

Ashraf vs Sabira

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Court : Kerala

Decided On : Jul-19-2022

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Crl.Rev.Pet/499/2022

Appellant : Ashraf

Respondent : Sabira

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
TUESDAY, THE 19TH DAY OF JULY 2022 / 28TH ASHADHA, 1944
CRL.REV.PET NO. 499 OF 2022 CRA 101/2019 OF ADDITIONAL
SESSIONS COURT- II, KOZHIKODE MC 86/2014 OF JUDICIAL
MAGISTRATE OF FIRST CLASS-I, PERAMBRA REVISION
PETITIONER/APPELLANT/RESPONDENT: ASHRAF AGED 47 YEARS
S/O. POCKER, NADATHALAKKAL HOUSE, KAYANNA P.O.,
CHAKKITTAPARA, PERAMBRA, BY ADV ZUBAIR PULIKKOOL
RESPONDENT/RESPONDENT/PETITIONER & STATE:

1 SABIRA AGED 39 YEARS W/O. ASHRAF, NADATHALAKKAL
HOUSE, WARD NO. XIV, BUILDING NO. 362-B, KAYANNA P.O.,

CHAKKITTAPARA, CHEMBRA, PERAMBRA, NOW RESIDING AT CHETTIYAM VEETIL HOUSE, CHENOLI P.O., MULIYANGAL, PERAMBRA, 2 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM 682 031.

OTHER PRESENT: SMT T V NEEMA -SR Public Prosecutor THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19.07.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ..2..

ORDER

This criminal revision petition has been filed challenging the order passed by the Judicial First Class Magistrate Court-I, Perambra in M.C.No.86/2014 dated 27.12.2018 as well as the

judgment by the Sessions Court, Kozhikode (for short 'the

appellate court') in Crl.Appeal No.101/2019 dated 22.5.2020.

2. The revision petitioner is the husband. The 1 st respondent is the wife. The marriage is not in dispute. Two children were born in the wedlock. Paternity also is not in

dispute. The learned Magistrate awarded the monthly maintenance at the rate of Rs.2,500/- to the wife and Rs.1,500/- each to two children. The appellate court confirmed the said order. Challenging the order of the learned Magistrate and the judgment of the learned Sessions Judge, this Crl.R.P. has been preferred.

3. I have heard Sri.Zubair Pulikool, the learned counsel for the revision petitioner and Smt.T.V.Neema, the learned Senior Public Prosecutor.

4. The main crux of the argument of the learned counsel for the petitioner is that, the Family Court has already ..3..

awarded maintenance to the wife and children and the award of maintenance again by the learned Magistrate is unjustified. The learned counsel in support of

his argument relied on the recent decision of the Supreme Court in Rajnesh v. Neha and another [(2021) 2 SCC 324].

5. As stated already, the status of the parties are not in dispute. There is no case for the revision petitioner that the 1st respondent is employed and is having any income to

support her and children. Admittedly, the revision petitioner was employed in Gulf at the time of institution of the M.C. proceedings at the Magistrate court. The petitioner being the husband of the 1st respondent and father of the children is legally and morally bound to maintain them.

6. The Family Court has ordered maintenance at the

rate of Rs.2,500/- each to the wife and children. In addition, the learned Magistrate ordered the monthly maintenance at the rate of Rs.2,500/- to the wife and Rs.1,500/- each to the children.

7. Going by the provisions of the Family Courts Act and Protection of Women from Domestic Violence Act (for short 'the ..4.. D.V.Act'), the petition for maintenance is maintainable before

both the forums. However, the learned Magistrate, while disposing of the petition under the D.V.Act, is bound to take into account the maintenance, if any, awarded by the Family Court. It is also the dictum laid down in Rajnesh's case (supra). A reading of the impugned order would show that the learned Magistrate has taken into account the maintenance awarded by the Family Court. Hence, I find no irregularity or impropriety in the impugned order and judgment.

Accordingly, the Crl.R.P. is dismissed. Sd/- DR.KAUSER EDAPPAGATH, JUDGE
skj

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