

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

OP(Crl.).No. 52 of 2015 (Q)

PETITIONER:

**BERNARD SAJAN, AGED 38 YEARS
S/O.LATE AUGUSTINE, NEDIYATHARA HOUSE
VADUTHALA, ERNAKULAM**

BY ADV. SRI.GIGIMON ISSAC

RESPONDENTS:

- 1. GILDA A.J., AGED 34 YEARS
D/O.JAMES, AREEPARAMBIL HOUSE
PALARIVATTOM, ERNAKULAM - 682025**
- 2. EMMANUEL JUSTINE, AGED 6 YEARS
REPRESENTED BY HIS MOTHER GILDA.A.J., -DO-**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 11-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1- TRUE COPY OF THE PETITON NUMBERED AS M.P.NO.736/14 FILED BY THE RESPONDENTS**
- P2- TRUE COPY OF THE ORDER DATED 25.6.13 IN M.C.NO.226/08 FILED BY THE RESPONDENT**
- P3- TRUE COPY OF THE SUMMONS ISSUED BY THE FAMILY COURT, ERNAKULAM IN M.P.NO.736/14 APPEARANCE ON 24.10.2014**
- P4- TRUE COPY OF THE REVIEW PETITION PREPARED FOR FILING ON 20.1.2015**

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

P. UBAID, J.

O.P.(Crl) No.52 of 2015

Dated this the 11th day of February, 2015

JUDGMENT

The petitioner herein is liable under a maintenance order, to pay Rs.4,000/- per month to his wife and child. He has kept the amount in arrear, and now there is a claim by the wife and child for the entire amount due for the last five years. When the petitioner failed to make payment promptly, the learned trial Judge ordered warrant of arrest against him. Admittedly, huge amount of maintenance is due from the petitioner. What is awarded is Rs.4,000/- per month, but he did not make payment for the last so many years. Now, it appears, he pleads the defence of limitation. Maintenance is in fact more a liability on the part of husband or father, than the right of the persons in whose favour it is ordered. Having kept the maintenance amount in arrears without making prompt and due payment, the husband now turns up and contents that there is bar of limitation. Any way, this cannot be now entertained.

2. The petitioner now seeks orders from this Court under Article 227 of the Constitution of India recalling the warrant of arrest issued from the trial court, and directing the trial court to permit him to pay maintenance in monthly instalments. These two reliefs cannot be granted by this Court under Article 227 of the Constitution of India. This Court will not interfere and pass such orders to the prejudice of the persons entitled to receive maintenance and against the right of those persons. Such request will have to be considered by the trial court executing the maintenance order. The petitioner can very well approach the trial court and tell the court that he is ready to make payment in instalments. If he makes substantial payment to show his bonafide, no doubt, it will be considered by the trial court.

With the above observations, this petition is closed.

Sd/-

P. UBAID, JUDGE

sd