

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

Crl.MC.No. 5944 of 2015

MC 2/2013 OF CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM

**AGAINST THE JUDGMENT IN CRL.APPEAL NO. 45/2014 OF II ADDITIONAL SESSIONS
JUDGE, KOLLAM**

PETITIONERS/RESPONDENT NOS.1&3 :-

- 1. NADIRSHA A.M.,
S/O ABDUL MAJEED, RESIDING AT IMAN MANZIL,
PALACHIRA P.O., VARKALA, TRIVANDRUM.**
- 2. RABEELA, AGED 62 YEARS,
W/O ABDUL MAJEED, RESIDING AT IMAN MANZIL,
PALACHIRA P.O., VARKALA, TRIVANDRUM.**

BY ADV. SRI.C.K.SREEJITH

RESPONDENTS/PETITIONER AND STATE :-

- 1. SMT. SABEENA, AGED 31 YEARS,
D/O. MUHAMMED KUNJU, RESIDING AT FABIYA, HOUSE NO.40,
KADAPPAKADA NAGAR, KOLLAM TALUK-691008.**
- 2. STATE OF KERALA.
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.**

R BY SRI.JASTIN JACOB, PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 07-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' ANNEXURES :-

ANNEXURE A1: THE TRUE COPY OF THE COMPLAINT FILED BY IST RESPONDENT AS MC 2/2013 CJM COURT, KOLLAM.

ANNEXURE A2: THE TRUE COPY OF THE AFIDAVIT WITH PETITION FILED FOR INTERIM MAINTENANCE.

ANNEXURE A3: THE TRUE COPY OF THE OBJECTION FILED BY THE IST PETITIONER.

ANNEXURE A4: THE TRUE COPY OF THE PETITION FILED BY THE PETITIONER IN THE M.C.

ANNEXURE A5: THE TRUE COPY OPF THE OBJECTION FILED IN MC.2/2013.

ANNEXURE A6: THE TRUE COPY OF THE JUDGMENT PASSED IN CRL.A.NO.45/2014.

ANNEXURE A7: THE TRUE COPY OF THE JUDGMENT IN CRL.M.C.NO.5211/13 ON THE FILE OF THE HON'BLE HIGH COURT OF KERALA.

ANNEXURE A8: THE TRUE COPY OF THE MEDICAL CERTIFICATE SHOWING THAT THE FATHER OF THE PETITIONER WAS HOSPITALIZED.

ANNEXURE A9: TRUE COPY OF THE DISCHARGE BILL DATED 25.3.13.

ANNEXURE A10: TRUE COPY OF THE CARDIAC CATHETERIZATION REPORTS DATED 19.5.15 ISSUED BY THE COSMOPOLITOM HOSPITALS (P) LTD., TRIVANDRUM.

ANNEXURE A11: THE TRUE COPY OF THE ORDER PASSED BY THE LEARNED JUDICIAL IST CLASS MAGISTRATE COURT I, VARKALA IN CMP NO.6652/12 IN CC NO.944/13.

ANNEXURE A12: THE TRUE COPY OF THE NOTICE ISSUED BY THE MUSLIM JAMA-ATH, CHAVARA DATED 15.11.2014.

ANNEXURE A13: THE TRUE COPY OF THE PETITION FILED IN O.P.NO.2251/2013 ON THE FAMILY COURT ATTINGAL.

RESPONDENT(S)' ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

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P.UBAID, J.

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Crl.M.C.No.5944 of 2015
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Dated this the 7th day of September, 2015

ORDER

The petitioners herein are the respondents 1 and 3 in M.C.No.2 of 2013 of the Chief Judicial Magistrate's Court, Kollam. In the said proceeding, the learned Magistrate passed interim order under Section 23 of the Protection of Women from Domestic Violence Act (DV Act), and in appeal, the order was confirmed by the learned Additional Sessions Judge-II, Kollam. However, the learned Appellate Judge directed the trial court to dispose of the original proceeding at the earliest, giving opportunity to the appellants to substantiate their contentions. Crl.Appeal No.45 of 2014 was disposed of the by the learned Appellate Judge on 22.11.2014. Trial is accordingly proceeding now. The petitioners' grievance is that the trial court has been insisting on payment of the interim maintenance awarded by the Court. In this proceeding, the petitioners seek orders directing the trial court to dispose of M.C.No.2 of 2013 within a

time frame, and directing the learned Magistrate not to insist on payment of interim maintenance till the main proceeding is disposed of. On hearing the learned counsel, and on a perusal of the materials, I find that this Crl.M.C. does not merit consideration. The learned Appellate Judge has already directed the trial court to dispose of the matter at the earliest, on merits. The interim order granting maintenance is confirmed by the appellate court. The said order is not seen challenged. This means that the petitioners will have to make payment of interim maintenance till the main proceeding is disposed of. This Court cannot direct the trial court not to insist on payment of interim maintenance, when the judicial order passed by the trial court stands confirmed in appeal. This Court cannot usurp into the powers of the Court below in exercise of the powers under Section 482 Cr.P.C. The learned Magistrate will dispose of the case at the earliest as directed by the Appellate Court. If the petitioners feel any unnecessary delay, they can approach this Court under Article 227 of the Constitution. However, if payment of interim maintenance in lump is not possible, the petitioners can make a request before the learned Magistrate for permission to make payment of interim maintenance in

installments. Only that much can be ordered at the most in this proceeding.

With these observations, this Crl.M.C. is disposed of, without being admitted to files.

Sd/-

**P.UBAID
JUDGE**

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//TRUE COPY//

P.A. TO JUDGE