

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

Crl.MC.No. 4674 of 2015 ()

**MC.NO. 227/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KASARAGOD
CRL.M.P.NO.1934/2015 IN CRL.A.NO.127/2015 OF SESSIONS COURT, KASARAGOD**

PETITIONERS/PETITIONERS/APPELLANT:

1. FAISAL ALI,S/O. ABDUL RAHMAN,
RAHMATH ROAD, POOCHAKKAD,
PALLIKKARE, HOSDURG TALUK, KASARAGOD DISTRICT.
2. BEEFATHIMA,W/O. ABDUL RAHMAN,
RAHMATH ROAD, POOCHAKKAD,PALLIKKARE,
HOSDURG TALUK, KASARAGOD DISTRICT.
3. UMMALIMMA @ UMMALI @ ASIDA,
W/O. (LATE) SHARAFUDEEN, MELPARAMBA,
KASARAGOD DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS/RESPONDENTS:

1. FATHIMATH FOUSIYA,
D/O. MOHAMED JADEED, KOLLAMPADY, MASJID ROAD,
KASARAGOD POST, ANANGOOR,
KASARAGOD VILLAGE-673 001
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.PIN-682 031

R2 BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 29-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 4674 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX A1- TRUE COPY OF THE ORDER PASSED BY THE JUDICIAL MAGISTRATE
OF FIRST CLASS I, KASARGOD IN MC.NO. 227/2011.**
- ANNEX A2- TRUE COPY OF THE ORDER PASSED BY THE COURT OF SESSION,
KASARGOD IN CRL.M.P.NO. 1934/2015 IN CRL.A.NO. 127/2015.**
- ANNEX A3- TRUE COPY OF THE PROCEEDINGS OF THE FAMILY COURT,
KASARGOD IN C.M.P.NO. 452/2012 IN M.C.NO. 117/2010.**
- ANNEX A4- TRUE COPY OF THE C.M.P.NO. 208/2014 IN M.C.NO. 117/2010.**
- ANNEX A5- TRUE COPY OF THE C.M.P.NO. 64/2012 IN M.C.NO.117/2010.**

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

/TRUE COPY/

P.S.TO JUDGE

sts

ALEXANDER THOMAS, J.
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Crl.M.C.No. 4674 of 2015
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Dated this the 29th day of July, 2015
O R D E R

The order under challenge is one at Anx.A-2 rendered by the Sessions Court, Kasargod in proceedings under the Protection of Women from Domestic Violence Act initiated in Crl.M.P.No. 1934/2015 in Crl.Appeal No.127/2015. As per the said order, the Appellate Court (Sessions Court concerned) had granted stay of the operation and implementation of Anx.A-1 passed by the jurisdictional Magistrate's court on an interim maintenance claim decided as per the aforestated Act. The Sessions Court held that the impugned order in appeal will remain under suspension till disposal of the appeal on the appellants under protest remit the amount directed to be paid by him as per the impugned order. It is this order that is under challenge before this Court.

2. The operative portion of Anx.A-1 order passed by the Magistrate's court at paragraph 14 thereof reads as follows:

“14. In the result, the petition is allowed in part as follows:

- (i) Prohibiting the respondents from committing any act of domestic violence against the petitioner.

- (ii) Prohibiting the respondents from communicating to the petitioner in whatever manner.
- (ii)(sic) Directing the 1st respondent to pay Rs.1,500/- per month to the petitioner and Rs.1,750/- per month to her child as maintenance from the date of petition.
- (iii) Directing the respondents to pay Rs.1,00,000/- as compensation to the petitioner within 2 months for mental agonies suffered by her."

The impugned Anx.A-2 order passed by the Appellate Court (Sessions Court) reads as follows:

"Heard. Operation of order under challenge in appeal be suspended till disposal of Appeal on appellant under protest remits the amount directed to be paid by him as per clause (iii) (maintenance) or order challenge and clears arrears by 10.06.15. call on 15.06.15."

It is pointed out by Sri.Sunny Mathew, the learned counsel for the petitioners that the petitioners have now been ordered to pay the entire arrears of maintenance covered by clause No.(ii) of Anx.A-1 order from the date of petition instituted the year 2011. Obviously Anx.A-2 order is an interlocutory order. There is no necessity now to issue notice to respondent wife and trouble her with additional expenses in conducting this litigation now pending here. Therefore, it is for the 1st petitioner to move an appropriate application for necessary modification of the condition imposed in Anx.A-2 order before the appellate court by producing necessary materials to establish his case about his limited income, etc. by

producing his income certificate from a competent authority and the 1st petitioner shall also swear to an affidavit before the court below showing his avocation and various source of income, if any, that he is availing. The respondent wife will be given opportunity to contest the correctness of these claims of the 1st petitioner by filing objections and producing necessary materials in the matter. After considering the rival pleas of both sides, the Sessions Court concerned will take a decision on the application of the petitioners for modification of the impugned condition No.ii at Anx.A-1 without any further delay, at any rate, within a period of two months from the date of filing of the application concerned along with a certified copy of this order. Until a decision is taken on the said application of the petitioners for the modification, further operation and implementation of Anx.A-2 order will be kept under suspension, provided that the 1st petitioner pays at least 30% of the amounts covered by paragraph 14, condition No.ii of Anx.A1 order, within a period of one month from today. Failure of the 1st petitioner to oblige this direction to pay the aforesaid amount to the respondent wife will lead to automatic cancellation of the benefit of this order and the impugned proceedings could be implemented in

the manner known to law. The petitioners shall file an application for modification within a period of two weeks along with a certified copy of this order.

With these observations and directions, the Crl.M.C. stands finally disposed of.

sd/-
ALEXANDER THOMAS, JUDGE
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///True copy///

P.S. to Judge