

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 31ST DAY OF JANUARY 2017/11TH MAGHA, 1938

Cr1.Rev.Pet.No. 1322 of 2016 ()

CRL.A 91/2015 OF ADDITIONAL SESSIONS COURT - III, KASARAGOD.

.....

REVISION PETITIONER/1ST RESPONDENT/PETITIONER:

PREETHA M., AGED 39 YEARS,
D/O.E.KRISHNAN NAIR, AYAROTT,
KODOM VILLAGE, P.O.PADIMARUTHU,
HOSDURG TALUK, KASARAGOD DISTRICT-671531.

BYSRI.T.SETHUMADHAVAN (SENIOR ADVOCATE)
ADVS.SRI.K.JAYESH MOHANKUMAR
SRI.PUSHPARAJAN KODOTH
SMT.VANDANA MENON

RESPONDENT(S)/APPELLANT/1ST RESPONDENT & STATE:

1. KUNHIKELU, AGED 52 YEARS,
S/O. KELU NAIR, KANDATHIL HOUSE,
RAVANESWARAM, CHITHARI VILLAGE,
P.O.RAVENESWARAM, HOSDURG TALUK,
KASARAGOD DISTRICT-671316.
2. STATE OF KERALA, REPRESENTED BY
THE DIRECTOR OF PUBLIC PROSECUTIONS,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV.SRI.K.SHRIHARI ROA
R2 BY PUBLIC PROSECUTOR SMT.M.K.PUSHPALATHA

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 31-01-2017 ALONG WITH CRRP.443/2016,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

mbr/

RAJA VIJAYARAGHAVAN, V., J.

Crl.R.P.Nos.1322 & 443 OF 2016

Dated this the 31st day of January, 2017

O R D E R

~~~~~

1.Crl.R.P.No.1322 of 2016 is filed by the petitioner in C.M.P.No.14396 of 2014 on the file of the Judicial Magistrate of First Class-I, Hosdurg. Crl.R.P.No.443 of 2016 on the other hand is filed by the 1<sup>st</sup> respondent in the aforesaid case. For the purpose of clarity, the parties will be described as per their status in Crl.R.P.No.1322 of 2016.

2.The petitioner married the 1<sup>st</sup> respondent on 29.7.2000 and in the said wedlock two children were born. They lived together in the shared household. Alleging that the steps were being taken by the respondent to oust the petitioner from the shared house hold after misappropriating the gold ornaments, she filed the aforesaid petition under the Protection of Women From

Domestic Violence Act. According to the petitioner, she was working as an Anganwadi teacher and was earning only a sum of Rs.2000/- per mensem. Her elder son was suffering from serious ailments and was undergoing treatment at the A.J.Institute of Medical Science at Mangalore and also K.M.C.hospital, Mangalore. Periodical checkups were required for her son and the expenses for the same comes to around Rs.10,000/- per mensem. According to the petitioner, the respondent has neglected the petitioner and her minor children and he has not offered any sum by way of maintenance. It was asserted that the respondent was a land broker by profession and was earning a sum of Rs.50,000/-. An application for interim relief was filed before the learned Magistrate as C.M.P.No.14396 of 2014.

3. The respondent entered appearance and filed objection. He denied that he was a land broker and was earning a

sum of Rs.50,000/-. On the other hand, he asserted that he was suffering from heart ailments and was earning only a sum of Rs.300/- per day.

4.The learned Magistrate, on the basis of materials, concluded that the petitioner as well as the minor children were entitled to maintenance and also for the treatment expenses of her elder son. Consequently, a sum of Rs.5000/- per mensem was granted towards treatment for the expenses and the respondent was further directed to pay a sum of Rs.2000/- each to the petitioner and to the minor children. Against the said order, the respondent preferred Crl.A.No.91 of 2015 before the Court of Session. By judgment dated 12.2.2016, in Crl.A.No.91 of 2015, the learned Sessions Court partly allowed the appeal and the impugned order was modified and the respondent was directed to pay a sum of Rs.3000/- per mensem for the treatment of of the elder son. He was

further ordered to pay maintenance at the rate of Rs.1500/- each to the petitioner as well as the two children. The aforesaid order is challenged by the petitioner as well as the respondent by filing separate Criminal Revision Petitions.

5.Heard the learned counsel appearing for the petitioner as well as the respondents.

6.Since identical issues are concerned, both these petitions are considered and disposed of together. There cannot be any dispute with regard to the order passed by the learned Magistrate is interim in nature. It is admitted by the petitioner that she is working as an Anganwadi teacher. According to her, she was drawing a sum of Rs.2,000/- per mensem. However, the learned counsel appearing for the petitioner handed over a document obtained by him under the Right to Information Act which reveals that the petitioner is drawing a sum in excess of

Rs.5,000/- from her job as a teacher. Insofar as the elder son is concerned, it appears that he is suffering from a very serious ailment and that he is undergoing treatment in various hospitals. The amount ordered by the learned Magistrate for the treatment expense is Rs.5000/-. This Court is of the view that the learned Sessions Judge was not justified in reducing the amount to Rs.3,000/-. Insofar as the minor children are concerned, who are now aged 15 and 9 years respectively the amount ordered Rs.2000/- each cannot be said to be excessive.

7.Having regard to the above, I am of the view that no purpose will be served in retaining this matter before this Court. In so far as the amount granted to the petitioner in Crl.R.P.No.1322 of 2016 is concerned, I am of the view that the said amount can be fixed only after taking of the evidence.

8.In the result, this petition is disposed of in the following manner:

(i) The parties are directed to appear before the learned Magistrate on 15.2.2017 and let in evidence to substantiate their respective contentions.

(ii)Till the final orders are passed in the above revision petition, the respondent shall pay a sum of Rs.2000/- each to the minor children towards maintenance.

(iii) Insofar as the amount due to the minor child for the treatment expenses are concerned the order passed by the learned Magistrate is restored and the petitioner shall pay a sum of Rs.5000/-

iv) Insofar as the admitted arrears are concerned, it is submitted that certain amounts have been paid during the pendency of this revision petition.

v) One half of the admitted arrears at the rate fixed in this order shall be deposited by the petitioner before the learned Magistrate, at any rate, within a period of one month from today.

The learned Magistrate is directed to consider and pass orders in the original petition expeditiously, at any rate, within a period of four months from the date of production of a copy of this order.

**Sd/-**

**RAJA VIJAYARAGHAVAN, V.  
JUDGE**

Ps/31/1/2017