

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

OP(Crl.).No. 309 of 2015 (Q)

C.M.P.NO.1259/2015 IN M.C.NO.93/2010 OF FAMILY COURT, THRISSUR

PETITIONER(S) :

- 1. ABHITHA, AGED 34 YEARS,
D/O.LATE VIKRAM SINGH, POKKANCHERY HOUSE, NATTIKA P.O.,
THRISSUR DISTRICT.**
- 2. MINOR JANITHKUMAR, AGED 7 YEARS,
REPRESENTED BY HIS MOTHER, S/O.ABITHA (FIRST PETITIONER),
POKKANCHERY HOUSE, NATTIKA P.O., THRISSUR DISTRICT.**

**BY ADVS.SRI.MADHU RADHAKRISHNAN
SRI.NELSON JOSEPH
SRI.M.D.JOSEPH**

RESPONDENT(S) :

**SHANILKUMAR GOPI, AGED 36 YEARS,
S/O.LATE GOPI, CHOOREKOTTAYIL HOUSE, PADAMUKAL P.O.
THRISSUR.**

BY ADV. SRI.K.S.RAJEEV (ALUVA)

**THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 11-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

OP(Crl.).No. 309 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1: TRUE COPY OF THE PETITION IN M.C NO.93/2010.**
- EXT.P2: TRUE COPY OF THE ORDER OF THIS HONOURABLE COURT IN
RPFC NO.493/2014.**
- EXT.P3: TRUE COPY OF AMENDMENT PETITION IN C.M.P NO.1259/2015.**
- EXT.P4: TRUE COPY OF OBJECTION TO AMENDMENT PETITION IN
CMP NO.1259/2015.**
- EXT.P5: TRUE COPY OF THE ORDER IN AMENDMENT PETITION IN
CMP NO.1259/2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

PA.TO JUDGE.

Msd.

B. KEMAL PASHA, J.

.....
O.P.(Crl) No. 309 of 2015
.....

Dated this the 11th day of December, 2015

J U D G M E N T

An amendment has been sought for through Crl.M.P.No.1259 of 2015 in M.C.No.93/2010 before the Family Court, Thrissur by the petitioners for enhancing the amounts claimed. According to the respondent, there was a settlement arrived at between the parties whereby a total amount of maintenance of ₹3,000/- per month was agreed to be accepted by the petitioners. The learned counsel for the petitioners has pointed out that there was an arrangement for monthly maintenance at the rate of ₹3,000/- each. Whatever it is, due to the dispute between the parties, the compromise could not take effect. Subsequently, the matter was referred for mediation also. The mediation also

failed as a consensus could not be arrived at. This Court, through Ext.P2 order remitted the matter to the court below for enabling the court below to consider all the aspects in accordance with law. The order impugned in Ext.P2 was set aside. This Court has made a rider that the parties should not take the said opportunity as one granted to raise new contentions.

2. Here, in this particular case, the amounts claimed by way of maintenance were sought to be enhanced by the petitioners. It seems that no new contentions are being taken up by the parties. It cannot be styled as a new contention when the petitioners want to enhance the amounts claimed. Even otherwise, when an order of maintenance has been passed, subsequent developments can be taken note of and the amount can be enhanced under Section 127 Cr.P.C. The view expressed by the learned counsel for the respondent that the petitioner should proceed with the petition as such and after the disposal of

the same, they can file another petition for getting the amounts enhanced, is too hyper technical. The matters have to be finalised. It need not go on for ever. The court below, through Ext.P5 has dismissed the said Crl.M.P. The view taken by the court below is too hyper technical. The court below ought to have allowed the application for amendment. Thereafter, the parties can adduce evidence in the matter and the matter can be decided afresh by the court below.

In the result, this Original Petition stands allowed and Ext.P5 order is set aside. The court below shall permit the petitioner to carry out the amendment and proceed with the matter as mentioned above, and in accordance with Ext.P2 order of this Court.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge