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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE
&
THE HONOURABLE MR. JUSTICE K. RAMAKRISHNAN

TUESDAY, THE 14TH DAY OF FEBRUARY 2017/25TH MAGHA, 1938

OP (FC).No. 26 of 2015 (R)

AGAINST THE ORDER IN OP 200/2014 of FAMILY COURT, KASARAGOD

PETITIONER/RESPONDENT:

NIVYA V.M, AGED 24 YEARS,
D/O. LATE CHADRA MOHAN, 'K.K. NILAYAM',
DR. AMBEDKAR ROAD, NELLIKUNNU, KASARGOD-671 121

BY ADVS. SRI.P.S.SREEDHARAN PILLAI
SRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR
SRI.ARUN KRISHNA DHAN
SRI.JOSEPH GEORGE (MULLAKKARIYIL)

RESPONDENT/PETITIONER:

SHIVAPRASAD N.K, AGED 36 YEARS,
S/O. K.V. SHANTHA, 'PADMININIVAS', BEACH ROAD,
NELLIKUNNU, KASARGOD DISTRICT & TALUK,
KASARGOD-671121

BY ADV. SMT.R.PADMAKUMARI

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
01-02-2017, THE COURT ON 14.02.2017 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: A TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A. NO. 329/2014 IN O.P.NO. 200/2014 FILED BEFORE THE FAMILY COURT, KASARGOD DATED 26.6.2014.

EXHIBIT P2: A TRUE COPYU OF THE COUNTER AFFIDAVIT FILED BY THE PETITINER/WIFE HEREIN IN IA NO.329/2014 IN O.P.NO. 200/2014 FILED BEFORE THE FAMILY COURT, KASARGOD DATED 11.7.2014

EXHIBIT P3: A TRUE COPY OF THE AFFIDAVIT AND PETITION IN IA NO. 562/2014 IN O.P.NO. 200/2014 FILED BEFORE THE FAMILY COURT, KASARGOD BY THE CONCERNED CLERK DATED 24.10.2014

EXHIBIT P4: A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENT/ HUSBAND HEREIN IN IA NO. 562/2014 IN OP NO. 200/2014 FILED BEFORE THE FAMILY COURT, KASARGOD DATED 05.11.2014

EXHIBIT P5: A TRUE COPY OF THE ORDER IN IA NO.329/2014 IN OPNO. 200/2014 FILED BEFORE THE FAMILY COURT, KASARGOD DATED 8.12.2014

EXHIBIT P6: A TRUE COPY OF THE JUDGMENT IN SESSIONS CASE NO. 623/2012 FILOED BEFORE THE SESSIONS COURT, KASARGOD DATED 01.10.2014

EXHIBIT P7: A TRUE COPY OF THE DEATH CERTIFICATE OF PETITIONE'S FATHER CHANDRAMOHAN K. ISSUED BY THE REGISTRAR OF BIRTHS & DEATHS, KASARGOD MUNICIPALITY DATED 10.12.2013

EXHIBIT P8: A TRUE COPY OF THE PETITIONER'S SALARY CERTIFICATE DATED 03.10.2014 ISSUED BY THE PRINCIPAL, EXPERT PRE UNIVERSITY COLLEGE, KODIALBAIL, MANGALORE.

EXHIBIT P9:A TRUE COPY OF THE RESIGNATION LETTER TENDERED BY PETITIONER HEREIN DATED 06.01.2015

EXHIBIT P10: A TRUE COPY OF THE ADVVERTISEMENT NOTICE OF "NELLIKUNNU FRIENDS CIRCLE" CLUB INVITING PUBLIC FOR THE DEEPAVALI CELEBRATIONS SET TO BE HELD ON 23.10.2014

EXHIBIT P11: A TRUE COPY OF THE LETTER DATED 02.06.2014 SUBMITTED BY THE PETITIONER TO THE DIST. POLICE CHIEF, KASARGOD

EXHIBIT P12: A TRUE COPY OF THE BANK STATEMENT OF THE PETITIONER'S ACCOUNT ISSUED BY CORPORATION BANK, KODIBALI, MANGALORE FROM 14.06.2014 TO 07.01.2015.

EXT.P13 A COMPUTER COPY OF THE CERTAIN PHOTOS POSTED BY THE RESPONDENT IN HIS FACEBOOK PAGE.

EXT.P14 A COMPUTER COPY THE WEB PAGE FROM THE ONLINE INTERNATIONAL TELEPHONE DIRECTOR WWW.TRUECALLER.COM REFLECTING THE NAME AND NUMBER OF THE RESPONDENT.

RESPONDENT'S EXHIBITS:

EXT.R1 THE TRUE COPY OF THE MARRIAGE CERTIFICATE ISSUED BY THE
ENMAKAJE GRAMA PANCHAYATH

EXT.R2 THE TRUE COPY OF THE MARRIAGE CERTIFICATE ISSUED BY THE
SUBRAYADEVA TEMPLE, KATTUKUKKE.

EXT.R3 THE TRUE COPY OF THE PAPER REPORT PUBLISHED IN MALAYALA
MANORAMA DAILY DATED 4.6.2011.

EXT.R4 THE TRUE COPY OF THE SHOW CAUSE NOTICE DATED 15.6.2011
ISSUED TO R1.

EXT.R5 THE TRUE COPY OF THE RESIGNATION LETTER DATED 16.9.2011
SUBMITTED BEFORE THE BOARD OF DIRECTORS OF THULUNAD CHITS (P) LTD.

EXT.R6 ATHE TRUE COPY OF THE ORDER DATED 18.6.2011 IN MP.1719/2011
OF SESSIONS COURT, KASARAGOD IN CRIME NO.509/2011 OF KASARAGOD POLICE
STATION.

EXT.R7 THE TRUE COPY OF TH REFER REPORT FILED BY DEPUTY
SUPERINTENDENT OF POLICE, KASARAGOD IN CRIME NO.509/2011 DATED
30.6.2012.

EXT.R8 THE TRUE COPY OF THE COMMON JUDGMENT DATED 18.3.2014 IN
OP 234/2011 ON THE FILES OF THE FAMILY COURT, KASARAGOD.

EXT.R9 TRUE COPY OF THE ORDER IN BA.598/2012 DATED 14.1.2013 OF
HIGH COURT OF KERALA.

EXT.R10 TRUE COPY OF THE REPORT OF THE INVESTIGATING OFFICER
DATED 29.6.2014.

/TRUE COPY/

P.S TO JUDGE

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"CR"

A.M. SHAFFIQUE & K. RAMAKRISHNAN, JJ.

.....
O.P.(FC).No.26 of 2015
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Dated this the 14th day of February, 2017.

JUDGMENT

K. Ramakrishnan, J:

The respondent in IA.No.329/2014 in OP.No.200/2014 has filed this petition challenging Ext.P5 order passed by the Court below under Article 227 of the Constitution of India.

2. The marriage between the petitioner and the respondent was solemnized on 31.1.2011 and it was registered before the Marriage Registrar, Enmakaje. After some time, the relationship between them strained. The petitioner herein earlier filed O.P.No.234/2011 before the Family Court, Kasaragod for a declaration that the marriage between the petitioner and the respondent was null and void and the respondent herein filed OP.No.172/2011 for restitution of conjugal rights and both these cases were disposed of by Ext.R8 common judgment dated 18.3.2014 dismissing OP.No.234/2011 and allowing OP.No.172/2011. Thereafter the petitioner herein filed OP.No.200/2014 for dissolution of marriage under Section 13(ia) of the Hindu Marriage Act (hereinafter referred to as 'the Act' for short) on the ground of cruelty on the part of the respondent. The respondent herein entered appearance and filed counter denying the allegations and praying for dismissal of the application. He has also filed IA.No.329/2014 under Section 24

of the Act and Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code' for short) seeking pendente lite maintenance and litigation expenses from the petitioner herein. It is alleged in that petition that at the time of marriage, the respondent was working in a financial institution under the name and style Thulunad Chits, Kasaragod and on account of a false news published in Malayala Manorama daily dated 4.6.2011 alleging that the respondent herein had abducted the petitioner and took her to different places and committed rape on her, he was asked to resign from the post and accordingly he was compelled to resign. The respondent herein filed OP.No.234/2011 for annulment of the marriage and the same was dismissed on 18.3.2014. He had incurred heavy expenses for conducting the litigation in OP.No.234/2011. She has now filed the present petition stating the same reasons mentioned in OP.No.234/2011. The petitioner also filed CMP.No.4320/2011 against the respondent before the Judicial First Class Magistrate Court, Kasaragod alleging commission of the offences under Sections 341, 365, 366, 376, and 506 of the Indian Penal Code, which was forwarded to the Kasaragod police for investigation who registered Crime No.509/2011 of Kasaragod police Station. The Kasaragod police also registered Crime No.1086/2011 against the petitioner herein for the offence

punishable under Section 500 of the Indian Penal Code under Section 3(2)(ii) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the SC/ST' Act for short). In that the petitioner herein moved B.A.No.9598/2012 before this Court for anticipatory bail and this Court had observed that this is a fight between the wife and the husband who claimed to have been in love and got married. The thing as it appears that the wife does not want to continue her relationship with the husband for the reasons only known to her, resorting to such methods are highly objectionable and which would spoil his career. The respondent had to incur huge expenses by way of paying legal fees to the extent of Rs. One lakh to the senior counsel and Rs.25,000/- to the junior counsel. The minimum expenses for conducting the cases will come to Rs.3 lakhs. The respondent is without any employment now. He is suffering from several illness. The petitioner herein is working as Assistant Professor in Biology drawing a monthly income of Rs.50,000/-per month. She requires only one third for her expenses. She is capable of providing Rs.15,000/- per month to her husband who has no independent source of income sufficient to support his necessary expenses. So he prayed for a direction to the petitioner herein to pay Rs.15,000/- per month as pendente lite maintenance and Rs.3 lakhs for litigation

expenses.

3. The petitioner herein, who is the respondent in the application, filed counter contending as follows:

She admitted the solemnization of marriage and also the litigations pending between the parties. She denied the allegation that the respondent lost his employment as a result of the news paper reports and also that he incurred heavy expenses for conducting OP.No.234/2011 and also defending the present case. She had also denied the allegation that she was drawing a monthly income of Rs.50,000/- per month and a further allegation that the respondent herein had spent lavishly for promotion of their love affair and also for physical enjoyment and he is not having source of income and he is sick requires expenses for medical treatment etc. According to her, taking advantage of her soft nature, he trapped her and virtually spoiled her life. He had tortured her and she had escaped from him. He had also filed several false cases against her and her family members. His intention was to compel her to go after him. If he is not having any income, he could have engaged a legal aid counsel by applying to the Legal Services Authority. The harassment made by the respondent herein caused premature death of her father. He is without any human feelings. The application itself was filed with an ulterior motive. She is having lot of liabilities. Since she

is the only earning member, the entire family burden is on her shoulders. The salary shown is also not correct. The respondent, who is the petitioner in the Court below in the application, is not entitled to get any relief. So she prayed for dismissal of the application.

4. The respondent herein, who is the petitioner in the petition, was examined as PW1 and Exts.A1 to A27 were marked on his side. No evidence was adduced from the side of the petitioner herein except marking Ext.B1. After considering the submissions of both the parties, the Court below by Ext.P5 impugned order directed the petitioner to pay Rs.6,000/- per month as pendente lite maintenance and rejected the prayer for litigation expenses. Aggrieved by the same, the present petition has been filed.

5. The respondent filed a detailed counter denying the allegations and also supporting the impugned order passed by the Court below and produced Exts.R1 to R10 documents. The petitioner herein also filed IA.No.2432/2015 to accept additional documents Exts.P13 and P14 and that application was allowed. The documents were received subject to its admissibility and reliability can be considered in this petition.

6. Heard Sri.P.S. Sreedharan Pillai, learned counsel appearing for the petitioner and Smt. R. Padmakumari, learned

counsel appearing for the respondent.

7. The learned counsel appearing for the petitioner submitted that the Court below was not justified in allowing the application. The petitioner had to resign her job and she is at present without any employment or income. Further the respondent is a well qualified person and a musician conducting music programmes and getting income. There is nothing on record to show that he is permanently disabled from doing any work as well. The Court below has not considered the scope and circumstances for providing maintenance to the husband by the wife in such proceedings in the right perspective. So according to the learned counsel, the order passed by the Court below is not legal.

8. On the other hand, the learned counsel appearing for the respondent submitted that on account of the defamatory publication made by the petitioner, the respondent had to lose his employment. He is suffering from hypertension on account of the stress caused by facing the unnecessary litigations initiated by the petitioner that prevented him from doing any work as well. So according to the learned counsel, the Court below was perfectly justified in allowing the application.

9. It is an admitted fact that the petitioner and the respondent were in love for some time and they belonged to

different community. It is also an admitted fact that there was a marriage ceremony conducted and they lived as husband and wife. But due to some difference of opinion between them, their relationship strained which resulted in initiation of several litigations between them.

10. It is also an admitted fact that earlier the petitioner filed OP.No.234/2011 for annulment of marriage solemnized between the petitioner and the respondent and OP.No.172/2011 was filed by the respondent for restitution of conjugal rights before the same Family Court and after evidence the petition filed by the petitioner for annulment of the marriage was dismissed and the petition filed by the respondent for restitution of conjugal rights was allowed. It is thereafter that the petitioner herein filed the present petition OP.No.200/2014 for dissolution of marriage on the ground of cruelty. The respondent herein filed IA.No.329/2014 under Section 24 of the Act read with Section 151 of the Code for pendente lite maintenance and litigation expenses on the ground that he is without any employment and the petitioner is employed getting good income and she liable to pay the same.

11. Section 24 of the Act reads as follows:

24. Maintenance *pendente lite* and expenses of proceedings:- *Where in any proceeding under this Act it*

appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent it may seem to the court to be reasonable:

[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be].

12. It is clear from Section 24 that a petition can be filed by either wife or husband who is without any employment and no source of income to support pendente lite maintenance and litigation expenses from the other spouse, who is capable of providing the same. So a petition filed by the husband for this purpose is perfectly maintainable by virtue of the wordings of Section 24 of the Act.

13. In this case, the case of the respondent herein was that on account of the false publication made in Malayala Manorama daily, he had to resign his employment as Director of a Chits Fund and he is suffering from hypertension and he could not do

any work. It is true that he himself was examined as PW1 and Exts.A1 to A27 were marked on his side. The petitioner herein had produced Ext.B1, the salary certificate issued from the college where she was working wherein her gross salary was shown as Rs.19,600/- and take home salary was shown as Rs.18,620/-. It is true that the respondent had produced Exts.A5 to A20 to prove that he was treated for hipertension and he had resigned his employment. While cross examination of the respondent herein, he stated that he is having weakness and he had produced a medical certificate for that purpose but the Doctor who issued certificate has not been examined. He had also submitted that he had not approached the Legal Services Authority seeking legal aid. It is also seen from the documents produced before this Court that at the instance of the respondent herein, a case was registered against the petitioner and her father under the provisions of SC/ST Act 1989. He had admitted that he was going for ganamela and musical programmes, but now he is not going. He had not examined any person to prove this fact. He had not examined the Doctor to prove that on account of his illness, he is permanently disabled from doing any work and getting any income.

14. In the case of wife filing an application for maintenance from the husband, unless he is able to establish that he is

permanently disabled from getting any income, he cannot be exonerated from the payment of maintenance to his wife. The same principle has to be extended in a case where he is seeking maintenance from the wife. A husband seeking maintenance from the wife can be treated only as exceptional case as normally he has got the liability or obligation to maintain the wife and vice versa is only exceptional.

15. The question under what circumstances the husband is entitled to get maintenance under Section 24 of the Act has been considered by the Bombay High Court in the decision reported in **Smt. Kanchan, w/o. Kamelendra Sawarkar v. Kamalendra @ Kamalakar s/o. Rajaram Sawarkar** (AIR 1992 Bombay 493) and it has been held that:

"Since the wife is in employment, the husband cannot make himself wholly depend on her income through a devise under Section 24 of the Act. In the absence of any handicap or impediment to earn, to grant maintenance to such able bodied person equipped with skill would promote idleness, which is opposed to spirit of Section 34 of the Act".

16. The same question has been considered by the Madhya Pradesh High Court in the decision reported in **Yashpal Singh Thakur v. Smt. Anjana Rajpu** (AIR 2001 MP 67) relying on the decision reported in **Govind Singh v. Smt. Vidya** (AIR 1999 Rajasthan 304) where it has been observed that:

"It is true that Section 24 of the Hindu Marriage Act, 1955 entitles either party to move an application for maintenance provided such party has no means of subsistence and the other party is in a position to provide maintenance. But it does not mean that the husband who is otherwise capable of earning his living should stop earning the living and start depending on the earning of the wife. In that case the husband has incapacitated himself by stopping the running the auto rickshaw on hire. It is well established maxim of Anglo Saxion jurisprudence that no person can be allowed to incapacitate himself. That maxim is applicable to the case of earning husband. A person who voluntarily incapacitates himself from earning is not entitled to claim maintenance from the other spouse".

17. Relying on the decision, the Madhya Pradesh High Court has held that assuming that the respondent has resigned his job in the High Court, not making any attempt to earn money though capable of getting private job cannot claim maintenance from the wife who was in Government service. So it is clear from the dictum mentioned above that it is not a normal practice of husband applying for maintenance from the wife who is employed though he is capable of maintaining himself by doing some work.

18. In this case, the case of the respondent was that he was compelled to resign from his job on account of the alleged defamatory publication made by the petitioner herein. It was

admitted by him in his evidence that he is a musician and attending musical programmes both karnatic and cinematic and attending ganamelas and getting additional income apart from the employee of a private chits fund at the time of marriage. It is also brought out in evidence that he was capable of raising funds to pay huge fees by engaging senior counsel which is clear from the pleadings in his petition itself. If he is capable for raising funds for that purpose, it is hardly believable that he is not capable of raising funds for maintaining himself. He had not examined any person to prove that he was not getting opportunity to conduct any music concept which he was doing earlier. He had not adduced any evidence to show that in spite of his effort made, he could not get any employment as well. These aspects were not considered by the Court below before coming to the conclusion that the respondent is entitled to get maintenance from the petitioner herein under section 24 of the Act. If such an attitude has been taken by the Courts, then idleness of husbands will be promoted and they will be tempted not to do any work and depend on the wife for their livelihood, and such thing is not expected to be promoted in the society and that was not the intention of Section 24 of the Act providing maintenance to either party to the proceedings. It was intended to support only such spouse who is really incapable of maintaining himself/herself to

get something for their sustenance and to conduct the litigation which they were forced to face from the other party to the proceedings who is capable of supporting the other spouse and nothing more. So under such circumstances, the order passed by the Court below directing the petitioner herein to pay pendente lite maintenance of Rs.6,000/- is unsustainable in law and the same is liable to be set aside.

In the result, this petition is allowed and Ext.P5 order passed by the Court below in IA.No.329/2014 in OP.No.200/2014 of the Family Court, Kasaragod is hereby set aside and the petition filed by the respondent for interim maintenance and litigation expenses is hereby dismissed.

Registry is directed to communicate a copy of this judgment to the Court below at the earliest.

Sd/-

A.M. SHAFFIQUE, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.