

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

OP(Crl.).No. 394 of 2015 (Q)

CRA 215/2015 of ADDL.DISTRICT COURT-I,MAVELIKKARA

**C.M.P.NO2898/2015 IN M.C.58/2015 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, KAYAMKULAM**

PETITIONERS :-

- 1. DR.SHYLA, AGED 34 YEARS, D/O.SIRAJUDHEEN,
THAJ MANSION, VALEL, KANNAPPALLY BHAGAM,
KAYAMKULAM P.O., KAYAMKULAM,
ALAPPUZHA DISTRICT - 690 502.**
- 2. FATHIMA JALEEL, AGED 14 YEARS, D/O.SHYLA,
THAJ MANSION, VALEL, KANNAPPALLY BHAGAM,
KAYAMKULAM P.O., KAYAMKULAM,
ALAPPUZHA DISTRICT - 690 502.**
- 3. MARIYAM, AGED 6 YEARS, D/O.SHYLA,
THAJ MANSION, VALEL, KANNAPPALLY BHAGAM,
KAYAMKULAM P.O., KAYAMKULAM,
ALAPPUZHA DISTRICT - 690 502.**
- 4. THAMAR MALIC, AGED 4 YEARS, S/O.SHYLA,
THAJ MANSION, VALEL, KANNAPPALLY BHAGAM,
KAYAMKULAM P.O., KAYAMKULAM,
ALAPPUZHA DISTRICT - 690 502.
(MINOR PETITIONERS 2, 3 & 4 REPRESENTED BY
THEIR MOTHER AND GUARDIAN DR.SHYLA, THE 1ST
PETITIONER).**

BY ADV. SRI.NOBEL RAJU

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RESPONDENT(S) :-

1. DR.JALEEL, AGED 42, S/O.ABDULLA,
MUNNAKKAPPARAMBIL, PERUMPADAPPU DESOM,
CHENTHRAPINNI P.O., KODUNGALLOR,
THRISSUR DISTRICT - 680 687.
(PRESENTLY WORKING IN QATAR-REPRESENTED BY
POWER OF ATTORNEY HOLDER, HILAL, AGED 38 YEARS,
S/O.ABDULLA, MUNNAKKAPPARAMBIL, PERUMPADAPPU DESOM,
CHENTHRAPINNI P.O., KODUNGALLOR,
THRISSUR DISTRICT - 680 687.
2. SALAM, AGED 48 YEARS, S/O.ABDULLA,
MUNNAKKAPPARAMBIL, PERUMPADAPPU DESOM,
CHENTHRAPINNI P.O., KODUNGALLOR,
THRISSUR DISTRICT - 680 687.
3. HILAL, AGED 38 YEARS, S/O.ABDULLA,
MUNNAKKAPPARAMBIL, PERUMPADAPPU DESOM,
CHENTHRAPINNI P.O., KODUNGALLOR,
THRISSUR DISTRICT - 680 687.
4. AVISHA BEEVI, AGED 67 YEARS, W/O.ABDULLA,
MUNNAKKAPPARAMBIL, PERUMPADAPPU DESOM,
CHENTHRAPINNI P.O., KODUNGALLOR,
THRISSUR DISTRICT - 680 687.
5. SHAHILA, AGED 40 YEARS, W/O.SALAM,
MUNNAKKAPPARAMBIL, PERUMPADAPPU DESOM,
CHENTHRAPINNI P.O., KODUNGALLOR,
THRISSUR DISTRICT - 680 687.
6. NIZAR, AGED 45 YEARS, S/O.ABDULLA,
MUNNAKKAPPARAMBIL, PERUMPADAPPU DESOM,
CHENTHRAPINNI P.O., KODUNGALLOR,
THRISSUR DISTRICT - 680 687.
7. THE STATE OF KERALA, REPRESENTED BY
GOVT.PLEADER, HIGH COURT OF KERALA - 682 031.

R BY SRI.ABHIJITH LESLIE, GOVERNMENT PLEADER

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 20-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP(Crl.).No. 394 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS :-

EXHIBIT P1 : A TRUE COPY OF THE ORDER IN C.M.P.NO2898/2015 IN M.C.58/2015 DATED 4/7/2015 ISSUED BY THE JUDICIAL FIRST CLASS MAGISTRATE, KAYAMKULAM.

EXHIBIT P2 : A TRUE COPY OF THE ORDER IN CRL.M.P.NO459/2015 IN CRL.A.215/2015 DATED 7/8/2015 OF THE ADDITIONAL SESSIONS JUDGE-I, MAVELIKKARA.

EXHIBIT P3 : A TRUE COPY OF THE RECEIPTS OF THE FEES OF P2 & 3 ISSUED BY THE SN CENTRAL SCHOOL, KAYAMKULAM.

EXHIBIT P4 : A TRUE COPY OF THE RECEIPT NO.38 ISSUED TO THE 4TH PETITIONER BY THE KARUNA VIDYAKSHETRA, INTERNATIONAL SCHOOL, KAYAMKULAM.

RESPONDENT(S)' EXHIBITS :- **NIL**

//TRUE COPY//

P.A. TO JUDGE

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P.UBAID, J.

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O.P.(CrI)No.394 of 2015

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Dated this the 20th day of November, 2015

JUDGMENT

The petitioners herein are the petitioners in MC No.58 of 2015 before the Judicial First Class Magistrate Court, Kayamkumam. It is a proceeding brought under Section 12 of the Protection of Woman from Domestic Violence Act (DV Act). On an application brought by the petitioners as CMP No.2898 of 2015 for some interims order under Section 23 of the DV Act, the learned Magistrate directed the respondents therein to pay interim maintenance to the three children at the rate of ₹25,000/- each per month. Aggrieved by the said order dated 04.07.2015, the respondents in the said proceeding brought appeal before the Court of Session as CrI.Appeal No.215 of 2015. In appeal, the learned First Additional Sessions Judge, Mavelikkara granted stay of

enforcement of the interim maintenance order on condition that payment of interim maintenance shall be made to the first child at the rate of ₹15,000/- per month, and to the other two children at the rate of ₹10,000/- each per month. The said order passed by the appellate court on 7.8.2015 in CMP No.459 of 2015 is under challenge in this original petition brought under Article 227 of the Constitution of India.

2. On hearing the learned counsel, and on a perusal of the impugned orders, I find no reason or scope for interference under Article 227 of the Constitution of India. The learned appellate Judge has only granted stay of execution of the interim order on certain conditions. If the petitioners are aggrieved, or if they want modification or variation of the condition, they can very well approach the Court of Session itself. This sort of applications cannot be entertained by the High Court. The main case is yet to be decided. The interim orders passed by the trial court will always be subject to the orders in the main proceeding. Anyway, if all the petitioners are aggrieved by the conditions imposed by the appellate court, that grievance

will have to be heard by the appellate court itself, and appropriate modification can be made by the learned appellate Judge, if felt necessary.

With these observations, this Original Petition is disposed of, without being admitted to files.

Sd/-

**P.UBAID
JUDGE**

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//TRUE COPY//

P.A. TO JUDGE