

Shibu Kumar Vs. Smeja

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SooperKanoon Citation : sooperkanoon.com/1094394

Court : Kerala

Decided On : Sep-30-2013

Judge : Honourable Mr.Justice K.Harilal

Appellant : Shibu Kumar

Respondent : Smeja

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL MONDAY,THE30H DAY OF SEPTEMBER20138TH ASWINA, 1935 CrI.Rev.Pet.No. 1796 of 2013 ()
----- CRL.A.NO. 77/2012 OF SESSIONS COURT ,KASARAGOD CMP.NO. 10281/2011 IN M.C.NO.680/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -I,HOSDURG ----- REVISION PETITIONER(S)/APPELLANTS/RESPONDENTS:

----- 1. MR. SHIBU KUMAR.B,S/O.KUMARAN,AGED33YEARS, SOFTWARE ENGINEER,THROUGH POWER OF ATTORNEY HOLDER SMT. SHEEBA KUMAR, W/O.SHAJ, AGED39YEARS, RESIDING AT "SHEE", THOKKILANGADI, P.O. NIRMALAGIRI, KUTHUPARAMBA AMSOM AMBILAD DESOM, THALASSERY TALUK,PIN- 670 701.

2. MRS. SHEEBA KUMAR, W/O.SHAJ,AGED39YEARS, TEACHER, RESIDING AT "SHEE" THOKKILANGADI, P.O.NIRMALAGIRI, KUTHUPARAMBA AMSOM

AMBILAD DESOM, THALASSERY TALUK,PIN- 670 701. BY
ADVS.SMT.K.V.PAVITHRAA SRI.M.P.JAYANANDHAN
RESPONDENTS/RESPONDENTS/PETITIONER:

----- 1. SMEJA.K,
D/O.C.KUNHIRAMAN, AGED27YEARS, ENGINEER, RESIDING AT
CHEMMANGHOT HOUSE, P.O.PEELIKKODE, HOSDURG TALUK,
KASARAGOD DISTRICT.

2. STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA. R1 BY ADV. SRI.SURESH KUMAR KODOTH R2 BY PUBLIC
PROSECUTOR SMT. SEENA RAMACHANDRAN THIS CRIMINAL REVISION
PETITION HAVING BEEN FINALLY HEARD ON3009-2013, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING: sts CRRP.NO.1796/2013
APPENDIX PETITIONER'S ANNEXURES: ANNEX1CERTIFIED COPY OF THE

JUDGMENT

DATED2708/2013 IN CRL.A.NO.77/2012 OF THE SESSIONS JUDGE,
KASARAGODE AND COPY OF

ORDER

IN CMP.NO.10281/2011 IN M.C.NO.680/2011 OF FIRST CLASS MAGISTRATE
COURT, HOSDURG ANNEX2COPY OF THE LIST OF SELECTED
PARTICIPANTS IN TWO DAYS ISET WORKSHOP HELD ON10H & 11TH
NOVEMBER 2012 ANNEX3COPY OF THE LIST OF SELECTED PARTICIPANTS
IN TWO DAYS ISET WORKSHOP HELD ON2D TO9H NOVEMBER2012
RESPONDENT'S ANNEXURES: NIL /TRUE COPY/ P.A.TO.JUDGE sts K.
HARILAL, J.

----- Crl.R.P. No. 1796 of 2013 ----- Dated this the
30th day of September, 2013

ORDER

The Revision Petitioners are appellants in Criminal Appeal No. 77 of 2012 on the
files of the Sessions Judge, Kasaragod as well as respondents in CMP No. 10281
of 2011 in M.C.No.680 of 2011 on the files of Judicial First Class Magistrate's court

-I, Hosdurg. The above appeal was filed challenging the correctness of the interim order dated 24/03/2012 for interim maintenance passed in CMP No.10281 of 2011 in MC.No.680 of 2011 on the files of Judicial First Class Magistrate's court -I, Hosdurg filed under section 12(1) of the Act 43 of 2005.

2. The case of the Revision Petitioners is that in the CMP for interim maintenance, the learned Magistrate ordered notice to respondents on 06/12/2011. But the respondent/petitioner in CMP, without giving notice to the respondents therein pressed for interim order for maintenance and the Magistrate passed the impugned order directing the 1st Revision Petitioner to pay Rs.5000/- Crl.R.P. No. 1796 of 2013 2 per month. Against the order the petitioners herein filed above appeal. The appellate court set aside the impugned order, and provided another opportunity to the appellant to contest the claim for interim maintenance on condition that 1st Revision Petitioner deposits the entire amount payable as per the impugned interim order on or before 10/09/2013. Further, the learned Magistrate was directed to dispose the CMP on or before 27/09/2013, on compliance with the said condition.

3. The learned counsel for the Revision Petitioners submits that the interim order was passed without serving the copy of the application for interim maintenance to the Revision Petitioners. I am of the opinion that the court can pass an interim order or directing to pay interim maintenance without serving notice to the opposite party. There is no illegality or impropriety in passing such an interim order.

4. Nevertheless, in appeal, the Revision Petitioners are given another opportunity to contest the interim application also on merits with a condition to deposit the Crl.R.P. No. 1796 of 2013 3 entire amount. There is no illegality or impropriety in the said direction imposing condition. In the above view this Revision Petition is devoid of merits and dismissed accordingly.

5. Any how, the learned Magistrate shall hear the matter after affording an opportunity of being heard to both parties and dispose the interim application at the earliest afresh, on compliance with the condition imposed by the appellate court within one month from today. The direction to deposit the arrear will stand extended by three weeks from today. Sd/-K.HARILAL JUDGE MJL

