

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

Crl.MC.No. 3873 of 2015 ()

PETITIONER/RESPONDENT:

**MAXWELL M. CHENNUR, CHENNUR HOUSE
VYDRAPADI, PALLIPURAM, ERNAKULAM
REPRESENTED BY POWER OF ATTORNEY
JOSEPH MON, CHENNUR HOUSE, VYDRAPADI
PALLIPURAM, ERNAKULAM.**

**BY ADVS.SMT.R.LEELA
SMT.U.S.SARITHA**

RESPONDENTS/PETITIONERS:

- 1. HAPPY, D/O.E.K.ANTONEY, ELAMKUNNAPUZHA HOUSE
NAYARAMBALAM VILLAGE, KOCHIN, NOW RESIDING AT "GLORIA"
NEAR ROTARY CLUB, REPUBLIC ROAD, NORTH PARAUR-683515.**
- 2. AMALA MAXWELL, AGED 19 YEARS
D/O.MAXWELL M.CHENNUR, RESIDING AT "GLORIA"
NEAR ROTARY CLUB, REPUBLIC ROAD, NORTH PARAUR-683515.**
- 3. MADHU MAXWELL, AGED 16 YEARS
D/O.MAXWELL M.CHENNUR, RESIDING AT "GLORIA"
NEAR ROTARY CLUB, REPUBLIC ROAD, NORTH PARAUR-683515.**
- 4. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADV. SRI.HAPPY MAXWELL (PARTY IN PERSON)
R2 BY PUBLIC PROSECUTOR SMT. SHEEBA M.T.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29-09-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE A1- TRUE COPY OF THE COMMON ORDER IN M.C.138/2010, O.P.1968/2009, O.P.1993/2009 AND O.P.968/2010 OF THE FAMILY COURT, ERNAKULAM.

ANNEXURE A2- THE TRUE COPY OF THE M.P.414/2014 IN MC 138/2010 FILED BY THE 1ST PETITIONER BEFORE THE FAMILY COURT ERNAKULAM.

ANNEXURE A3- THE TRUE COPY OF THE STATEMENT FILED BY THE PETITIONER HEREIN BEFORE THE FAMILY COURT, ERNAKULAM.

ANNEXURE A4- THE TRUE COPY OF THE JUDGMENT IN O.P.CRL.235/2015 BEFORE THIS HON'BLE COURT.

ANNEXURE A5- THE TRUE COPY OF THE OBJECTION IN MP 414/2014 FILED BY THE PETITIONER HEREIN BEFORE THE FAMILY COURT, ERNAKULAM.

ANNEXURE A6- THE TRUE COPY OF THE APPLICATION FILED BY THE COUNSEL FOR THE PETITIONER HEREIN TO RECALL WARRANT BEFORE THE FAMILY COURT ERNAKULAM.

ANNEXURE A7- TYPED COPY OF THE ORDER DATED 5.6.2015 IN M.P.414/2014 IN M.C. 138/2010 OF THE FAMILY COURT, ERNAKULAM.

RESPONDENTS' EXHIBITS

ANNEXURE R1(a) COPY OF THE POWER OF ATTORNEY EXECUTED BY 2ND RESPONDENT DATED 17.04.2015

ANNEXURE R1(b) COPY OF THE POWER OF ATTORNEY EXECUTED BY 3RD RESPONDENT DATED 14.08.2015

ANNEXURE R1(c) COPY OF STATEMENT FILED BY THE RESPONDENT HEREIN BEFORE THE FAMILY COURT, ERNAKULAM

ANNEXURE R1(d) COPY OF COUNTER AFFIDAVIT IN O.P.(Crl) 253/2014 FILED BY THE RESPONDENT NO.2 (LIC OF INDIA)

ANNEXURE R1(e) COPY OF THE M.P. 1145/2014 IN M.C.NO.138/2010 FILED BY THE RESPONDENT HERE IN BEFORE HONOURABLE FAMILY COURT, ERNAKULAM

TRUE COPY

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.3873 of 2015

Dated this the 29th day of September, 2015

O R D E R

The petitioner herein is the respondent in M.C.No.130/2010 of the Family Court, Ernakulam. The order passed by the Family Court in the said proceeding is now being executed. The total amount ordered by the court is Rs.12,500/- per month for the children. They are represented by the 1st respondent herein as their mother. Pending the execution proceedings, the learned trial Judge issued a warrant of arrest against the petitioner. The petitioner's grievance is that without and before issuing a distress warrant, the learned trial Judge straight away issued a warrant of arrest against him. The said order is sought to be quashed under Section 482 Cr.P.C.

2. On hearing both sides, I find that there is dispute between the parties regarding the amount actually due. That will have to be adjudicated and decided by the learned trial Judge. It is submitted that CMP No.414/2014 filed for execution of the maintenance awarded is still pending. The petitioner's grievance appears to be genuine that coercive steps can be taken against him only after deciding the actual amount due under the impugned order. In such a situation, I feel it appropriate to make

a direction to the court below accordingly, and close this proceeding.

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

- a) The learned Judge, Family Court, Ernakulam is directed to adjudicate and decide the actual amount of maintenance due from the petitioner herein as per the order in M.C.No.130/2010.
- b) Enforcement of the warrant of arrest issued from the court below will stand suspended till such adjudication is made and CMP No. 414/2014 is disposed of.
- c) Once adjudication is made regarding the amount due, and the petitioner fails to make payment within the time fixed by the court below, coercive steps including warrant of arrest can be issued against the petitioner.
- d) The petitioner's grievance that one child has already attained majority and that the order in his favour cannot be enforced, will also be appropriately considered by the learned trial Judge.
- e) The court below is directed to take decision in CMP No.414/2014 within a period of three months.

Sd/-

P. UBAID, JUDGE

sd