

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

Crl.MC.No. 7935 of 2015 ()

CMP 9002/2015 of JUDICIAL FIRST CLASS MAGISTRATE COURT,VARKALA

PETITIONER/RESPONDENT:

**HUSSAN KUNJU, AGED 45 YEARS
S/O.MUHAMMED KUNJU
DHARUL ABDAR VEEDU, VETTIYARA
NAVAYIKULAM, THIRUVANANTHAPURAM.**

BY ADV. SRI.LIJU. M.P

RESPONDENTS/PETITIONERS:

- 1. S.SHIHANA, DHARUL ABDAR, ALIKUNNU, VETTIYARA
NAVAYIKULAM, THIRUVANANTHAPURAM-695 603.**
- 2. THASNNIUM (MINOR), AGED 15 YEARS
D/O.SHIHANA, REPRESENTED BY MOTHER/GUARDIAN, S.SHIHANA
ALIKUNNU, VETTIYARA, NAVAYIKULAM
THIRUVANANTHAPURAM-695 603.**
- 3. SALMAN (MINOR), AGED 12 YEARS
S/O.SHIHANA, REPRESENTED BY MOTHER/GUARDIAN, S.SHIHANA
ALIKUNNU, VETTIYARA, NAVAYIKULAM
THIRUVANANTHAPURAM-695 603.**
- 4. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA-682031.**

R2 BY PUBLIC PROSECUTOR SMT. SHEEBA M.T.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21-12-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 7935 of 2015 ()

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE A : ORDER DT 7-11-2015 PASSED IN CMP NO.9002/2015 IN CMC 6838/2012
ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
VARKALA.**

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.7935 of 2015

Dated this the 21st day of December, 2015

O R D E R

The petitioner herein is aggrieved by a distress warrant issued from the Judicial First Class Magistrate Court-I, Varkala in a proceeding brought under Section 12 Protection of Women from Domestic Violence Act (D.V.Act). The learned Magistrate decided the case ex-parte, and in the appeal brought by the claimant, the amount awarded by the trial court was enhanced. There also the petitioner remained ex-parte. It is submitted that an application to set aside the ex-parte order is pending before the learned Magistrate, and another application for rehearing the appeal is also pending before the appellate court. When he failed to make payment of the amount ordered, coercive steps happened to be issued from the trial court. The petitioner seeks orders under Section 482 Cr.P.C. quashing the said order.

2. On hearing the learned counsel and on a perusal of the materials, I find that the order issued by the trial court for realisation of the amount of maintenance cannot be quashed under Section 482 Cr.P.C. He will have to approach the learned

Magistrate, make payment substantially, and get the warrant recalled. It is submitted that he has already made payment of Rs.3 Lakhs. This also will have to be looked into by the learned Magistrate appropriately. The learned counsel submits that the petitioner has been making payment @ Rs.5,000/- per month. The learned Magistrate will consider all these aspects. He can very well approach the learned Magistrate and make necessary application. It will definitely be considered appropriately by the learned Magistrate. On a consideration of the grievance projected by the petitioner, and also the amount already paid by him, the request to recall the warrant shall be judiciously considered by the learned Magistrate.

With these observations, this Crl.M.C. is disposed of.

Sd/-

P. UBAID, JUDGE

sd

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P.A. to Judge