2025:KER:31121

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

OP(CRL.) NO. 242 OF 2025

AGAINST THE ORDER DATED 17.01.2020 CMP NO.7816 OF 2019 IN MC NO.388 OF 2019 OF JUDICIAL MAGISTRATE OF FIRST CLASS, PAYYANNUR

PETITIONER/RESPONDENT NO.1:

SANTHOSH KUMAR E.K
AGED 48 YEARS
S/O KUNHIRAMAN NAMBIAR,
PADUVILAM HOUSE, PARIKKALAM P.O.,
IRITTY, KANNUR DISTRICT, PIN - 670705

BY ADVS.
M.SHAJNA
K.M.FIROZ
NAYANA K.UMESH

RESPONDENTS/PETITIONERS 1 TO 3/
RESPONDENTS 2 TO 5:

1 **RAJNA SANTHOSH KUMAR**
AGED 42 YEARS, W/O.SANTHOSH KUMAR E.K,
VANIBHAVANAM HOUSE,
RAMANKULAM P.O. VELLUR, PAYYANNUR,
KANNUR DISTRICT, PIN - 670307

2 **ADITHYA SANTHOSH KUMAR (MINOR),**
AGED 17 YEARS, S/O. SANTHOSH KUMAR E.K,
VANIBHAVANAM HOUSE, RAMANKULAM,
P.O. VELLUR, PAYYANNUR, KANNUR DISTRICT.
REP.BY 1ST PETITIONER MOTHER
RAJNA SANTHOSH KUMAR, PIN - 670307

3 RITHWIK SANTHOSH KUMAR (MINOR)
AGED 11 YEARS, S/O.SANTHOSH KUMAR.E.K,
VANIBHAVANAM HOUSE, RAMANKULAM P.O.
VELLUR, PAYYANNUR, KANNUR DISTRICT,
REP.BY 1ST PETITIONER MOTHER
RAJNA SANTHOSH KUMAR
(ALL ARE RESIDING WITHIN THE LIMITS OF
PAYYANNUR POLICE STATION), PIN - 670307

4 SHYAMALA.E.K
AGED 64 YEARS, W/O.KUNHIRAMAN NAMBIAR,
PADUVILAM HOUSE, P.O.PARIKKALAM,
IRITTY, KANNUR DISTRICT., PIN - 670705

5 KUNHIRAMAN NAMBIAR
AGED 78 YEARS, FATHER'S NAME NOT KNOWN,
PADUVILAM HOUSE, P.O.PARIKKALAM,
IRITTY, KANNUR DISTRICT., PIN - 670705

6 SUMESH.E.K
AGED 44 YEARS, S/O. KUNHIRAMAN,
PADUVILAM HOUSE, P.O.PARIKKALAM,
IRITTY, KANNUR DISTRICT., PIN - 670705

7 RAKESH.E.K
AGED 42 YEARS, S/O. KUNHIRAMAN,
PADUVILAM HOUSE, P.O.PARIKKALAM,
IRITTY, KANNUR DISTRICT
(WITHIN THE LIMITS OF ULIKKAL
POLICE STATION), PIN - 670705

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 10.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The petitioner is the husband of respondent No.1. The respondent Nos. 2 and 3 are the children of the petitioner and the respondent No.1. The respondent Nos. 4 to 7 are the relatives of the petitioner.

2. The respondent Nos. 1 to 3 filed M.C.No.388 of 2019 before the Judicial First Class Magistrate Court, Payyannur under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against the petitioner. The respondent Nos. 1 to 3 also filed an application for interim maintenance as Crl.M.P.No.7816 of 2019, which was allowed as per Ext.P1 order. Thereafter, the M.C.No.388 of 2019 itself was dismissed as per Ext.P2 judgment. After the dismissal of the M.C., the respondent Nos. 1 to 3 filed Ext.P3 petition to enforce Ext.P1 order. The petitioner appeared before the learned Magistrate and submitted that since the M.C. itself was dismissed, the interim order merged with the judgment

in M.C. and hence, the execution petition to execute Ext.P1 order is not maintainable. The petitioner filed objection to Ext.P3 and raised the maintainability issue. The grievance of the petitioner is that without considering the issue of maintainability, the learned Magistrate is proceeding with Ext.P3. It is in these circumstances, the petitioner has approached this Court.

3. I have heard Smt.M.Shajna, the learned counsel for the petitioner.

4. Ext.P2 judgment would show that M.C.No.388 of 2019 was dismissed by the learned Magistrate holding that there is no domestic violence. The petitioner has raised a definite plea that since M.C. itself was dismissed, Ext.P1 interim order cannot be executed. Since such an issue of maintainability has been raised, it is incumbent on the part of the learned Magistrate to decide the maintainability issue first.

Hence, this original petition is disposed of with a direction to the Judicial First Class Magistrate Court, Payyannur to consider the maintainability issue first and then decide Ext.P3 petition on merits, in accordance with law.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

APA

APPENDIX OF OP(CRL.) 242/2025

PETITIONER EXHIBITS

EXHIBIT P1 **A TRUE COPY OF THE ORDER DATED 17.01.2020 IN CMP NO. 7816/2019 IN MC NO. 388/2019 PASSED BY JFCM PAYYANNUR**

EXHIBIT P2 **TRUE COPY OF THE ORDER DATED 21.01.2022 IN MC 388/2019 PASSED BY THE JFCM COURT PAYYANNUR**

EXHIBIT P3 **TRUE COPY OF THE MEMORANDUM OF CMP NO.1364/2022 DATED 09.03.2022ON THE FILES OF JFCM PAYYANNUR**

EXHIBIT P4 **A TRUE COPY OF THE COUNTER STATEMENT FILED ON BEHALF OF THE PETITIONER AND OTHER RESPONDENTS DATED 17.06.2022 IN CMP 1364/2022 ON THE FILES OF JFCM PAYYANNUR**

EXHIBIT P5 **TRUE COPY OF THE ORDER SHEET IN CMP NO.1364/2022 OF THE JFCM COURT PAYYANNUR**

EXHIBIT P6 **A TRUE COPY OF THE JUDGMENT REPORTED IN KLT ONLINE 3143 DATED 21.12.2024.**