

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

OP (FC).No. 283 of 2015 (R)

PETITIONER(S):

SUKUMARAN AGED 41 YEARS
S/O.SANKARAN, PONNATH VEEDU, KUTHANNUR P.O.
ALATHUR, PALAKKAD.

BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENT(S):

PRIYA, AGED 31 YEARS
D/O.CHANDRAN, R/A. MOOCHIKKAL VEEDU, THOOTODU
KUDALLUR P.O., CHITTUR, PALAKKAD - 678 101.

R. BY ADV. SRI.RAJESH SIVARAMANKUTTY

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 283 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. TRUE COPY OF THE JUDGMENT IN C.C.NO.521/2011 OF THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE-I, PALAKKAD DATED 20.03.2014.

EXHIBIT P2. TRUE COPY OF THE ORDER IN I.A.NO.1072 OF 2012 IN O.P.NO.384/2011 OF THE FAMILY COURT, PALAKKAD DATED 22.08.2012.

EXHIBIT P3. TRUE COPY OF THE I.A.NO.1832/2013 IN O.P.NO.384/2011 OF THE FAMILY COURT, PALAKKAD.

EXHIBIT P4. TRUE COPY OF THE ORDER IN I.A.NO.1832/2013 IN O.P.NO.384/2011 OF THE FAMILY COURT, PALAKKAD DATED 12.05.2015.

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PS TO JUDGE

C.K.ABDUL REHIM & K.RAMAKRISHNAN, JJ.

OP(FC). No. 283 of 2015

Dated this the 27th day of July, 2015

JUDGMENT

K.Ramakrishnan,J.

Respondent in IA.No.1832/2013 in OP.No.384/2011 on the file of Family Court, Palakkad has filed this petition challenging the order passed therein under Article 226 of the Constitution.

2. It is alleged in the petition that the petitioner and the respondent are man and wife and there was a child born to them in that wedlock. Their relationship strained and so she filed M.C.No.201/2011 before the Family Court, Palakkad under section 125 of the Code of Criminal Procedure (hereinafter called the Code) and the Family Court has ordered maintenance at the rate of Rs.3000/- to the respondent and Rs.1000/- to the child to be payable by the petitioner. The petitioner thereafter filed OP.No.130/2011 for custody of the child and in that the Family Court had directed the petitioner to pay maintenance at the rate of Rs.1000/- per month to the child . Thereafter the petitioner filed OP.No.384/2011 before the Family Court,

Palakkad for divorce and in that the respondent filed IA.No.1072/2012 under section 24 of the Hindu Marriage Act seeking litigation expenses to the tune of Rs.8000/- in which it was mentioned that she was not claiming any maintenance as maintenance was granted to her and child by the same court under different proceedings. Later she filed present IA.1832/2013 under section 24 of the said Act directing the petitioner herein to pay maintenance to herself and child in which it was mentioned that though maintenance was ordered by the Family Court under section 125 of the Code of Criminal Procedure, huge amount is in arrears. It is in that application that the impugned order was passed by the Family Court directing the petitioner to pay Rs.2000/- per month to the respondent and Rs.1000/- to the child as interim maintenance. This order is being challenged by the petitioner.

3. Heard counsel for the petitioner and respondent.

4. Counsel for the petitioner submitted that it is not clear from the order as to whether the amount ordered is over and above the amount ordered in the guardian OP proceedings and the maintenance case. Some amount has been paid towards

arrears and he is not liable to pay all the amounts ordered to be paid as maintenance in different proceedings. Further litigation expenses ordered as Rs.6000/- as per Ext.P2 order has already been paid by him.

5. On the other hand counsel for the respondent submitted that earlier she did not claim any maintenance under section 24 of the Hindu Marriage Act as maintenance was ordered to the respondent and the child in another proceedings. But since no amount was paid as per the orders of the Family Court in maintenance proceedings and the guardian proceedings, she was compelled to file the present petition seeking interim maintenance also under section 125 of the Code.

6. It is an admitted fact that the petitioner and the respondent are man and wife and a child was born to them in that wedlock. It is also admitted fact that after the birth of the child their relationship strained and they are residing separately. It is also admitted that the respondent filed M.C.No.201/2011 before the Family Court seeking maintenance under section 125 of the Code for herself and the child and the Family Court had passed an order of maintenance directing the petitioner herein to

pay Rs.3000/- per month to the respondent and Rs.1000/- to the child. It is also admitted that in OP.No.130/2011 filed by the petitioner before the same court for custody of the child, there was an order to pay maintenance @ Rs.1000/- per month to the child. It is not clear as to whether that amount was in addition to the amount ordered by the Family Court under section 125 of the Code. It is thereafter that the petitioner filed a petition for divorce as OP.No.384/2011 before the same court and in that the respondent filed IA.No.1072/12 seeking litigation expenses to the tune of Rs.8000/- in which it was mentioned that she was not claiming any maintenance as maintenance has been granted to her and the child by the Family Court under section 125 of the Code and also Rs.1000/- to the child in the guardian OP proceedings. On that basis the Family Court had directed the petitioner herein to pay Rs.6000/- as litigation expenses and it was admitted by both sides that that amount was paid. It is thereafter that the respondent filed IA.No.1832/2013 in which it was mentioned that though maintenance was ordered by the Family Court under section 125 of the Code, he was not paying the amount and huge amount is due towards arrears of

maintenance for herself and also for the child and that prompted her to file this petition seeking maintenance @ Rs.5000/- each to the respondent and the child.

7. Here also the amount of Rs.5000/- claimed appears to be a consolidated amount considering the amount already ordered by the Family Court in the earlier proceedings as well. However the Family Court by the impugned Ext.P4 order directed the petitioner herein to pay Rs.2000/- per month to the respondent and Rs.1000/- to the child as interim maintenance. It is not clear from the order as to whether this amount is fixed after taking into account the amount of maintenance already awarded by the Family Court in the other proceedings viz. proceedings under section 125 of the Code and in the guardian OP though there is mention made about the earlier orders passed by the same court in different proceedings as well. It is not clear from the order as to whether the amount of Rs.2000/- and 1000/- fixed by the court below as interim maintenance of the mother and the child is over and above the amount already awarded by the same court in the other proceedings. So we feel that there is some force in the submission made by the counsel

for the petitioner that the order is liable to be set aside and fresh consideration on that application is required by the Family Court after proper application of mind. Taking into consideration of the circumstances mentioned above, Ext. P4 order passed by the court below in I.A.No.No.1832/2013 in OP.384/2011 is set aside and the matter is remitted to the court below for fresh disposal in accordance with law after taking into consideration the circumstances mentioned above regarding maintenance awarded to the respondent and the child in different proceedings. It is also made clear that if any amount is due to the respondent from the petitioner in execution of the amount already awarded in the proceedings under section 125 of the Code, the respondent is at liberty to execute and realise the amount from the petitioner by way of resorting appropriate remedy before the Family Court.

With the above direction the OP(FC) is disposed of.

C.K.ABDUL REHIM, JUDGE

K.RAMAKRISHNAN, JUDGE

pmn/

