

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

OP(Crl.).No. 17 of 2015

**AGAINST THE ORDER IN M.C.No.85/2014 of FAMILY COURT, KOTTARAKKARA
DATED 15.10.2014.**

PETITIONER(S):

- 1. REMI ABRAHAM,
PADAPPAN PARAYIL, CHACHIPPUNNA, PUNNATHALA VILLAGE
PATHANAPURAM, KOLLAM DISTRICT.**
- 2. DEBORAH (MINOR) AGED 3 YEARS
REP.BY HER MOTHER REMI ABRAHAM,
PADAPPAN PARAYIL,
CHACHIPPUNNA, PUNNATHALA VILLAGE, PATHANAPURAM,
KOLLAM DISTRICT.**

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENT(S):

**REJI R,
S/O. MATHAI RAJAN, THAYYIL RAJ BHAVAN,
VELLAKULANGARA KANAL NAGAR, MANAKKALA P.O.,
ERATH VILLAGE, ADOOR, PATHANAMTHITTA-691 551.**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 19-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

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|-----------|---|--|
| EXT.P1 | : | TRUE PHOTOCOPY OF THE MARRIAGE CERTIFICATE OF THE PETITIONER REGISTERED BEFORE THE ADOOR MUNICIPALITY. |
| EXT.P2 | : | TRUE PHOTO COPY OF O.P.NO.286/2014 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, KOTTARAKKARA FOR RECOVERY OF MONEY. |
| EXT.P2(a) | : | TRUE PHOTO COPY OF O.P.NO.452/14 FOR DIVORCE FILED BY THE 1ST PETITIONER BEFORE THE FAMILY COURT, KOTTARAKKARA. |
| EXT.P2(b) | : | TRUE PHOTO COPY OF M.C.NO.85/14 FOR MAINTENANCE FILED BY THE PETITIONERS BEFORE THE FAMILY COURT, KOTTARAKKARA. |
| EXT.P3 | : | TRUE COPY OF THE ORDER DTD.15.10.2014 IN M.C. NO.85/2014 AND CRL.M.P.NO.352/2014 OF THE FAMILY COURT, KOTTARAKKARA. |
| EXT.P4 | : | TRUE PHOTO COPY OF THE COMPLAINT C.C.NO.971/14 U/S. 498A & 323 R/W 34 IPC FILED BY THE PETITIONERS BEFORE THE JFCM-III, PUNALLOOR. |

RESPONDENT(S)' EXHIBITS

NIL

//True Copy//

P.A. To Judge

Bb

K. Ramakrishnan, J.

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Dated this, the 19th day of January, 2015.

J U D G M E N T

This is an application filed by the petitioners in M.C.No.85/2014 before the Family Court, Kottarakkara to enforce the interim order of maintenance passed by the Family Court under Article 227 of Constitution of India.

2. It is alleged in the petition that petitioners are the wife and child of the respondent and she filed O.P.Nos.286/2014 and 452/2014 before the Family Court, Kottarakkara for various relief including dissolution of marriage and also filed M.C.No.85/2014 before the same court for maintenance under Section 125 of Code of Criminal Procedure. On the basis of a complaint given, a case was registered under Section 498A of Indian Penal Code and after investigation, final report was filed and it is pending as C.C.No.971/2014 before the Judicial First Class Magistrate Court, No-III, Punaloor. The Family Court has passed an interim order of maintenance at the rate of Rs.2,000/- and Rs.2,500/- respectively to the petitioners in M.C.No.85/2014. Though the matter was referred for mediation and the petitioner appeared for

mediation more than six times, there was no effective co-operation from the respondent in settling the case. He did not pay the interim maintenance awarded also. So, the petitioner has no other remedy except to approach this court seeking the following relief:

"i) Issue an order directing the respondent to pay the Interim maintenance awarded to the petitioners.

ii) Grant such other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. Considering the nature of relief claimed, this court felt that the petition can be disposed of at the admission stage itself after hearing the Counsel for the petitioners dispensing with notice to the respondent.

4. The Counsel for the petitioners submitted that his only attempt is to get the case disposed of at the earliest within a time frame and his clients are prepared to co-operate with proceeding with the case.

5. The main relief claimed in the petition is for invoking the power under Article 227 of Constitution of India to enforce the payment of interim maintenance ordered by the Family Court in M.C.No.85/2014 pending before the Family

Court, Kottarakkara. There is nothing mentioned in the petition as to whether any execution petition has been filed for enforcing that order. Interim maintenance also can be enforced by filing an execution petition before the same court and without availing that remedy, petitioner is not entitled to come to this court seeking to invoke the power under Article 227 of Constitution of India. This power can be invoked only if there is any irregularity committed by the courts below in disposing the matters on judicial side. The power is only limited. When efficacious remedy is available to the petitioner to enforce the order, this court feels that it is not a fit case to invoke the power under Article 227 of Constitution of India and the petitioner can move the Family Court itself for execution of the interim order of maintenance passed by that court from the respondent in accordance with law. The prayer for early disposal also can be made before that court and in view of the recent decision of the Supreme Court (**Bhuvan Mohan Singh Vs. Meena [AIR 2014 SC 2875]**) in matters under Section 125 of Code of Criminal Procedure, this court feels that there is no necessity to give any specific direction in this regard as the subordinate courts are bound by the dictum laid by the Apex

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court in the matter of disposal of petitions filed by the wife and children under Section 125 of Code of Criminal Procedure.

With the above direction and observation, the petition is disposed of.

Communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge