

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

OP(Cr1.).No. 382 of 2015 (Q)

AGAINST THE ORDER IN CRMP 1935/2014 of PRINCIPAL SESSIONS
COURT, TRIVANDRUM DATED 29-07-2015

PETITIONER(S) :

1. K.SUDHEER AGED 43 YEARS
S/O.LATE K.K.KRISHNAN NAIR
RESIDING AT KARAKKATTU VEEDU, ERIKKAVU
KARTHIKAPALLY P.O., ALAPPUZHA DISTRICT.
2. K.P.SUMANGALAMMA
W/O.LATE K.K.KRISHNAN NAIR
RESIDING AT KARAKKATTU VEEDU, ERIKKAVU
KARTHIKAPALLY P.O., ALAPPUZHA DISTRICT.

BY ADV. SRI.AYYAPPAN SANKAR

RESPONDENT(S) :

- 1 AMRITHA.N.V, AGED 42 YEARS
D/O.K.DEVAKIAMMA, AMBALAPPATTU, PATTOM
THIRUVANANTHAPURAM.
- 2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - 682 031.

BY GOVERNMENT PLEADER SRI.JUSTIN JACOB

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(Crl.).No. 382 of 2015 (Q)

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXT.P1. TRUE PHOTOCOPY OF THE PETITION FOR INTERIM ORDER U/S.23 OF D.V.ACT DATED 12/2/2013 ON THE FILE OF THE JFCMC-IV, THIRUVANANTHAPURAM.
- EXT.P2. TRUE PHOTOCOPY OF THE EXPARE AD-INTERIM ORDER DATED 13/2/2013 IN CMP NO.754/2013 IN MC 121/2013 OF THE CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM.
- EXT.P3. TRUE PHOTOCOPY OF THE OBJECTION DATED 16/6/2014 IN MC NO.20/2013 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-IV, THIRUVANANTHAPURAM.
- EXT.P4. TRUE PHOTOCOPY OF THE PETITION FOR MODIFICATION FILED ON 23/10/2013 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-IV, THIRUVANANTHAPURAM.
- EXT.P5. TRUE PHOTOCOPY OF THE ORDER DATED 26/6/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-IV, THIRUVANANTHAPURAM.
- EXT.P6. TRUE PHOTOCOPY OF THE MEMORANDUM OF APPEAL IN CRAL.APPEAL NO.256/2014 ON THE FILE OF THE SESSIONS COURT, THIRUVANANTHAPURAM.
- EXT.P7. TRUE PHOTOCOPY OF THE CRL.MP NO.1935/2014 IN CRLA NO.256/2014.THIRUVANANTHAPURAM.
- EXT.P8. TRUE PHOTOCOPY OF THE OP FILED BY THE 1ST PETITIONER AS OP (HMA) NO.1423/2012 BEFORE THE FAMILY COURT, ALAPPUZHA.
- EXT.P9. TRUE PHOTOCOPY OF THE RECEIPT SIGNED BY THE RESPONDENT AND HER BROTHER ACKNOWLEDGING RECEIPT OF ALL ORNAMENTS ON 12/5/2012.
- EXT.P10. CERTIFIED COPY OF THE ORDER DATED 30/7/2014 OF SESSIONS COURT, THIRUVANANTHAHPURAM IN CRL.MP NO.1935/2014 IN CRL. APPEAL BNO.256/2014.
- EXT.P11. TRUE PHOTOCOPY OF THE JUDGMENT DATED 8/6/2015 IN OP CRL. NO.113/2015 OF THIS COURT.
- EXT.P12. TRUE PHOTOCOPY OF THE ORDER DATED 29/7/2015 OF THE PRL. SESSIONS COURT, THIRUVANANTHAPURAM PASSED IN EXT.P7 STAY PETITION.

RESPONDENT(S) ' EXHIBITS NIL

//TRUE COP//

P.A TO JUDGE

vdv

P.UBAID, J.

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O.P(Crl.)No.382 of 2015

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Dated this the 9th day of December, 2015

JUDGMENT

The petitioners herein are the respondents in M.C No.20/2013 of the Judicial First Class Magistrate Court (Mobile), Thiruvananthapuram. In the said proceeding brought under Section 12 of Protection of Women from Domestic Violence Act, 2005 ('D.V Act'), the learned Magistrate passed an interim order under Section 23 of the 'D.V Act', directing the 1st petitioner to pay maintenance to his wife at the rate of Rs.4,500/- per month. Aggrieved by the said order, the petitioners herein approached the Court of Sessions, Thiruvananthapuram with Crl. Appeal No.256/2014. The petitioners also sought stay of execution of the order passed by the learned Magistrate.

2. After hearing both sides, the learned Appellate Judge dismissed the stay application by order dated 29.07.2015. The said order disallowing stay is sought to be quashed under Article 227 of the Constitution of India.

3. On hearing the learned counsel and on a perusal of the materials including the impugned order passed by the Appellate

Court, I find that there is no scope for interference by this Court under Article 227 of the Constitution of India. There is reason to believe that the claimant has some ailments, for the treatment of which she requires money, besides the amount required for maintenance otherwise. The petitioners practically have no dispute on this aspect. What is granted by the trial court is Rs.4,500/- per month as per an interim order. The said order is subject to the final decision taken in the main proceedings. On the basis of evidence, the trial court is yet to decide what amount can in fact be granted as maintenance to the claimant. Till then, the petitioners will have to wait, especially in a circumstance where the lady requires some reasonable amount for her treatment. I find nothing wrong in the order passed by the court below rejecting the request for stay of execution.

In the result, this original petition is dismissed in liminae without being admitted to files.

Sd/-
P.UBAID, JUDGE