

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

OP(Cr1.).No. 356 of 2015 (Q)

AGAINST THE ORDER/JUDGMENT IN CRMP 613/2015 of FAMILY COURT,
ATTINGAL.

PETITIONER(S) :

RAMACHANDRAN P., AGED 53 YEARS,
S/O. KESHAVAPILLA, MUKKATTUVILA VEEDU,
IDAIKANDAM DESOM, KAREEPRA VILLAGE, EZHUKONE,
KOTTARAKKARA, KOLLAM DISTRICT.

BY ADV. SRI.ALEXANDER GEORGE

RESPONDENT(S) /PETITIONER :

1. REENA, AGED 34 YEARS,
KAYALARIKATHU VEEDU, KAPPIL P.O., IDAVA VILLAGE,
PIN-695 311.

2. KASHINAD (MINOR), AGED 3 YEARS,
S/O. RAMACHANDRAN, KAYALARIKATHU VEEDU, KAPPIL P.O.,
IDAVA VILLAGE, PIN-695 311,
REPRESENTED BY HIS MOTHER FIRST RESPONDENT REENA.

R1 & 2 BY ADV. SRI.M.DINESH

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 02-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

OP(Crl.).No. 356 of 2015 (Q)

APPENDIX

PETITIONER(S) ' EXHIBITS:

P1 : COPY OF THE ORDER PASSED IN MC 527/13 OF FAMILY COURT, ATTINGAL.

P2 : COPY OF CRL.MP NO.168/2015 FILED BY THE PETITIONER BEFORE THE
FAMILY COURT, ATTINGAL.

P3 : COPY OF CRL.MP NO.147/15 FILED BEFORE THE FAMILY COURT, ATTINGAL.

P4 : COPY OF THE CRL.MP NO.613/2015 FILED BY THE PETITIONER BEFORE THE
FAMILY COURT, ATTINGAL.

RESPONDENT(S) ' EXHIBITS:

//True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

O.P.(Crl.) No.356 of 2015

Dated this the 2nd day of December, 2015

JUDGMENT

This is an application filed by the petitioner who is the counter petitioner in M.C.No.527/2013 on the file of the Family Court, Attingal, to issue direction to the family court to keep Ext.P3 proceedings in abeyance, till disposal of Exts.P2 and P4 petitions pending before that court under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner is the respondent in M.C.No.527/2015 on the file of the Family Court, Attingal. The petition was filed by the respondents herein for maintenance under Section 125 of the Code of Criminal Procedure (hereinafter called the Code). The petition was decided exparte vide Ext.P1 order of the family court. Respondent filed Ext.P3 Crl.M.P.No.147/2015 for executing Ext.P1 order. Thereafter petitioner filed Ext.P2 petition to set aside the exparte order

as Crl.M.P.No.168/2015 and also filed Ext.P4 Crl.M.P.No.613/2015 to stay Ext.P3 proceedings pending disposal of Exts.P2 and P4 petitions. But without considering the applications, the court below is proceeding with the execution petition. So the petitioner has no other remedy except to approach this court, directing the family court to dispose of Exts.P2 and P4 petitions as expeditiously as possible, till then direct the family court to keep in abeyance the proceedings in Ext.P3 execution petition.

3. Heard the counsel for the petitioner, Sri.Alexander George and counsel for the respondents Sri.D.Dinesh.

4. The grievance of the petitioner is that, the court below is not disposing the application to set aside the exparte order, but at the same time simultaneously proceeding with the execution petition filed by the respondents. He wants only a direction to the family court to dispose of the application filed by him to set aside the

exparte order.

5. The counsel for the respondents opposed the application.

6. On going through the allegations in the petitions, it is seen that, respondents obtained Ext.P1 exparte order of maintenance against the petitioner and also filed Ext.P3 petition for execution of the same as Crl.M.P.No.147/2015. It is also in away admitted by both the counsel that, the petitioner herein filed Ext.P2 petition as Crl.M.P.No.168/2015 to set aside the exparte order and Crl.M.P.No.613/2015 to keep the execution proceedings pending till the disposal of Ext.P2 petition and no orders have been passed by the court below and court below is proceeding with the execution petition.

7. Once petitioner filed an application to set aside the exparte order along with petition to stay further proceedings pursuant to the exparte order, court below is expected to pass some orders in those applications and

without passing orders, proceeding with the execution petition will only cause unnecessary hardship to the petitioner. If ultimately the exparte order is set aside, then the person who will be affected more will be the petitioner in this petition. So there is merit in the grievance of the petitioner. So this court feels that, the petition can be disposed of as follows:

The family court, Attingal, is directed to expedite disposal of Ext.P2 petition (Crl.M.P.No.168/2015 and Ext.P4 Crl.M.P.No.613/2015) as expeditiously as possible, at any rate within two months from the date of receipt of this order, till then, the court below is directed to keep in abeyance the proceedings in Ext.P3, namely Crl.M.P.No.147/2000, till then, the court below is directed to keep in abeyance further proceedings in Crl.M.P.No.147/2015 pending before that court. The amount of deposit made by the petitioner as directed by this court will be given credit to the ultimate amount that is

going to be passed by the family court later, if the exparte order is set aside and if it is not set aside, then that will be credited to the amount payable as per exparte order in the execution proceedings, namely Ext.P3 proceedings.

With the above direction and observation the petition is disposed of.

Interim order granted is vacated.

Office is directed to communicate this judgment to the concerned court, immediately.

Sd/-
K. Ramakrishnan, Judge

//True Copy//

P.A. to Judge