

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1360 of 2015

AGAINST THE JUDGMENT IN CRL APPEAL NO.117/2014 OF IV
ADDL.SESIONS COURT-IV, THODUPUZHA DATED 12-08-2015

AGAINST THE ORDER IN CMP 453/2009 of J.M.F.C., ADIMALI
DATED 24-05-2014

PETITIONER/1ST RESPONDENT/PETITIONER :-

LEELAMANY, AGED 57 YEARS,
D/O.LATE BHASKARAN,
MANATHARAYIL HOUSE, KUTHUPARA,
VELLATHOOVAL PO, VELLATHOOVAL VILLAGE,
DEVIKULAM TALUK, IDUKKI DISTRICT.

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENT(S)/APPELLANT/RESPONDENT & STATE :-

1. N.MOHANAN, PALAKUNNEL HOUSE,
AGED 62 YEARS, MANNATTU COMPLEX,
ADIMALI PO, MANNAMKANDAM VILLAGE,
DEVIKULAM TALUK, IDUKKI DISTRICT - 685 586.
2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTIONS,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R1 BY ADV. SRI.S.JIJI

R2 BY SRI.JUSTIN JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 15-12-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

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P.UBAID, J.

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Crl.R.P.No.1360 of 2015
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Dated this the 15th day of December, 2015

ORDER

The petitioner herein is the claimant in CMP No.453 of 2009 of the Judicial First Class Magistrate Court, Adimaly, which is a proceeding brought under Section 12 of the Protection of Women from Domestic Violence Act (DV Act) claiming maintenance from her husband. The proceeding was contested by the husband, and he even disputed the marital status. The learned Magistrate conducted an enquiry in the proceeding, and recorded evidence. The claimant examined herself as PW1, and proved Exts.P1 to P4 documents. The husband did not adduce any evidence in support of his contentions. However, Ext.D1 was marked on his side.

2. On an appreciation of the evidence, the learned Magistrate found that the claimant is entitled to get maintenance from her husband. Accordingly, he was directed

to pay maintenance to the wife at the rate of ₹2,500/- per month. Aggrieved by the said order dated 24.05.2014, the husband approached the Court of Session with Crl.Appeal No.117 of 2014. On hearing both sides, the learned 4th Additional Sessions Judge, Thodupuzha found that the claimant has one acre of landed property, and so she is not entitled to claim maintenance. Accordingly, the order of the learned Magistrate was reversed by the learned appellate Judge, and the petition was dismissed. Aggrieved by the said order in appeal dated 12.08.2015, the wife has come up in revision.

3. On haring both sides, and on a perusal of the orders of the courts below, I find that maintenance was wrongly disallowed to the claimant by the learned appellate Judge. Ofcourse, it is true that the claimant has some landed property. But there is absolutely no evidence to show that the property yields any income. The respondent herein did not turn up to adduce any evidence in support of his contentions. He has even gone to the extent of disputing the marital status. Anyway, on an appreciation of the evidence, the learned Magistrate found that she is an aggrieved person

having domestic relation with the respondent, and in the absence of any evidence to prove that the claimant's property yields any sort of income, she was granted maintenance at the rate of ₹2,500/- per month. I find that maintenance was rightly granted to the claimant by the learned Magistrate, and it was wrongly disallowed by the learned appellate Judge. Just because, the lady has some property, it cannot be found that she has income to maintain herself. She has given evidence that the property does not yield any income. There is no evidence contra. The respondent herein did not turn up to prove his case otherwise that the said property yields income. It is not known what is the source of income from this property, or what are the improvements therein. In the absence of any such evidence proving any sort of income, the claimant cannot be denied the relief of maintenance. Being the husband of the claimant, it is his liability and responsibility to pay maintenance to his wife so long as the marital tie subsists.

In the result, this Criminal Revision Petition is allowed. Accordingly, the impugned order passed by the learned 4th Additional Sessions Judge, Thodupuzha in Crl.Appeal No.117 of

2014 will stand set aside, and the orders passed by the learned Magistrate will stand restored.

Sd/-
P.UBAID
JUDGE

rkj

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P.A. TO JUDGE