

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

Crl.Rev.Pet.No. 2024 of 2014 ()

**AGAINST THE JUDGMENT IN CRL. APPL. 286/2013 of SESSIONS COURT,
KOTTAYAM DATED 16/10/2014
IN MC 42/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I,KANJIRAPPALLY**

REVISION PETITIONER/APPELLANT/RESPONDENT :

**M.N.THANKAPPAN @ M.N.THANKACHAN
S/O.NARAYANAN, APCO WOOD CRAFT HOSDURG,
KANJANGADU P.O., RESIDING AT MALIYEKKAL HOUSE,
KANJIRAMATTOM P.O., CHENGALAM EAST VILLAGE.**

BY ADV. SRI.A.K.HARIDAS

RESPONDENTS/RESPONDENTS/APPELLANTS & SATE :

- 1. SHAILIJA
W/O.M.N.THANKACHAN, MALIYEKKAL HOUSE,
KANJIRAMATTOM P.O., ANICKADU.**
- 2. SREEJITH
S/O.M.N.THANKACHAN, MALIYEKKAL HOUSE
KANJIRAMATTOM P.O., ANICKADU.**
- 3. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

**R1 & R2 BY ADV. SRI.K.KESAVANKUTTY
R3 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 24-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S ANNEXURES :

ANNEXURE A1: COY OF MEDICAL PRESCRIPTION OF PSYCHIATRIST.

ANNEXURE A2: COPY OF MEDICAL CERTIFICATE.

RESPONDENT'S ANNEXURES : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

B.KEMAL PASHA, J.

Crl.R.P.No.2024 of 2014 C

Dated this the 24th day of March 2015

ORDER

The prayer in this petition is to set aside the impugned judgments of the court below and to remand the matter to the trial court.

2. Heard the learned counsel for the petitioner, learned counsel for respondents 1 and 2 and the learned Public Prosecutor.

3. The matter relates to an application filed by respondents 1 and 2 herein, under Section 12 of the Protection of the Protection of Women from Domestic Violence Act, as M.C. No.42 of 2012 before the Judicial First Class Magistrate's Court-1, Kanjirappally against the petitioner herein, who is the husband of the first respondent and the father of the second respondent. Notice was

served on the petitioner herein. He had not cared to appear before the trial court. He was set ex-parte and the matter was disposed of, finally by the trial court, thereby granting a relief of maintenance and other reliefs vide order dated 4.2.2013, and amounts of ₹ 3,000/- and ₹2,000/- per month were ordered to be paid as maintenance to respondents 1 and 2 herein respectively.

4. The petitioner herein challenged the said order before the Sessions Court, Kottayam, that too belatedly, with an application under Section 5 of the Limitation Act, for condonation of the delay of 96 days. The court below has allowed the application under Section 5 of the Limitation Act, on payment of cost of ₹1,000/- on or before 14.10.2014 vide order dated 30.9.2014 in Crl.M.P. No.2543/2013 in C.A. No.286/2013. The amount ordered as costs, has not been paid. Consequently, the appellate court dismissed the appeal as time barred on 16.10.2014. The appellant has come up with this Crl.R.P.

5. According to the learned counsel for the petitioner, the petitioner was suffering from mental illness and he was undergoing medical treatment and that is the reason why he could not appear before the court below and could not pay the costs, as ordered by the court below.

6. On hearing the parties, this court is of the view that this Crl.R.P. can be allowed on condition.

In the result, this Crl.R.P. is allowed on condition that the petitioner shall deposit half the arrears of maintenance as ordered by the trial court within one month from today before the trial court. In case, the amount is not paid within the said period, this Crl.R.P. will be treated as dismissed. This Crl.R.P. is allowed to the above extent and the matter is remitted to the trial court for fresh disposal on merits, in accordance with law. The trial court shall dispose of the matter, as expeditiously as possible, as the matter relates to the year 2012, in case the deposit is made as

ordered as above. On such deposit, needless to say, the 1st respondent herein shall be permitted to withdraw the said amount from the trial court.

The parties shall appear before the trial court on 9.4.2015.

Sd/-
B.KEMAL PASHA,
JUDGE

dl

// TRUE COPY //

PA to Judge