

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

**FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937**

**OP(Crl.).No. 226 of 2014 (Q)**  
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**PETITIONER/RESPONDENT:**  
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**V.P BAIJU, AGED 42 YEARS, S/O.C.I.PARAMESWARAN  
VELIYATHU HOUSE, EDAYAPPURAM, ALUVA EAST  
VILLAGE, ERNAKULAM DISTRICT**

**BY ADVS.SMT.CAROLIN SINDHU VAZ  
SMT.P.A.JAIMOLE  
SMT.A.NISSY  
SRI.K.S.MOHAMED HASHIM**

**RESPONDENTS/PETITIONERS:**  
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**1. SHARMINI, AGED 36 YEARS  
D/O.CHANTHU, USHUS BHAVAN, PALLILAM KARA  
THRIKKAKARA NORTH VILLAGE, ERNAKULAM DISTRICT.**

**2. AISWARYA , AGED 13 YEARS  
(2ND RESPONDENT BEING MINOR IS REPRESENTED BY  
MOTHER, THE 1ST RESPONENT)**

**R1-R2 BY ADV. SMT.V.O.PHILOMINA**

**THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 04-12-2015, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:**

**APPENDIX**

**PETITIONER'S EXHIBITS**  
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- EXT.P1 - TRUE COPY OF THE MC NO.138/2014 OF THE FAMILY COURT,  
ERNAKULAM FILED BY THE RESPONDENT.
- EXT.P2 - TRUE COPY OF THE M.P.NO.416/2014 OF FAMILY COURT, ERNAKULAM  
FILED BY THE RESPONDENT.
- EXT.P3- CERTIFIED COPY OF THE WRITTEN STATEMENT FILED BY THE  
PETITIONER IN M.P.NO.416/2014
- EXT.P4 - TRUE COPY OF THE COMPROMISE DECREE IN O.P.770/2006 OF THE  
FAMILY COURT, ERNAKULAM DATED 21-01-2013
- EXT.P5 - CERTIFIED COPY OF ORDER IN M.P.NO.416/2014 OF THE FAMILY  
COURT, ERNAKULAM DATED 11-08-2014

**RESPONDENTS' EXHIBITS**  
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NIL

// TRUE COPY //

P.A. TO JUDGE

SD

**K. RAMAKRISHNAN, J.**

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**O.P.(Crl).No.226 of 2014**  
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**Dated this the 4<sup>th</sup> day of December, 2015**

**JUDGMENT**

This is an application filed by the petitioner challenging the interim order of maintenance passed by the court below in M.P.No.416/2014 in M.C.No.138/2014 under Article 226 of the Constitution of India.

2. It is alleged in the petition that the 1<sup>st</sup> respondent is the divorced wife of the petitioner and the 2<sup>nd</sup> respondent is the child born to them. Earlier, there were several proceedings between the petitioner and the 1<sup>st</sup> respondent including application for maintenance and that was compromised between the parties and Ext.P4 compromise decree was passed on the basis of a mediation agreement entered into between the parties in respect of those cases. Thereafter, the marriage between them was dissolved by filing a joint petition for divorce on mutual consent as O.P.No.65/2013 before the Family Court, Ernakulam. As per the agreement, according to the petitioner, all the claims between the parties have been settled and it is on

the basis of that, all the cases were withdrawn and a joint petition for divorce was filed. Suppressing this fact, petitioner filed Ext.P1 M.C.No.138/2014 claiming maintenance for the respondents under Section 125 of Code of Criminal Procedure and also filed Ext.P2 M.P.No.416/2014 praying for interim maintenance. The petitioner appeared and filed Ext.P3 objections. But without considering the objections, the Family Court passed Ext.P5 impugned order directing the petitioner to pay an interim maintenance of Rs.3000/- to the child and Rs.2000/- to the mother. This order is being challenged by the petitioner.

3. Considering the scope of enquiry, this Court has called for a report from the Family Court, Ernakulam, regarding the time required for disposal of the case. The Family Court sent a report stating that there are large number of old cases pending and attempt will be made to dispose of the case within a period of one month immediately after the target period, namely, on or before 31.06.2016. While admitting the petition, this Court passed an interim order directing the petitioner to continue to pay maintenance to the child as directed in the order and stayed only the order of payment in respect of the 1<sup>st</sup> respondent alone.

The counsel for the respondent submitted that even as per the agreement alleged and relied on by the counsel for the petitioner, she had not relinquished her claim for future maintenance and after that agreement, her status has changed as divorced wife and as a divorced wife, she is entitled to claim under Section 125 of the Code of Criminal Procedure. According to the learned counsel for the petitioner, if the divorce was based on settlement and by mutual consent, she is estopped from claiming maintenance. All these matters are to be considered by the Family Court on the basis of evidence.

4. So this Court feels that for the purpose of disposal of the case, the interim order can be maintained till the disposal of the M.C. filed by the petitioner. The court below wanted one month's time after the target period fixed for disposal of the M.C., namely, 31.06.2016. But as per the directions of the Supreme Court, the applications under Section 125 of the Code of Criminal Procedure have to be disposed of as expeditiously as possible, otherwise the intention of the legislature for protecting the vagrant mothers will be defeated.

So considering the circumstances, this Court feels that the petition can be disposed of as follows:

The court below is directed to expedite disposal of M.C.138/2014, as expeditiously as possible, at any rate, within two months from the date of receipt of the order. Till then, the interim arrangement made by this Court regarding payment of maintenance to the child will continue and the question as to whether the 1<sup>st</sup> respondent is entitled to get maintenance or not can be considered by that court after considering the objection raised by the petitioner in his objections.

With the above directions and observations, this petition is disposed of.

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

JV

sd/-  
**K. RAMAKRISHNAN,**  
**JUDGE**