

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

Crl.MC.No. 7620 of 2015 ()

PETITIONER/PETITIONER/RESPONDENT:

**MIBEESH, AGED 29 YEARS, S/O. KALIYADAN APREM
PULIPARAMBU DESOM, POYYA VILLAGE, KODUNGALLUR
TALUK, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
APREM, S/O. KALIYADAN KOCHUVAREED, PULIPARAMBU DESOM
POYYA VILLAGE, KODUNGALLUR TALUK**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS/RESPONDENTS/PETITIONER AND THE STATE OF KERALA:

- 1. LIPSY, AGED 25 YEARS, D/O. MANI ARACKAL POULOSE
MUPLIYAM VILLAGE/DESOM, MUKUNDAPURAM TALUK
THRISSUR DISTRICT - 680 001**
- 2. THE STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
AT ERNAKULAM - 682031**

R2 BY PUBLIC PROSECUTOR SRI. JUSTIN JACOB

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04-12-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

CRL..M.C.NO.7620/2015

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE-I CERTIFIED COPY OF THE ORDER IN M.C. NO.62/2013 ON THE FILES OF
FAMILY COURT, IRINJALAKUDA DATED 30.10.2014**

**ANNEXURE-II COPY OF THE PETITION IN M.P.63/2015 IN M.C.62/2013 ON THE FILES
OF FAMILY COURT, IRINJALAKUDA DATED 30.01.2015**

**ANNEXURE-III CERTIFIED COPY OF THE ORDER IN M.P.63/2015 IN M.C.62/2013 ON
THE FILES OF FAMILY COURT, IRINJALAKUDA DATED 13.07.2015**

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.7620 of 2015

Dated this the 4th day of December, 2015

O R D E R

The petitioner herein is the respondent in M.C.No.62/2013 of the Family Court, Irinjalakuda, which is proceeding brought under Section 125 Cr.P.C. On 30.10.2014, the learned Judge decided the case ex-parte, directing the petitioner herein to pay maintenance to his wife @ Rs.6,000/- per month. Later, the petitioner filed M.P.No.63/2015 to set aside the ex-parte order. On the said application, the learned trial judge passed an order on 13.07.2015 directing the petitioner to make some deposit as a condition for considering the petition to set aside the ex-parte order. The said order is under challenge. Much thought or probe is not required to find that the impugned order cannot be sustained. The learned Judge cannot impose any condition for considering the application to set aside the ex-parte order. On merits, the learned trial Judge decided the application to set aside the ex-parte order, and if felt necessary, some conditions can be imposed for allowing the application. Such a course is

possible under the law, but the order passed by the learned trial Judge cannot be sustained.

In the result, this petition is allowed. The impugned order dated 13.07.2015 passed by the court below will stand set aside. The court below is directed to consider and decide M.P.No.63/2015 in M.C.No.62/2013 judiciously, on merits. It is clarified that, if ultimately the court finds the necessity of some condition for allowing the application, or to set aside the ex-parte order, such reasonable condition can be imposed.

Sd/-

P. UBAID, JUDGE

sd

// True Copy //

P.A. to Judge