

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

OP(Crl.).No. 125 of 2015 (Q)

MC.NO. 11/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, PALAKKAD

PETITIONER/IST RESPONDENT :

HARISH S.,
AGED 65, S/O.SUNDARAM P.,
252, 5TH MAIN ROAD, 1ST PHASE
MANJUNATH NAGAR, BANGALORE, PIN-600 79.

BY ADV. SRI.MANJU ANTONEY

RESPONDENT/PETITIONER :

SAROJINI K., AGED 58,
(C/O.C.GOPIKUMAR, SOWPARNIKA, RAMANATHAPURAM)
MANIYAMKAD HOUSE, NO.103, PUTHUR
PALAKKAD DISTRICT, PIN-678 005.

BY PUBLIC PROSECUTOR SMT. P. MAYA

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 31-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

...2/-

OP(Crl.).No. 125 of 2015 (Q)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1 TRUE COPY OF THE M.C.11/13 DATED 02.01.2013 FILED BY THE
RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE
COURT NO.II, PALAKKAD.
- EXT.P2 TRUE COPY OF C.M.P. NO.637/14 DATED 29.12.2014 FILED BY THE
PETITIONER IN M.C.11/13 BEFORE THE HON'BLE JUDICIAL FIRST
CLASS MAGISTRATE COURT NO.II, PALAKKAD.
- EXT.P3 TRUE COPY OF DELAY CONDONATION APPLICATION-C.M.P. NO. 243/15
DATED 16/01/2015 IN M.C.11/13 FILED BY THE PETITIONER BEFORE
THE JUDICIAL FIRST CLASS MAGISTRATE COURT NO.II, PALAKKAD.
- EXT.P4 TRUE COPY OF ORDER DATED 23.02.2015 PASSED BY THE JUDICIAL
FIRST CLASS MAGISTRATE COURT-II, PALAKKAD IN C.M.P. NO. 243/15
IN M.C. NO.11/13.
- EXT.P5 TRUE COPY OF ORDER OF DIVORCE DATED 24.04.2013 PASSED BY
THE FAMILY COURT-IV, BANGALORE IN M.C. NO.4591/12.
- EXT.P6 TRUE COPY OF THE DECREE OF DIVORCE DATED 24.04.13 PASSED BY
THE FAMILY COURT-IV, BANGALORE IN M.C. NO.4591/12.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

B. KEMAL PASHA, J.

.....
O.P.(Crl) No.125 of 2015
.....

Dated this the 31st day of August, 2015

J U D G M E N T

Heard.

2. What is under challenge is the order setting aside the *exparte* order passed by the court below in a proceeding relating to maintenance in a matter under the Protection of Women from Domestic Violence Act, 2005. While allowing the application through the impugned order, the court below has ordered the petitioner to pay four months' maintenance to the wife at the rate of ₹10,000/- per month. The case of the petitioner is that the wife, being a divorced wife through a decree of divorce obtained from the Family Court, Bangalore, is not entitled to maintenance under the said Act. The said question has to be decided by the court below. The

court below has not decided the said question. An appeal is perfectly maintainable under Section 29 of the Protection of Women from Domestic Violence Act, 2005 on the said order. With liberty to the petitioner to move an appeal, this Original Petition is closed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge