

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

OP(Crl.).No. 325 of 2015 (Q)

MC.NO. 109/2015 OF FAMILY COURT, THIRUVANANTHAPURAM

PETITIONER(S) :

1. DIVYA CHANDRAN, AGED 24 ,
S/O.CHANDRAN, R/AT DIVYA BHAVAN, MYLADY
PULIYARAKONAM P.O., THIRUVANANTHAPURAM, PIN-695573.

2. ANNA
AGED 2 YEARS, D/O.SURESH S.A.
MINOR, REPRESENTED BY HER MOTHER
THE 1ST PETITIONER DIVYA CHANDRAN OF -DO-.

BY ADVS.SMT.T.S.MAYA (THIYADIL)
SMT.K.A.SUNITHA

RESPONDENT :

SURESH S.A., AGED 31 YEARS
S/O.SADASIVAN, R/AT KRIPALAYAM, PALLIVILA
CHOWVALLOOR, PULIYARAKONAM P.O.,
THIRUVANANTHAPURAM, PIN-695 573.

BY ADVS. SRI.J.R.PREM NAVAZ
SRI.P.T.SHEEJISH

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 30-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

...2/-

OP(Crl.).No. 325 of 2015 (Q)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1 : COPY OF THE MC. 109/2015 FILED BY THE PETITIONERS PENDING BEFORE THE FAMILY COURT, TVM.
- EXT. P2 : COPY OF THE TREATMENT DETAILS OF THE 2ND PETITIONER.
- EXT. P3 : COPY OF THE INTERIM MAINTENANCE PETITION FILED BY PETITIONERS CMP 176/2015 IN MC 109/2015.
- EXT. P4 : COPY OF THE OBJECTION FILED BY THE RESPONDENT IN CMP.NO. 176/2015.
- EXT. P5 : THE CERTIFIED COPY OF THE ORDER IN CMP 176/2015 IN MC 109/2015 OF THE FAMILY COURT, TVM DT.18-6-2015.
- EXT. P6 : COPY OF THE REVIEW PETITION CMP 280/15 IN CMP 176/2015 FILED BY THE RESPONDENT.
- EXT. P7 : COPY OF THE DOCUMENTS FILED BY THE RESPONDENT ALONG WITH EXT.P6 REVIEW PETITION.
- EXT. P8 : COPY OF THE OBJECTION FILED BY THE PETITIONER IN REVIEW PETITION.
- EXT. P9 : CERTIFIED COPY OF THE ORDER IN CMP 280/2015 IN CMP 176/2015 OF THE FAMILY COURT, TVM DT.13-8-15.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

B.KEMAL PASHA, J.

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O.P.(Crl.).No.325 of 2015

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Dated this the 30th day of October, 2015

J U D G M E N T

Initially, the court below had passed an order granting interim maintenance at the rate of ₹3,000/- per month to the wife and the child. The child is an invalid child suffering from physical disabilities. So far no amount has been paid. Subsequently, a review application was filed by the present respondent before the court below, stating that the 1st petitioner herein is gainfully employed, by producing Exhibit-P7(3). It is a pay-sheet given by the institution, wherein the 1st petitioner is working, to the Corporation of Thiruvananthapuram, for the period from 01.10.2014 to 31.03.2015. In Exhibit 7(3), it is shown that the petitioner was paid a Basic Pay of ₹15,466/-, D.A. ₹11,600/- and thereby a total salary of ₹27,066/- for the said period. Relying on the contents of the said document, the court below has

taken a view that it is the monthly salary of the 1st petitioner and therefore the 1st petitioner is not entitled to get any interim maintenance. The court below has limited the interim maintenance at the rate of ₹3,000/- per month to the child alone. The said order is under challenge.

2. The learned counsel for the petitioners herein has argued that what is contained in Exhibit P7(3) is not monthly salary of the persons noted therein; whereas it is the total amount paid to them for the period from 01.10.2014 to 31.03.2015, and it has to be treated as the salary for a period of six months. If that be the case, the court below has gone wrong in reviewing the earlier order.

3. The learned counsel for the respondent argues that it is monthly salary and not the salary for six months that is shown therein. The learned counsel for the petitioners has pointed out that the 1st petitioner is working as a Salesgirl in a private firm and no such person can expect an amount of ₹27,066/- as monthly salary.

4. Whatever it is, it was an interim arrangement

made by the court below. The amount of actual maintenance that can be arrived at, at the final stage should be based on evidence that has to be adduced by the parties. Till then the court below ought not have limited the claim of interim maintenance to the child alone. The court below has gone wrong in reviewing the order. In fact, the amount of interim maintenance allowed to the child, who is invalid, is also not reasonable.

In the result, this Original Petition (Criminal) is allowed and the impugned order passed by the court below is modified. The respondent shall pay a monthly maintenance at the rate of ₹3,000/- to the 1st petitioner and ₹5,000/- to the 2nd petitioner, till final orders are passed. The respondent shall pay the entire arrears of interim maintenance at this rate from the date of filing of the M.C. before the court below, within a period of one month from today. It is open to the respondent to adduce evidence with regard to the actual amount that is being received by the 1st petitioner, which will ultimately considered by the court below at the final disposal of the

case. The court below shall pass the final orders in the matter expeditiously, quite untrammelled by any of the observations made by this Court.

**Sd/- B. KEMAL PASHA
JUDGE**

DSV/31/10/15

// true copy //

P.A. to Judge.