

Binu vs Haseena

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Court : Kerala

Decided On : Feb-02-2022

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : OP(Crl.)/26/2022

Appellant : BINU

Respondent : Haseena

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH
WEDNESDAY, THE 2ND DAY OF FEBRUARY 2022 / 13TH MAGHA,
1943 AGAINST THE ORDER/JUDGMENT IN M.P. 601/2021 IN MC
143/2021 OF FAMILY COURT, THRISSUR
PETITIONER/RESPONDENT IN M.P. BINU, AGED 48 YEARS
S/O. VALIYAKATH ABDUL RAHMAN, MANNATH HOUSE, RCM LANE,
VELIYANNUR POST, THRISSUR DISTRICT, PIN-680 021 BY ADV
ANWIN JOHN ANTONY RESPONDENTS/PETITIONERS IN M.P.:

1 HASEENA, AGED 34 YEARS W/O. BINU, MANNATH HOUSE, RCM
LANE, VELIYANNUR POST, THRISSUR DISTRICT, PIN-680 021 2

MINHA (MINOR), AGED 16 YEARS D/O. BINU, MANNATH HOUSE, RCM LANE, VELIYANNUR POST, THRISSUR DISTRICT, PIN-680 021- REP BY MOTHER & GUARDIAN -1ST RESPONDENT HASEENA 3 HAZRATH AMAN, AGED 12 YEARS (MINOR), D/O. BINU, MANNATH HOUSE, RCM LANE, VELIYANNUR POST, THRISSUR DISTRICT, PIN-680 021- REP BY MOTHER & GUARDIAN -1ST RESPONDENT HASEENA BY ADVS. PRAJIT RATNAKARAN ABDUL RAOOF PALLIPATH(K/920/1998) K.R.AVINASH (KUNNATH)(K/1364/2003)

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 02.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This petition is filed under Article 227 of the

Constitution of India challenging an order passed by Family Court, Thrissur on 02.09.2021 in M.P No.601/2021 in M.C No.143/2021. M.C No.143/2021 was an application filed by the first petitioner for herself and for and on behalf of the second and third petitioners who are her children seeking for monthly maintenance allowance from her husband under Section 125(1) Cr.P.C.

2. In the M.C, as per the averments of the petitioner, the respondent was conducting a footwear shop in Thrissur Town and is earning Rs.3,00,000/- per month and therefore she is entitled to get Rs.30,000/-, Rs.20,000/- and Rs.10,000/- respectively for herself and

children as interim monthly maintenance allowance. Objection was filed by the respondent in the M.C wherein it was contended that the School fee of the second and third petitioners was paid by him and that the footwear business was run by his mother wherein he is only an employee earning Rs.500/- as salary per day therefrom. According to him the footwear shop originally was run by his father and

after his death, his mother has taken charge of. Other contentions were also taken that the 1st petitioner was living in adultery and she is not entitled to get

maintenance allowance, that the 1st petitioner was working as a cashier in a super market and earning Rs.15,000/- monthly and that he is a Cardiac patient, presently undergoing rest and therefore is unable to pay maintenance allowance to the petitioners.

3. The rival contentions of respective parties were

evaluated by the court below and fixed the monthly income of the respondent notionally as Rs.50,000/-, and issued a direction to the respondent to pay interim maintenance allowance at the rate of Rs.4,000/- to the 1st petitioner and Rs.3,000/- each to the 2nd and the 3rd petitioners.

4. It is relevant to notice that the averments of the 1st petitioner that the respondent was getting Rs.3,00,000/- monthly as income from the footwear shop was denied by him. According to him, the footwear shop was run by his mother and being an employee there, he is

getting only Rs.500/- daily as salary. Evidence of any sort is not forthcoming to substantiate the contentions on either side and therefore on what basis the court below has fixed the monthly income of the respondent notionally as

Rs.50,000/- is not known. Even for fixation of notional income, there must be some basis. When materials of any kind are lacking to base, there is no justification for the fixation of a huge sum as monthly income notionally and issuing direction to the respondent to pay interim monthly maintenance at the rate of Rs.4,000/- to the 1st petitioner and Rs.3,000/- each to the 2nd and 3rd petitioners.

5. In the above circumstances, though the amount ordered is only interim maintenance allowance, this Court cannot avoid interference. In the above circumstances, the CrI.M.C is allowed and the order assailed in the petition on hand is modified by limiting the interim maintenance allowance payable to the 1st petitioner as Rs.3,000/- and to the 2nd and 3rd

petitioners as Rs.2,000/- each. This Court observes that the modification of the interim maintenance allowance by this Court will not stand in the way of Family Court, Thrissur to fix any higher sum as monthly maintenance allowance on the

basis of cogent evidence that would be adduced by the parties in the M.C. It is submitted by the learned counsel for the 1st petitioner that no amount has been paid so far by the respondent towards interim maintenance allowance. In that context, this Court finds it expedient in the interest of justice to direct the respondent to pay Rs.30,000/- (Rupees Thirty Thousand only) towards arrears of interim maintenance allowance at the rates now stands modified by this order, within a period of two weeks from this day.

Sd/- MARY JOSEPH JUDGE al/- APPENDIX OF OP(CRL.) 26/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE PETITION DATED 30.03. 2021 IN MC NO.143/2021 FILED BEFORE THE HON'BLE FAMILY COURT, THRISSUR Exhibit P2 TRUE COPY OF THE PETITION DATED 30.03. 2021 IN MP NO.601/2021 FILED BEFORE THE HON'BLE FAMILY COURT, THRISSUR Exhibit P3 TRUE COPY OF OBJECTION DAED 02.08.2021 FILED BY THE PETITIONER BEFORE THE HON'BLE FAMILY COURT, THRISSUR Exhibit P4 TRUE COPY OF ORDER DATED 02.09.2021 IN MP NO.601/2021 OF THE HON'BLE FAMILY COURT, THRISSUR Exhibit P5 TRUE COPY OF THE AGREEMENT DATED 16.08.2021 BETWEEN THE MOTHER OF THE PETITIONER AND ONE MUHAMMED SHEMEER Exhibit P6 TRUE COPY OF THE OP TICKET DATED 14.07.2021 OF GENERAL HOSPITAL THRISSUR Exhibit P7 TRUE COPY OF CAUSALITY REGISTRATION CARD DATED 14.07.2021 OF GOVERNMENT MEDICAL COLLEGE HOSPITAL , THRISSUR Exhibit P8 TRUE COPY OF THE ORDER DATED 22.11.2021 IN CRL MP 2758/2021 OF ADDITIONAL SESSIONS COURT-THRISSUR

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