IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 30TH DAY OF JULY 2024 / 8TH SRAVANA, 1946

CRL.MC NO. 1464 OF 2018

AGAINST THE ORDER/JUDGMENT DATED IN CRRP NO.2 OF 2016 OF SPECIAL COURT (ATROCITIES AGAINST SC/ST), MANJERI ARISING OUT OF THE ORDER/JUDGMENT DATED IN MC NO.20 OF 2013 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II,PERINTHALMANNA

PETITIONER/RESPONDENT:

ASHRAF.C
S/O. MUHAMMED, AGED 34 YEARS, THOLPETTY P.O., VIA KATTIKULAM, THIRUNELLI VILLAGE, MANANTHAVADI TALUK, WAYANAD DISTRICT.

BY ADVS.
SRI.ANOOP.V.NAIR
SRI.V.MANOJKUMAR
SRI.M.V.SURESH KANNUR
SRI.V.K.SREEJITH
SMT.M.SRUTHI DAS

RESPONDENTS/APPELLANT/PETITIONER:

1 **STATE OF KERALA**
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031.

2 **SEENATH. M.**
W/O. LATE M.HAMZA, AGED 38 YEARS, MEKKADAN HOUSE, VELLIYANCHERI P.O., VIA MELATTUR, EDAPPATTA VILLAGE, PERINTHALMANNA TALUK - 679 326.

BY ADV.

SRI.U.K.DEVIDAS - R2

SRI.SANGEETHARAJ.N.R, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

Crl.M.C. No.1464 of 2018

Dated this the 30th day of July, 2024

O R D E R

Petitioner is the respondent in M.C. No.20/2013 on the file of the Judicial First Class Magistrate Court – II, Perinthalmanna. It was a case filed by the 2nd respondent under Section 3(1) of the Muslim Women's (Protection of Rights on Divorce) Act, 1986. The 2nd respondent claimed different amount under different heads in the above petition. The petitioner contested the case and after adducing evidence by both sides and also after hearing both sides, the learned Magistrate allowed the petition in part. The relevant portion of the above order is extracted hereunder:

> "1. The respondent is directed to pay ₹3,60,000/- towards the future maintenance

(Matha) of the petitioner and ₹ 15,000/- towards her maintenance during Iddat period of three months at the rate ₹ 5,000/- per month u/s 3(1) of Muslim Women's (Protection of Rights on Divorce) Act.

2. The respondent is directed to pay the above amounts within one month from the date of order.

3. All other prayers are disallowed.

4. Both parties are directed to bear their respective costs."

2. Aggrieved by the inadequacy of the amount, the 2nd respondent filed Crl.R.P. No. 2/2016 before the Sessions court, Manjeri. The revision was considered by the Special Court for SC/ST (POA) Act Cases, Manjeri. The revisional court, after hearing both sides, allowed the revision and directed the petitioner to pay an amount of Rs.7,20,000/- towards future maintenance instead of Rs.3,60,000/-. Aggrieved by the same, this Crl.M.C is filed.

3. Heard the learned counsel appearing for

the petitioner and the learned counsel appearing for the 2nd respondent.

4. The counsel appearing for the petitioner submitted that the revisional court erred in enhancing the future maintenance from 3,60,000/- to 7,20,000/- without any basis. The counsel submitted that the 2nd respondent is also employed and therefore the court erred in passing such an order. The counsel appearing for the 2nd respondent submitted that the Crl.M.C itself is not maintainable because, even if the petitioner is aggrieved by Annexure I order, the remedy of the petitioner is to file a revision because the petitioner was the respondent in Annexure I order. The counsel submitted that, when a remedy of revision is available, this Court ought not have entertained a petition under Section 482 Cr.P.C. For this point, the counsel appearing for the petitioner relied the

order dated 23.06.2023 in Crl.M.C. No. 6653/2022.

5. This Court considered the contentions of the petitioner and the 2nd respondent. It is true that the petitioner can file a revision against Annexure I order and when a revision is permissible, normally a petition under Section 482 Cr.P.C. need not be entertained by this Court. This Crl.M.C is pending before this Court from 2018 onwards. An interim order was passed by this Court on 02.03.2018. At this distance of time, I am of the considered opinion that this Court need not dismiss the Crl.M.C stating that it is not maintainable. The observation of this Court in the order dated 23.06.2023 in Crl.M.C.No.6653/2022 will strengthen the above stand. Therefore the first contention of the 2nd respondent can not be entertained.

6. The main contention of the petitioner is that the enhancement of future maintenance from

3,60,000/- to 7,20,000/- is without any basis. This Court perused Annexure I order. A perusal of Annexure I order would show that the Sessions Judge confirmed the order granting maintenance to the 2nd respondent as maintenance during the iddah period of three months @ Rs.5,000/- each, i.e., 5,000 x 3 = 15,000/-.

7. Thereafter, the Sessions Judge used the multiplier '10' and recalculated the future maintenance in the following manner:

6000 x 12 x 10 = 7,20,000/-

8. It is a fact that the maintenance during the iddah period allowed by the trial court which is confirmed by the revisional court is Rs.5,000/- each. If that is the case, while calculating the future maintenance, the monthly maintenance ought to have been assessed by the revisional court as Rs.5,000/- instead of Rs.6,000/-. Therefore,

according to me, the future maintenance is to be decided taking Rs.5,000/- as monthly maintenance because during the iddah period, the 2nd respondent was given only Rs.5,000/- per month. As far as the multiplier of '10' is concerned, I am of the considered opinion that, there is nothing to interfere with the same.

9. Therefore, the future maintenance ordered by the revisional court is to be re-assessed in the following manner:

5000 x 12 x 10 = Rs.6,00,000/-

10. Therefore, the future maintenance ordered by the revisional court can be reduced to Rs.6,00,000/- instead of Rs.7,20,000/-. With that modification, this Criminal Miscellaneous Case can be disposed of.

Accordingly, this Criminal Miscellaneous Case is disposed of with the following directions:

a) The amount fixed by the revisional court towards future maintenance as Rs.7,20,000/- is reduced to Rs.6,00,000/- [5000 x 12 x 10].

b) The other amount ordered by the lower Court and the revisional Court are confirmed.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

DM/Sbna

APPENDIX OF CRL.MC 1464/2018

PETITIONER ANNEXURES

ANNEXURE I	**CERTIFIED COPY OF JUDGMENT IN CRL.R.P.NO.2/2016, DATED 28.09.2017 ON THE FILE OF SPECIAL COURT FOR SC/ST (POA) ACT CASES, MANJERI.**
ANNEXURE II	**CERTIFIED COPY OF JUDGMENT IN M.C.NO. 20/2013 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT- II, PERINTHALMANNA DATED 26.10.2015.**
ANNEXURE III	**TRUE COPY OF JUDGMENT PASSED BY THE FAMILY COURT, MALAPPURAM IN O.P.NO.1071/2012, O.P.NO. 982/2012 AND M.C.836/2012 FILED BY THE 2ND RESPONDENT.**

RESPONDENTS EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE