

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

CRL.REV.PET NO. 1121 OF 2024

AGAINST THE JUDGMENT DATED 11.04.2024 IN Cr1.A NO.1 OF 2023
OF II ADDITIONAL DISTRICT COURT, THIRUVANANTHAPURAM ARISING OUT OF
THE ORDER DATED 30.11.2021 IN CMP.NO.23/2021 IN MC NO.1 OF 2021 OF
JUDICIAL MAGISTRATE OF FIRST CLASS IV (MOBILE),
THIRUVANANTHAPURAM.

REVISION PETITIONER/APPELLANT/RESPONDENT:

BY ADVS.
P.A.AYUB KHAN
NIJI K.SHAHUL(K/1158/2010)

RESPONDENTS/RESPONDENTS/PETITIONER:

1

2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM DISTRICT,
PIN - 682031.
BY ADV REMA SMRITHI V K

PUBLIC PROSECUTOR SRI JIBU T S

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
04.04.2025, THE COURT ON 10.04.2025 DELIVERED THE FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.******Crl.R.P.No.1121 of 2024-A******Dated this the 10th day of April, 2025******O R D E R***

This Revision Petition has been filed under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short) by the respondent in C.M.P No.23/2021 in M.C.1/2021 on the files of Judicial Magistrate of First Class-IV (Mobile), Thiruvananthapuram, challenging the judgment in Crl.Appeal No.1/2023 dated 11.04.2024 arising out of C.M.P.No.23/2021 in M.C.1/2021. The petitioner in the above C.M.P and M.C is the respondent herein.

2. Heard the learned counsel for the revision petitioner/appellant/respondent as well as the learned counsel appearing for the respondent/respondent/petitioner and the learned Public Prosecutor. Perused the order impugned along with decisions placed by the learned counsel for the revision petitioner and by the learned counsel for the



respondent.

3. Parties in this Revision Petition are referred as to their status before the trial court as 'petitioner' and 'respondent', hereafter.

4. The petitioner approached trial court under Section 20 of Protection of Women from Domestic Violence Act, 2005 ('D.V Act' for short hereafter) seeking various reliefs. Along with the petition, CMP.No.23/2021 also was filed under Section 23 of the D.V Act seeking interim maintenance. According to the petitioner, marriage between the petitioner and the respondent was dissolved by a decree of divorce passed by the Family Court in the year 2018. According to her, the petitioner was gifted with 301 sovereigns of gold ornaments by her parents, as demanded by the respondent and an amount of Rs.10 lakh was also entrusted to the 1st respondent for the welfare of the petitioner. Again the respondent demanded for more ornaments and money and done acts of domestic violence. Consequently, the marriage was dissolved. According to the petitioner, she doesn't have any means for maintenance and the respondent is a Pilot by profession and he is getting more than Rs.15 lakh per month as salary from his job. Therefore, he is bound to pay maintenance to the



petitioner and on this premise interim maintenance was sought for.

5. The 1st respondent resisted the petition by filing detailed objection and the crux of the objection is that the petitioner had completely waived her right to maintenance from the respondent in view of Annexure A2 agreement entered into between them. Therefore legally she is not entitled to get maintenance as contended. Further, the respondent raised a contention that the petitioner has been running a Yoga Centre and she has been getting an average income of Rs.2 lakh per month. Therefore, she is not entitled to maintenance, as she could maintain herself.

6. The trial court disbelieved the income alleged to be derived by the petitioner for want of materials. In consideration of the fact that the respondent has been doing the job of a Pilot and admittedly he has been receiving Rs.8,35,000/- per month as gross income, as can be seen from his own disclosure in the statement showing his assets and liabilities, the trial court granted Rs.30,000/- as interim maintenance per month to the petitioner.

7. Even though the said order was challenged in appeal, as per judgment dated 11.04.2024, the learned Additional Sessions Judge



dismissed the appeal concurring the finding of the trial court. Now the concurrent verdicts are under challenge before this Court.

8. While assailing the concurrent verdicts, it is argued by the learned counsel for the respondent that in this matter, the parties, after birth of one child, decided to divorce their marriage and accordingly an agreement had been entered into between them as on 28.10.2017 executed before a Notary Public and copy of the same is Annexure A2. As per Annexure A2, it has been agreed that the second party (petitioner in the M.C) had amicably settled all disputes towards dowry, permanent alimony and maintenance etc. and she would not claim any more against the same, as she had collected all her belongings. Further, properties also shared between them. In view of clause No.4 in Annexure A2, the petitioner could not claim maintenance. Therefore, the trial court as well as the appellate court went wrong in granting interim maintenance to the petitioner, who actually did not deserve maintenance from the respondent.

9. The learned counsel for the petitioner submitted that Annexure A2 agreement has been created by the petitioner and the same also is under challenge in a litigation at the instance of the petitioner. But



she did not disclose its number or other details. After reading the contents in Annexure A2 it is submitted by the learned counsel for the petitioner that even though in clause No.4 it was stated that the parties had settled all disputes towards dowry, permanent alimony and maintenance etc., the subsequent clause of Annexure A2 agreement itself would show that there was no payment of any sum towards maintenance as per Annexure A2 and waiver of maintenance is foreseeable from Annexure A2, *prima facie*. Therefore the said clause in Annexure A2, which is illegal, would not stand in the way of granting maintenance to the petitioner. According to the learned counsel for the petitioner, the petitioner did not have any means of maintenance and the allegation that she has been earning Rs.2 lakh per month by running Yoga Centre is not at all proved, *prima facie*. Whereas the respondent, who is a Pilot by profession, is getting Rs.15 lakh every month and the take home salary as per his own disclosure statement is Rs.8,30,000/-. In such a case, the interim maintenance of Rs.30,000/- granted by the trial court is very reasonable and the order doesn't require any interference.

10. Having heard the parties, the questions arise for



consideration are :

(i) Whether waiver or abandonment of right by maintenance would negate the claim of maintenance to a wife?

(ii) What are the matters to be considered when interim maintenance is canvassed?

(iii) Once an act of domestic violence is committed whether the subsequent decree of divorce would absolve the liability of the husband to deny the benefits entitled under the D.V Act?

(iv) Whether the verdicts impugned would require interference?

(v) Relief.

11. In answer to the first question, it is relevant to refer the law on the subject.

12. In the decision of the Apex Court reported in [(1979 KHC 494: AIR 1979 SC 442 : 1979 (1) SCC 352: 1979 SCC (Cri) 302: 1979 CriLJ 198: 1979 MLJ (Cri) 446 : 1979 ALJ 209)] ***Bhupinder Singh v. Daljit Kaur*** the Apex Court dealt with a case of almost identical facts and held as under:



“We are concerned with a Code which is complete on the topic and any defence against an order passed under S.125 Cr.P.C. must be founded on a provision in the Code. S.125 is a provision to protect the weaker of the two parties, namely, the neglected wife. If an order for maintenance has been made against the deserter it will operate until vacated or altered in terms of the provisions of the Code itself. But until the original order for maintenance is modified or cancelled by a higher court or is varied or vacated in terms of S.125(4) or (5) or S.127, its validity survives. It is enforceable and no plea that there has been cohabitation in the interregnum or that there has been a compromise between the parties can hold good as a valid defence. A statutory order can ordinarily be demolished only in terms of the statute”. (emphasis supplied)”

13. In [(1992 KHC 170 : 1992 (1) KLT 868 : 1992 (2) KLJ 17: ILR 1993 (1) Ker. 112 : 1992 CriLJ 3275)], **Haroon v. Sainabha** a contention was raised that the wife and child cannot claim maintenance from the husband because in an earlier proceedings the matter was settled out of Court and the wife had executed an agreement in favour of the husband whereby all the disputes regarding maintenance were permanently settled. This Court repelled the contention holding that it is the statutory obligation of the husband to maintain his wife and minor son and he could not be permitted to contract out of such an obligation and such agreement



is opposed to public policy. It was held that a waiver in derogation of a statutory right could not be recognised by the court as it affects public policy and as it is against the very statutory obligation imposed on a husband to maintain his wife and children, who are unable to maintain themselves.

14. In [(1979 KHC 545 : AIR 1979 SC 362 : 1979 (2) SCC 316 : 1979 SCC (Cri) 473 : 1979 CriLJ 151 : 1979 Mah LJ 95)], ***Bai Tahira v. Ali Hussain Fidaalli Chothia***, the Apex Court considered the question as to whether a divorced wife would lose her right to claim maintenance for herself under S.125 of the Code of Criminal Procedure, on making a declaration in the compromise resulting in a consent decree that she had no further claim against the husband. The wife had got right in immovable properties and she had also received Rs.5,000/- as mehar from the husband. The Trial court held that the former husband was liable to pay maintenance to his former wife and the children in spite of receiving the customary dues and other rights in the properties. The Supreme Court upheld the order of the Trial court. Similar is the view taken in [2018 (5) KHC 156 : 2019 (1) KLT 826 : 2018 (4) KLJ 528 :ILR 2018 (4) Ker.627],



Vikraman Nair v. Aishwarya. Thus the legal position is very clear on the point that when an agreement is entered into between the wife and the husband, as a part of compromise filed in the Court or otherwise, whereby the wife relinquishes or waives the right to claim maintenance in future from the husband, such an agreement is opposed to public policy and it does not preclude her from claiming maintenance. Therefore waiver or abandonment of right of maintenance by the wife would not negate the claim of maintenance by the wife or by the child/children.

15. In [AIR 2021 SC 569], **Rajnesh v. Neha and anr.**, the Supreme Court considered the claim for maintenance under various enactments and in paragraphs 7 to 11 addressed how interim maintenance is to be granted and the same read as under:

“At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess-work or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the



husband to conceal his actual income. (i) Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the concerned Court, for fixing the permanent alimony payable to the spouse. (ii) In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid. (iii) Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family. (iv) If there are any trust funds/investments created by any spouse/grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.

In the same decision, the Apex Court addressed the criteria for determining maintenance and it has been held as under:

“Financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiraling inflation rates and high costs of living. The plea of the husband that he does not possess any source



of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort. Some factors would also be relevant for determining the quantum of maintenance payable like, age and employment of parties, right to residence, where wife is earning some income, maintenance of minor children, serious disability or ill health.”

16. In the decision reported in [2014 (2) KLD 693 : 2014 (10) SCALE 738 : 2014 (10) SCC 736 : 2015 (1) KLT SN 56], ***Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and another***, the Apex Court considered the question as to whether once an act of domestic violence is committed, whether subsequent decree of divorce would absolve the liability of the husband to deny the benefits to which the aggrieved person is entitled by the D.V Act, and held that an erstwhile wife can also claim



maintenance under the D.V Act.

17. Thus the judgment of the Apex Court in ***Rajnesh v. Neha*** (*supra*) would govern entitlement of maintenance under various enactments and the criteria for determining maintenance. In the instant case, as per the statement of the assets and liabilities disclosed by the respondent/husband, he has a take away salary of Rs.8,35,000/- per month. On perusal of the said statement filed by the petitioner, no independent income of her own could be seen.

18. Whether the petitioner is having an independent income to live, as in the same standard of the respondent, who is admittedly doing the job of a Pilot and the assets for herself thereof, is a matter of evidence and the court cannot look into those aspects in detail while considering an interim application for maintenance. As I have already pointed out, Annexure A2 agreement, *prima facie*, doesn't provide expressly that anything paid towards maintenance and otherwise the inference, *prima facie*, is that the right of maintenance was waived or relinquished. Such relinquishment or waiver has no legal footing as already found. But I leave the question regarding payment of maintenance, if any, as per



Annexure A2 to be decided by the trial court on evidence. As things stand now, acting on the income disclosed by both sides, considering the status of the husband as a Pilot getting Rs.8,35,000/- as monthly take away salary, where income of the petitioner is not at all established, *prima facie*, the trial court granted interim maintenance of Rs.30,000/- and the appellate court confirmed the same. The said concurrent findings do not require any interference.

19. In the result, this petition fails and is accordingly dismissed with direction to the respondent to clear the entire due amount within a period of 30 days from today, failing which, the petitioner is at liberty to go with coercive steps to realise the same as per law.

20. Interim order of stay stands vacated.

Registry shall forward a copy of this order to the jurisdictional court for information and further steps.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/



APPENDIX OF CRL.REV.PET 1121/2024

PETITIONER' S ANNEXURES

- Annexure A1** A TRUE COPY OF THE JUDGMENT IN OP NO. 2060 OF 2017 DATED 02.07.2018 OF THE FAMILY COURT, THIRUVANANTHAPURAM.
- Annexure A2** A TRUE COPY OF THE MARITAL SETTLEMENT AGREEMENT DATED 28.10.2017 BETWEEN THE PETITIONER AND THE 1ST RESPONDENT.
- Annexure A3** A TRUE COPY OF THE PETITION IN MC NO. 1 OF 2021 ON THE FILE OF THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, THIRUVANANTHAPURAM ALONG WITH COPY OF NOTICE RECEIVED BY THE PETITIONER.
- Annexure A4** TRUE COPY OF THE AFFIDAVIT OF ASSETS AND LIABILITY FOR NON-AGRARIAN DEPONENT FILED BY THE 1ST RESPONDENT IN MC 1 OF 2021 BEFORE THE JUDICIAL MAGISTRATE OF THE FIRST CLASS- IV, THIRUVANANTHAPURAM.
- Annexure A5** TRUE COPY OF THE ORDER OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS-IV, THIRUVANANTHAPURAM DATED 30-11-2022 IN CMP NO.23 OF 2021 IN MC NO.1 OF 2021.
- Annexure A6** TRUE COPY OF THE SAID AFFIDAVIT OF ASSETS AND LIABILITIES SUBMITTED BY THE PETITIONER.
- Annexure A7** TRUE COPY OF THE LIST OF DOCUMENTS ALONG WITH COPY OF THE DOCUMENTS SUBMITTED BY THE PETITIONER BEFORE THE JUDICIAL MAGISTRATE OF THE FIRST CLASS- IV, THIRUVANANTHAPURAM IN MC NO. 1 OF 2021
- Annexure A8** TRUE COPY OF THE SUMMARY OF THE BANK STATEMENTS DATED 07.04.2021 SUBMITTED BY THE PETITIONER BEFORE THE JUDICIAL MAGISTRATE OF THE FIRST CLASS- IV, THIRUVANANTHAPURAM.



- Annexure A9** TRUE COPY OF CMP NO. 584 OF 2021 IN MC NO.1 OF 2021 UNDER SECTION 340 OF CRPC BEFORE THE JUDICIAL MAGISTRATE OF THE FIRST CLASS- IV, THIRUVANANTHAPURAM.
- Annexure A10** TRUE COPY OF THE MEMORANDUM OF APPEAL IN CRL APPEAL NO. 1 OF 2023 BEFORE THE COURT OF THE ADDITIONAL SESSIONS JUDGE-II, THIRUVANANTHAPURAM.
- Annexure A11** TRUE COPY OF CMP NO. 3 OF 2023 ON THE FILE OF COURT OF SESSIONS JUDGE, THIRUVANANTHAPURAM.
- Annexure A12** TRUE COPY OF ORDER DATED 17.03.2023 OF THIS HONOURABLE COURT IN CRL RP NO. 258/2023.
- Annexure A13** TRUE COPY OF THE VERIFIED PETITION NUMBERED CRL MA 4/2023 DATED 02.11.2023 OF THE PETITIONER ALONG WITH THE DOCUMENTS ATTACHED THEREWITH.
- Annexure A14** TRUE COPY OF THE ORDER 04.12.2023 IN CRL.RP 258 OF 2023.
- Annexure A15** TRUE COPY OF THE OBJECTION DATED 29-01 2021 FILED BY REVISION PETITIONER WITHOUT ANNEXURES IN CMP NO.23 OF 2021 IN MC NO.1 OF 2021 BEFORE THE JUDICIAL MAGISTRATE OF THE FIRST CLASS-IV, THIRUVANANTHAPURAM.
- Annexure A16** TRUE COPY OF THE DEMAND DRAFT DATED 19.01.2024 ISSUED IN FAVOUR OF JFCMC IV TTHIRUVANANTHAPURAM.