

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

Crl.Rev.Pet.No. 2490 of 2013 ()

AGAINST THE JUDGMENT IN CRL.A 20/2013 OF SESSIONS COURT ,
KASARAGOD DATED 28-10-2013

AGAINST THE ORDER IN MC 639/2011 of JUDICIAL FIRST CLASS MAGISTRATE
COURT-I,HOSDRUG DATED 25-04-2012

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

MUHAMMED SHAFI @ MUHAMMED SALI AGED 45 YEARS
S/O.ABOOBACKER, RESIDING AT P.A HOUSE, PALIPUZHA P.O
PALLIKKERE VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT

BY ADVS.SMT.R.LEELA
SMT.P.LAKSHMY

RESPONDENT(S)/RESPONDENT/PETITIONER:

1. SABITHA .L.T, AGED 35 YEARS
W/O.MUHAMMED SHAFI @ MUHAMMED SALI
RESIDING AT NEAR JUMA MASJID, PADNEKKAD P.O
PADNEKKAD KANHANGAD VILLAGE, HOSDURG TALUK
KASARAGOD DISTRICT 671 101

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OPF KERALA, ERNAKULAM 682 031

R1 BY ADV. SRI.BLAZE K.JOSE
R1 BY ADV. SRI.RAHUL SASI
R2 BY SMT.SEENA RAMAKIRSHNAN, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 08-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

**ANNEXURE-A1- TRUE COPY OF THE APPEAL 20/13 FILED BY THE PETITIONER
BEFORE THE SESSIONS COURT HOSDURG**

**ANNEXURE-A2- TRUE COPY OF THE CMP1181/13 BEFORE THE JFCM COURT
HOSDURG DATED 15/2/2013.**

RESPONDENT'S EXHIBITS:-

NIL

R.AV

//True Copy//

PA to Judge

K.RAMAKRISHNAN, J

Crl.R.P.No.2490 OF 2013

Dated this the 8th day of January, 2015

O R D E R

Respondent in M.C.639/2011 on the file of Judicial First Class Magistrate Court, Hosdurg is the revision petitioner herein.

2. The case was taken on file on the basis of a complaint filed by the first respondent herein, as aggrieved person under section 12 of the Protection of Women from Domestic Violence Act, 2005, claiming reliefs under sections 18, 19, 20 and 22 of the Act. Since, the revision petitioner did not appear, after examining the first respondent herein as PW1 an exparte order was passed directing the revision petitioner herein, to pay maintenance @ Rs.3000/- to the aggrieved person and Rs.2000/- each to the children from the date of petition namely, 19.11.2011 and the revision petitioner is directed to return 50 sovereigns of gold ornaments or its present value within two months and directed to pay Rs.3,50,000/- to the aggrieved person being the amount received by him from the aggrieved person and directed to pay Rs.1,00,000/- to the aggrieved person as compensation for the mental and physical torture meted by her at the instance of the respondent and restrained him from committing any act of

domestic violence against the petitioner and the children and also to pay Rs.1000/- to the aggrieved person as cost of the proceedings. Aggrieved by the same, he filed Crl.Appeal.No.20/2013 before the Sessions Court, Kasaragod and the learned Sessions Judge by the impugned judgment allowed the appeal in part and directed to set aside the exparte order on condition of clearing the entire arrears of maintenance as per condition No.1 of the court below within 30 days and continue to comply with the said clause till the disposal of M.C and if that condition is complied with then permitting the revision petitioner to file objection and directed the Magistrate to dispose of the case on merit. It is further ordered that till the disposal of the case, the amount ordered as maintenance can be paid as interim maintenance during the pendency of the proceedings in the lower court. This order is challenged by filing this revision by the revision petitioner who is the respondent before the lower court.

3. Heard both sides.

4. The counsel for the revision petitioner submitted that the first child is with him and direction to pay maintenance to the first child is illegal. Further, it was an exparte order and he had got a specific case that the first respondent is living in adultery and as such she is not entitled to get maintenance and

the condition imposed is harsh and also submitted that properties were purchased in the name of the first respondent and she is in possession of the same and taking income, so, that there is no necessity to pay maintenance at all. But the learned counsel for the revision petitioner also submitted that this court is not inclined to exempt him from payment of maintenance, some leniency may be shown in the quantum of amount to be payable as interim maintenance and the arrears to be deposited.

5. On the other hand, the counsel for the first respondent submitted that it will be seen from the order of the lower court that after they were living separately no maintenance was paid and it was on that basis that the quantum of maintenance has been fixed which cannot be said to be excessive and the appellate court has correctly appreciated the facts and the condition imposed cannot be said to be excessive.

6. It is an admitted fact that at the time when the complaint was filed under section 12 of the Protection of Women from Domestic Violence Act, first respondent was the wife of the revision petitioner. There is no dispute regarding the paternity of the children. It is also an admitted fact that it is an exparte order passed and appellate court was inclined to set

aside the exparte order with a view to give an opportunity to the revision petitioner to contest the case on merit and the condition for setting aside the exparte order alone is under challenge now.

7. It is true that for the purpose of setting aside the exparte order, the court has got power to impose conditions especially in the case of maintenance there is nothing wrong for directing some portion of the maintenance amount to be deposited as the condition for setting aside the exparte order so as to give an opportunity to the revision petitioner to meet the case on merit. Further, the quantum of maintenance has been fixed by the court below without hearing the revision petitioner herein. So, considering the circumstances the condition imposed by the court below directing the revision petitioner to deposit the entire arrears of maintenance and continue to pay that amount as fixed by the court below as interim maintenance during the pendency of the proceedings appears to be little harsh. The question as to whether the first respondent is living in adultery or whether she is a divorced wife as submitted by the counsel for the revision petitioner at the time of hearing and whether the first child is living with the revision petitioner etc are matter for evidence. So, under the circumstances, this court feels that some leniency can be shown

in imposing condition for setting aside the ex parte order and this court feels that an amount of Rs.2000/- to the first respondent and Rs.1000/- each to the children can be fixed interim maintenance and if the revision petitioner deposits the arrears of maintenance at this rate as ordered by the court below from the date of petition namely, 19.11.2011, he can be given an opportunity to meet the case on merit. If the arrears of maintenance is paid within two months at the above rate, then the lower court is directed to set aside the ex parte order passed and give an opportunity to the revision petitioner to file his counter and after giving an opportunity to the parties to adduce evidence, dispose of the case on merit in accordance with law. After setting aside the ex parte order, the revision petitioner is liable to pay the interim maintenance at the above rate to the first respondent and the children during the pendency of the proceedings before the court below. If any default is committed, then the first respondent is entitled to realise the amount by executing the order as provided under law. After setting aside the ex parte order, if the revision petitioner files an application for modifying the maintenance order as regards the first child is concerned on the ground that he is living with him, then the court below is directed to conduct an enquiry and pass appropriate orders on that application in

accordance with law. Till then the arrears of maintenance if any deposited towards the share of the first child and the amount of interim maintenance or directed to be paid during the pendency of the proceedings need not be disbursed to the aggrieved person. If the above condition of depositing the arrears of maintenance at the rate within the time mentioned above is not complied with, then the exparte order of the court below will stand restored. Till two months as mentioned above, the coercive steps if any taken for execution of the exparte order is directed to be kept in abeyance.

With the above direction and observations, the revision petition is disposed of accordingly. Communicate this order to the concerned court immediately.

Sd/-
K.RAMAKRISHNAN, JUDGE

R.AV

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PA to Judge