

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

OP(Crl.).No. 65 of 2015 (Q)

IN MC 162/2013 of FAMILY COURT,TRIVANDRUM

PETITIONER(S):

**RAJAGOPAL.N.
T.C.13/1670(1), SAROVARAM, MEDICAL COLLEGE P.O.
THIRUVANANTHAPURAM**

BY ADV. SRI.BASANT BALAJI

RESPONDENT(S):

**1. SUMA R.NAIR
T.C.1670(1), SAROVARAM, MEDICAL COLLEGE.P.O.
THIRUVANANTHAPURAM-695 011.**

**2. NAVANEETHA, D/O.SUMA,
T.C.1670(1), SAROVARAM, MEDICAL COLLEGE.P.O.
THIRUVANANTHAPURAM-695011.**

**3. NAVEEN, S/O.RAJAGOPAL
T.C.1670(1), SAROVARAM, MEDICAL COLLEGE.P.O.
THIRUVANANTHAPURAM-695 011.**

**4. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, KOCHI-31.**

**R1 -R 3 BY ADV. SMT.K.KUSUMAM
R1 -R 3 BY ADV. SMT.RENY ANTO
R1 -R 3 BY ADV. SMT.ASWATHY KUSUMAM
R4 BY GOVERNMENT PLEADER SMT. SAREENA GEORGE P.**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 04-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP(Crl.).No. 65 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: TRUE COPY OF THE PETITION FILED BY THE RESPONDENTS AS M.C.NO.162/2013 ON THE FILE OF THE FAMILY COURT, THIRUVANANTHAPURAM.

P2: TRUE COPY OF THE RENT AGREEMENT DTD.26-03-2014 EXECUTED BETWEEN 1ST RESPONDENT AND GANESH NARAYANAN.

P3: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO THE MAINTENANCE CASE.

P4:TRUE COPY OF THE ORDER DTD 05-01-2015 IN CMP 198/2013 IN M.C.NO.162/2013.

P5:TRUE COPY OF THE AFFIDAVIT DTD.12-05-2014 OF THE PETITIONER.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

O.P(Crl.) No. 65 of 2015

Dated this the 4th day of March, 2015.

J U D G M E N T

The respondents 2 and 3 herein are the daughter and son of the petitioner herein, and the first respondent is their mother. The respondents 1 to 3 are the petitioners in M.C No.162 of 2013 of the Family Court, Thiruvananthapuram. On a claim made by the children for interim maintenance in the said proceeding brought under Section 125 Cr.P.C the learned trial Judge directed the petitioner herein to pay maintenance to the daughter at the rate of ₹ 4,000/- per month, and to the son at the rate of ₹ 3,000/- per month. The petitioner is aggrieved by the said interim order dated 5.1.2015 in C.M.P No.198 of 2013. As revision is not possible now, he has come under Article 227 of the constitution of India for orders. The main grievance of the petitioner is that the daughter is in fact a major daughter who is not entitled to get maintenance under Section 125 Cr.P.C, and so the order in her favour is liable to be set aside. As regards the son, the petitioner has no

grievance, and he is ready to pay maintenance to the son. The question of law involved is whether the grownup daughter, having attained the age of 18, can claim maintenance under Section 125 Cr.P.C. It will have to be deeply gone into and decided according to law by the trial court. No doubt, the major daughter can claim maintenance in the circumstances mentioned in clause (b) to Section 125 Cr.P.C. There cannot be any doubt or dispute regarding the right of the grownup daughter to claim maintenance and other expenses from the father under the personal law. It is submitted that a petition filed by the daughter for maintenance under the civil law is pending before the trial court as O.P No. 1519 of 2013.

2. It is a matter to be decided by the trial court finally in the main proceeding whether the daughter is entitled to get maintenance under Section 125 Cr.P.C. Anyway, her claim under the personal law is pending consideration. In such a situation, I am not inclined to set aside the order in favour of the daughter. However, a slight modification is felt necessary. Considering the entire facts and circumstances, I feel that ₹ 3,000/- per month, as ordered in the case of the son, will do justice to the daughter for the time being, subject of course to final decision in the main proceeding. If it is ultimately found

that the daughter is not entitled to claim maintenance under Section 125 Cr.P.C, but if the court finds otherwise under the personal law, that she is entitled to get maintenance from the father, whatever amount paid by the father in this proceeding can well be adjusted towards the amount due under the personal law. I feel it inappropriate and unjust to set aside the order as such in this proceeding, when the whole dispute is to be adjudicated and decided in the main proceeding by the trial court.

Accordingly, this original petition is allowed in part as follows:

- a. The impugned order for interim maintenance in favour of the second respondent will stand modified to the effect that the amount payable shall be ₹ 3,000/- per month.
- b. If it is ultimately found by the trial court that the second respondent is not entitled to get maintenance under Section 125 Cr.P.C, and that she is entitled to claim from the father under the personal law, and if O.P No.1519 of 2013 is decreed in her favour, the entire amount of maintenance paid by the father under the impugned order shall be adjusted towards the amount due under the said decree.
- c. The trial court will consider the claims as expeditiously

as possible, and take a decision in all the proceedings finally at the earliest.

P.UBAID,
JUDGE

sab