

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 14<sup>TH</sup> DAY OF JUNE 2024 / 24TH JYAISHTA, 1946

CRL.REV.PET NO. 1661 OF 2018

AGAINST THE ORDER DATED 09.08.2018 IN CRA NO.21 OF 2018  
OF II ADDITIONAL SESSIONS COURT,ERNAKULAM ARISING OUT OF  
THE ORDER DATED 08.12.2017 IN CMP NO.3755 OF 2009 OF  
ADDITIONAL CHIEF JUDICIAL MAGISTRATE (E&O), ERNAKULAM  
REVISION PETITIONER/APPELLANT:

SHILPA

AGED 20 YEARS

D/O.K.K. RAJEEVAN , CHERUVULLI LANE, BANK ROAD,  
KALOOR OCHI-17, REPRESENTED BY POWER OF  
ATTORNEY NEENA C.R., D/O. LATE RAJAN AGED 52,  
CHERUVULLI LANE, BANK ROAD, KALOOR, KOCHI 17.

BY ADVS.

SUBAL J.PAUL

SMT.SHEEBA THOMAS

RESPONDENTS/RESPONDENTS:

1 K.K.RAJEEVAN  
AGED 54 YEARS  
S/O. KUNJAN, KONDOTTY KARAYIL, CHOWARA, ALUVA.

2 STATE OF KERALA,  
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM - 682031.

R1 BY AMRIN FATHIMA

R1 BY STEFIN THOMAS

R1 BY KAVYA P.R.

R1 BY ANJANA SANJAY

R2 BY SMT.PUSHPALATHA M.K., SR.PUBLIC  
PROSECUTOR

CrI.R.P.No.1661 of 2018

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR  
FINAL HEARING ON 10.06.2024, THE COURT ON 14.06.2024  
DELIVERED THE FOLLOWING:

**P.G. AJITHKUMAR, J.****“C.R.”**

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**Crl.R.P.No. 1661 of 2018**

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**Dated this the 14<sup>th</sup> day of June, 2024****ORDER**

An interesting question cropped up in this revision; whether an order directing a Hindu father to pay maintenance to his unmarried daughter under Section 20(1)(d) of the Protection of Women from Domestic Violence Act, 2005 (D.V.Act) has the character of an order for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (Code) or maintenance under Section 20(3) of the Hindu Adoption and Maintenance Act, 1956 (Maintenance Act)?

2. The petitioner is the daughter of the respondent. The petitioner, through her mother, filed C.M.P.No.3755 of 2009 before the Additional Chief Judicial Magistrate (Economic Offence) Court, Ernakulam claiming maintenance. She was aged 14 years at that time. The Magistrate in exercise of the powers under Section 20(1)(d) of the D.V.Act ordered the respondent to pay monthly maintenance at the rate of

Rs.2,000/-. An appeal was filed by the respondent, but it was unsuccessful. She attained majority on 02.07.2012. However, the respondent continued to pay the amount of maintenance till April, 2015. He then filed C.M.P.No.2415 of 2015 seeking to exempt him from making continued payment of maintenance.

3. The contentions of the respondent were two fold: the petitioner attained majority, whereby the liability of the respondent to pay maintenance ceased and that the petitioner went abroad and has been earning sufficient income from her employment. The petitioner did not dispute the date of attaining majority, but contended that as long as she remained unmarried and incomeless, she was entitled to get the monthly maintenance. The learned Magistrate did not accept the contentions of the petitioner. The petition was allowed. The appeal preferred by the petitioner was dismissed by the Sessions Court. Challenging the said orders, this revision petition has been filed under Section 397 of the Code.

4. The petitioner admitted that during pendency of the appeal, she married. The marriage was in 2017. It is indisputable that even under the Maintenance Act, the petitioner is not entitled to claim maintenance from the respondent after her marriage. Therefore, the liability, which is now in dispute is concerning monthly maintenance from May, 2015 till the date of marriage of the petitioner.

5. Heard the learned counsel for the petitioner, the learned counsel for the respondent and the learned Public Prosecutor.

6. The courts below proceeded with the matter on the premises that the petitioner was entitled to get monthly maintenance till she marries or becomes an earning member. However, holding that since she did not produce her passport and other details showing her travel abroad and claim maintenance promptly after the date of her attaining majority, it was inferred that she had sufficient income. The appellate court observed that in the circumstances of the case the onus of proving that the petitioner did not have sufficient income to

maintain herself was on her, which she did not discharge. The courts below accordingly held concurrently that the obligation of the respondent to pay maintenance ceased.

7. I may say at the outset that if the order to pay maintenance was in recognition of the right of the petitioner under Section 125 of the Code, the obligation of the respondent ceased on her attaining majority; this being not an instance of the claimant suffering from physical or mental abnormality or injury. If, on the other hand, the order to pay maintenance is in recognition of the right of the petitioner under Section 20(3) of the Maintenance Act, the obligation to get maintenance continues until the marriage of the petitioner or till she could maintain herself out of her own earnings. This second question is no more *res integra*. This Court in **Vikraman Nair v. Aishwaya [2019 (1) KLT 826]** held that the obligation of a Hindu father to maintain an unmarried daughter who is unable to maintain herself is personal and legal in nature. As per Section 3(b)(ii) of the Act, 'maintenance' includes, in the case of an unmarried daughter,

the reasonable expenses of and incidental to her marriage. Even in the case of daughters who are grown up and living with their mother and maintained by the mother who is employed and earning salary, they are entitled to get financial assistance from their father at the time of their marriage. This Court held so by placing reliance on **Smt.Sneh Prabha v. Ravinder Kumar [AIR 1995 SC 2170]**. In the light of the law laid down in the aforesaid decisions, the law is definite that the father has the obligation to pay maintenance to a non-earning daughter till her marriage.

8. As stated, the courts below proceeded treating the order of maintenance in C.M.P.No.3755 of 2009 as one coming within the purview of Section 20(3) of the Maintenance Act, the sole reason being the parties are Hindus. I have pointed out above that depending upon the character of the order of maintenance passed under Section 20(1)(d) of the D.V.Act; whether in recognition of the right under Section 125 of the Code or under Section 20(3) of the Maintenance Act, the extent of its enforceability changes. If the order is one under

Section 20(1)(d) of the Maintenance Act, the liability of the father extends till the daughter gets married or till she becomes self-reliant. In such a case, it is for the father to prove either of the said facts in order to get absolved from the obligation to pay maintenance. So much so, the view taken by the courts below that the petitioner failed to prove that she had no sufficient income or even that she did not come forward to claim the maintenance is not a reason to allow the petition. If in recognition of the statutory right of the daughter under Section 20(3) of the Maintenance Act ordered the father to pay maintenance, that obligation can be ceased only on she marries or becomes an earning member. The court can order exemption only if the father proves such a disqualification of the daughter to receive maintenance. In that view of the matter, the orders of the courts below are incorrect.

9. The view taken by the courts below that the order directing the respondent to pay maintenance in C.M.P.No.3755 of 2009 was one coming under Section 20(3) of the



Maintenance Act, however, is not able to be approved. Section 20(1)(d) of the D.V.Act reads,-

“(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.”

This provision empowers a Magistrate to order maintenance under Section 125 of the Code or any other law for the time being in force. It inheres that the Magistrate in the exercise of such a jurisdiction can order maintenance in the case of a Hindu either under Section 125 of the Code or under the Maintenance Act. For the reason that the parties are Hindus, one cannot assume that the order of maintenance is in recognition of the right under the Maintenance Act, for, Section 125 of the Code is secular and applicable to all. Viewed so, it cannot be said that the order to pay for maintenance in C.M.P.No.3755 of 2009 is an order coming under Section 20(3) of the Maintenance Act. The learned Magistrate did not specify in recognition of which right of the petitioner such an order of maintenance was passed.

Therefore, it is only apposite at this belated point of time not to interfere with the impugned orders. The doubtful situation is created for lack of specificity in the order in C.M.P.No.3755 of 2009, which is one passed under Section 20(1)(d) of the D.V.Act.

10. In the light of the discussions made above, I hold that the Magistrates dealing with a petition claiming maintenance under Section 20(1)(d) of the D.V.Act shall specify in the order under which provision; whether under Section 125 of the Code or under Section 20(3) of the Maintenance Act maintenance is ordered. Reminding the learned Magistrates dealing with matters coming under the D.V.Act of the above aspect, this petition is dismissed.

Sd/-

**P.G. AJITHKUMAR, JUDGE**

dkr

APPENDIX OF CRL.REV.PET 1661/2018

**PETITIONER ANNEXURES**

- ANNEXURE A1** TRUE COPY OF JUDGMENT DATED 9.8.18 IN  
CRL. APPEAL 21/18 OF II ADDL. DISTRICT  
COURT, ERNAKULAM
- ANNEXURE A2** TRUE COPY OF JUDGMENT DATED IN CMP  
2415/15 OF ACJM COURT, ERNAKULAM