

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

Crl.Rev.Pet.No. 1857 of 2014 ()

AGAINST THE JUDGMENT IN CRL.A 63/2009 of ADDITIONAL SESSIONS COURT
(ADHOC-I), ERNAKULAM DATED 31-12-2011.

AGAINST THE ORDER IN MC 33/2008 of J.M.F.C.-I, ERNAKULAM
DATED 29-12-2008

REVISION PETITIONER/APPELLANT/1ST ACCUSED:

T.J.JOSEY, AGED 57 YEARS,
S/O. JOCKY, C.C.NO.12/412E,
EAST NAZARETH, MATTANCHERRY P.O.
KOCHI-2.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT/RESPONDENT/COMPLAINANT & STATE:

1. SHANTA JOSEY, AGED 49 YEARS,
W/O.T.J.JOSEY, THYVEETIL HOUSE,
NOW RESIDING AT C/O.PHILOMINA XAVIER,
PAPPALI HOUSE & NICE HOME, KALABHAVAN ROAD, KOCHI-18.

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

R1 BY ADV. SRI.TOM JOSE

R2 BY PUBLIC PROSECUTOR SMT. V.H.JASMINE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
27-02-2015, ALONG WITH RPFC. 294/2014, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-I TRUE COPY OF THE PASSPORT OF THE PETITIONER.

ANNEXURE-II TRUE COPY OF THE DISCHARGE SUMMARY DATED 31.12.2013
ISSUED BY THE MEDICAL TRUST HOSPITAL, ERNAKULAM.

ANNEXURE-III TRUE COPY OF THE REPORT PERTAINING THE TREATMENTS OF
THE PETITIONER UNDERGONE IN KUWAIT.

ANNEXURE-IV TRUE COPY OF THE PROCEEDINGS ISSUED BY ADVOCATE SUDEESH R.

ANNEXURE-V TRUE COPY OF THE PROCEEDINGS ISSUED BY ADVOCATE SUDEESH R.

ANNEXURE-VI TRUE COPY OF THE REVISION PETITION DATED 22.10.10 IN
CRL.R.P.NO.4016/10 BEFORE THIS COURT.

ANNEXURE-VII TRUE COPY OF THE RECEIPT DATED 11.8.14.

ANNEXURE-VIII TRUE COPY OF THE RECEIPT DATED 14.8.14.

ANNEXURE-IX TRUE COPY OF THE SALARY CERTIFICATE OF THE PETITIONER
DATED 24.6.14.

RESPONDENT'S ANNEXURES:

ANNEXURE-R1 TRUE COPY OF ORDER DATED 20.8.2010 IN CMP.1631/2010 IN
CRIMINAL APPEAL NO.63/09 OF THE SESSIONS COURT, ERNAKULAM.

ANNEXURE-R1(A) TRUE COPY OF DEPOSITION OF RW1 IN CONNECTED CASES
JOINTLY BEING TRIED BEFORE FAMILY COURT, ERNAKULAM IN
O.P.NO.1052/08,O.P.NO.282/08 & O.P.NO.1571/08.

ANNEXURE-R2 TRUE COPY OF PETITION DATED 22.9.10 FILED BY THE
RESPONDENT T.J.JOSEY SEEKING TIME TO EFFECT PAYMENT BEFORE THE
SESSIONS COURT, ERNAKULAM.

/TRUE COPY/

P.S TO JUDGE

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.1857 of 2014

&

R.P.(F.C.)No.294 of 2014
.....

Dated this the 27th day of February, 2015.

O R D E R

The revision petitioner in Crl.R.P.No.1857/2014 is the first counter petitioner in M.C.No.33/2008 before the Judicial First Class Magistrate Court-I, Ernakulam, which was filed by the first respondent herein, who is the revision petitioner in R.P.(F.C.)No.294/2014 claiming certain reliefs under section 12 of the Protection of Women from Domestic Violence Act.

2. After evidence, the learned Magistrate has passed an order granting the relief of alternate accommodation or pay rent at the specified rate provided by the court against the revision petitioner in Crl.R.P.No.1857/2014 against which he filed Crl.A.No.63/2009 before the Sessions Court, Ernakulam and the same was made over to Additional Sessions Court (Adhoc-I), Ernakulam for disposal and the learned Additional Sessions Judge dismissed the appeal confirming the order passed by the Magistrate, against which the above revision has been filed.

3. The revision petitioner in R.P.(F.C.)No.294/2014 was the petitioner in M.C.No.112/2008 before the Family Court, Ernakulam, which was filed against the respondent therein claiming maintenance under section 125 of the Code of Criminal Procedure and the learned Magistrate has passed an order of maintenance directing the respondent to pay maintenance at the rate of ₹2,500/- per month from the date of petition and dissatisfied with the quantum of maintenance, she filed the above revision.

4. While the case was pending before this Court, though the matter was referred for mediation earlier, the matter could not be settled. But, at the time when the matter was in the process of hearing, parties have entered into an agreement of compromise to settle the claims between them and they filed Crl.M.A.No.1182/2015 in Crl.R.P.No.1857/2014 whereby they have agreed to settle the entire claim for a total amount of ₹ 15 lakhs and both the petitioner and the respondent have decided to dissolve their marriage by filing a joint petition for divorce. The amount of ₹15 lakhs includes the amount of ₹2,20,000/- deposited by the revision petitioner in

Crl.R.P.No.1857/2014 towards the amount ordered as rent for alternate accommodation provided under section 19 of that Act and ₹ 2 lakhs has already been withdrawn by the first respondent (wife) in that case. The petitioners in both the cases are husband and wife. As directed by this Court, a demand draft for ₹3 lakhs out of the balance amount of Rs.12,80,000/- has been now handed over to the counsel for the wife and fixed deposit for the balance amount of Rs.9,80,000/- was taken in the name of the wife to be produced before the Family Court, Ernakulam as condition for filing an application for joint petition for divorce as agreed to between the parties as per the compromise. They have also decided to withdraw all the pending cases between them before all the courts including these proceedings. Further, as per the agreement, the husband has agreed to pay ₹ 4,000/- as maintenance to the physically challenged child from today, who is now with the mother, wife of the revision petitioner in Crl.R.P.No.1857/2014 and the first payment has already been made honouring the compromise entered into between the parties. The amount deposited in the name of the wife and produced before the

Family Court, Ernakulam can be disbursed to the wife only after disposal of the joint petition for granting divorce by mutual consent. If default was committed on the side of the husband in not co-operating with the disposal of the joint petition for divorce, then the order in M.C.No.33/2008 and also the order passed by the Family Court in M.C.No.112/2008 will be revived and the wife is entitled to execute that order as though those orders have been confirmed by this Court. If the wife did not co-operate, then the amount in deposit can be returned to the husband after adjusting the arrears, if any payable, on the basis of the orders now confirmed by this Court, if the joint petition for divorce is allowed and the marriage is dissolved by mutual consent, then the Family Court is directed to release the fixed deposit in favour of the wife. Till then, the court is directed to inform the bank that the amount should not be paid to any party without orders from that court. If the case could not be disposed of within one year, the family court is directed to renew the fixed deposit till the disposal of the joint petition for divorce. If the joint petition could not be disposed of due to non co-operation of the husband,

the amount is directed to be detained in court till the disposal granting mutual divorce. The amount of ₹20,000/- now lying in deposit before the Judicial First Class Magistrate Court-I, Ernakulam is permitted to be withdrawn by the petitioner in M.C.No.33/2008. So Crl.M.A.No.1182/2015 is recorded and both the above petitions are disposed of accordingly. Parties are at liberty to file respective applications for withdrawal of the pending cases and a joint petition for divorce as agreed to between them in the compromise in the appropriate court.

Office is directed to communicate a copy of this order to both the courts immediately.

Sd/-
K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

Crl.R.P.No.1857 of 2014
&
R.P.(F.C.)No.294 of 2014