.51 of 2003 under Section 3(1)(a) and 3(1)(b) in which a sum of Rs.1,08,000/- was granted as reasonable and fair provision under Section 3(1)(a) and a sum of Rs.17,500/- was granted under Section 3(1)(b) of the Act. Against

that order, first respondent filed CrI.R.P.55 of 2005 and the petitioner herein filed CrI.R.P.65 of 2005 which was disposed by the Sessions Judge, Alappuzha on 30.3.2007 by a common order. CrI.R.P. 55 of 2005 was partly allowed by modifying the impugned order under Section 3 (1)(b) from Rs.17,500/- to Rs.60,000/- and CrI.R.P.65 of 2005 was dismissed by the learned Sessions Judge. A close reading of Section 3(1)(b) of the Act shows that it does not in any way affect the right of the minor children of divorced muslim parents to claim maintenance from their father under Section 125 of Cr.P.C, till they attain majority or they are able to maintain themselves and in case of females, till they are married. Now the petitioner, who is the father of the minor, approached this court to quash the maintenance amount awarded by the courts below.

8. While exercising the inherent power under Section 482 Cr.P.C, it has to be exercised very carefully and with caution only according to justifiable reasons specifically mentioned therein. In normal course, court

will not exercise such inherent jurisdiction when there is no reasonable apprehension of any injustice. This can be only invoked to prevent abuse of process of court or otherwise to secure the ends of justice. It is also well settled that inherent powers can be exercised only when no remedy is available to the litigant and no specific remedy is provided in any statute. This power is an extraordinary one which has to be exercised sparingly and very carefully. The facts highlighted by the respondent show that there is partial compliance only. Therefore, there is a responsibility on the part of the petitioner to comply with the directions issued in M.C.51 of 2003 and CrI.R.P.65 of 2005. There is no merit in these petitions and they are accordingly dismissed.

P.D.RAJAN, JUDGE

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