

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 2ND DAY OF DECEMBER 2022 / 11TH AGRAHAYANA, 1944

OP (FC) NO. 505 OF 2022

AGAINST THE ORDER DATED 07.03.2022 IN I.A.NO.5447 OF 2019

IN O.P.NO.606 OF 2019 OF THE FAMILY COURT, ERNAKULAM

PETITIONER:

M.K. GHEEVARGHESE

AGED 52 YEARS, SON OF M.I. KURIACKO, MOOLAYIL
HOUSE, KANINADU P.O., VADAVUCODE, ERNAKULAM,
PIN - 682310.

BY ADVS.

P.S.GIREESH

E.S.FIROS

SUSHEEL SHANKAR

SALIH P.A.

ARJUN R NAIK

THEJALAKSHMI R.S.

RESPONDENT:

MARIAM GHEEVARGHESE,

AGED 21 YEARS, DAUGHTER OF ANNE GEORGE, NO.3,
MANIKESWARI ROAD, KALANIKETAN APARTMENTS, FLAT
NO.204, B BLOCK, 2ND FLOOR, KILPAUK, CHENNAI,
PIN - 600010.

BY ADVS.

G.BHAGAVAT SINGH

KELU BHAGAVAT

SHYJU S.

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THIS O.P. (FAMILY COURT) HAVING COME UP FOR FINAL HEARING ON 02.12.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

P.G.Ajithkumar, J.

The respondent in O.P. No. 606 of 2019 on the file of the Family Court, Ernakulam has filed this original petition under Article 227 of the Constitution of India. He challenges the order of the Family Court dated 07.03.2022 in I.A.No.5447 of 2019 in O.P.No.606 of 2019, whereby the petitioner was directed to pay interim maintenance to the respondent at the rate of Rs.15,000/- per month.

2. On 22.09.2022 notice on admission was ordered to be served on the respondent. The respondent entered appearance through her learned Counsel.

3. Heard the learned Counsel appearing for the petitioner and learned Counsel appearing for the respondent.

4. The petitioner is the father of the respondent. Marriage between the petitioner and the mother of the respondent which was solemnized on 12.11.1995 was dissolved as per the order of the Family Court, Ernakulam dated 18.06.2012. The respondent filed O.P. No. 606 of 2019 under Section 7 of the Family Courts Act, 1984 seeking a

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decree for payment of maintenance; both past and future. The respondent also claims Rs.75,00,000/- towards her marriage expenses. The petitioner has filed an objection resisting the claims of the respondent. Meanwhile the respondent filed I.A.No.5447 of 2019 claiming interim maintenance at the rate of Rs.15,000/- per month. The petitioner has filed an objection. After hearing both sides the Family Court allowed I.A.No.5447 of 2019 and directed the petitioner to pay interim maintenance at the rate of Rs.15,000/- per month. Ext. P5 is a copy of that order.

5. The learned Counsel appearing for the petitioner would submit that considering the monthly income being derived, the petitioner is not in a position to pay such an amount. He has to look after his second wife, daughter, step son and mother in law. He is getting only pension now, having he retired voluntarily from service in the year 2019. The learned Counsel appearing for the petitioner raises a legal contention that what the respondent can claim is maintenance as provided under Section 125 of the Code of Criminal Procedure, 1973, by operation of Section 7(2) of the Family

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Courts Act, and therefore, the Family Court is not empowered to order payment of interim maintenance. The learned Counsel placed reliance on the decision in **Abhilasha v. Prakash and others [AIR 2020 SC 4355]** in order to fortify that contention.

6. The contention of the learned Counsel appearing for the respondent on the other hand is that the petitioner at the time of retirement received a huge amount. He retired as a Scientist, and therefore, his monthly pension is much more than what is stated by him. When he has unhesitatingly been maintaining his present wife, daughter, step son and mother in law, he cannot refuse to pay appropriate amount towards monthly maintenance of his daughter, the respondent, who is a medical student.

7. The parties are Christians. The decision in **Abhilasha** (supra) is regarding a claim under Section 20 of the Hindu Adoption and maintenance Act, 1956. The said decision cannot have applicable in this case. Explanation (f) of Section 7 of the Family Courts Act confers jurisdiction upon the Family Courts to try a suit or proceedings for maintenance.

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8. The Apex Court in **Shaila Kumari Devi v. Krishnana Bhagwan Pathak [(2008) 9 SCC 632]** held that so far as 'interim' maintenance is concerned, it is true that Section 125 of the Code as it originally enacted did not expressly empower the Magistrate to make an order directing payment of interim maintenance. But the Code equally did not prohibit the Magistrate from making such an order. Now, having regard to the nature of proceedings, the primary object to secure relief to deserted and destitute wives, discarded and neglected children and disabled and helpless parents and to ensure that no wife, child or parent is left beggared and destitute on the scrap-heap of society so as to be tempted to commit crime or to tempt others to commit crime in regard to them, it was held that the Magistrate had 'implied power' to make orders to pay interim maintenance. The jurisdiction of the Magistrate under Chapter IX (Order for Maintenance of Wives, Children and Parents) is not strictly criminal in nature. Moreover, the remedy provided by Section 125 of the Code is a summary remedy for securing reasonable sum by way of maintenance. Hence, in the absence of any

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express bar or prohibition, Section 125 could be interpreted as conferring power by necessary implication to make interim order of maintenance subject to final outcome in the application.

9. Going by the principles laid down in the aforesaid decision, a Christian daughter is entitled to claim maintenance.

10. The contention of the petitioner is that the respondent being the daughter can claim maintenance as provided under Section 7(2) of Family Courts Act alone. Section 7(2) enables a daughter to claim maintenance under Section 125 of the Code. As per Section 125(1)(b) of the Code an unmarried daughter who has physical or mental abnormality or injury whereby unable to maintain herself alone can claim maintenance. Whether the respondent is entitled to claim maintenance under common law or under Section 125 of the Code alone is a matter to be decided by the Family Court at the time of final adjudication. The claim of the respondent for maintenance is a pending consideration of the Family Court. Till such time the original petition is decided,

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the petitioner being the father has to pay interim maintenance to his daughter, the respondent, who is pursuing her studies in medicine.

11. Rs.15,000/- per month is the interim maintenance ordered to be paid. The respondent being a medical student, her expenses include not only what is required for mere sustenance, but also educational and also other expenses. Considering the status and financial conditions of the parties, we are of the view that the interim maintenance at the rate of Rs.15,000/- is not exorbitant.

12. In such circumstances, we refrain from interfering with the impugned order in exercise of the jurisdiction of this Court under article 227 of the Constitution of India. This Original Petition is accordingly dismissed.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr

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APPENDIX OF OP (FC) 505/2022

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE ORIGINAL PETITION FILED BY THE RESPONDENT/PETITIONER NUMBERED AS O.P.NO.606 OF 2019 ON THE FILE OF THE FAMILY COURT ERNAKULAM
- EXHIBIT P2 TRUE COPY OF THE OBJECTIONS FILED BY THE PETITIONER/RESPONDENT IN O.P.NO.606 OF 2019 ON THE FILE OF THE FAMILY COURT ERNAKULAM
- EXHIBIT P3 TRUE COPY OF I.A.NO.5447 OF 2019 IN OP NO.606 OF 2019 FILED BY RESPONDENT/PETITIONER ON THE FILE OF THE FAMILY COURT, ERNAKULAM
- EXHIBIT P4 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER/RESPONDENT IN IA NO.5447 OF 2019 IN OP NO.606 OF 2019 ON THE FILE OF THE FAMILY COURT, ERNAKULAM
- EXHIBIT P5 TRUE COPY OF THE ORDER DATED 07.03.2022 PASSED BY THE FAMILY COURT ERNAKULAM IN I.A.NO.5447 OF 2019 IN OP NO.606 OF 2019
- EXHIBIT P6 TRUE COPY OF THE FEES DETAILS AS PROVIDED IN THE OFFICIAL WEBSITE OF GOVERNMENT KILPAUK MEDICAL COLLEGE