



2025:KER:22087

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 14TH DAY OF MARCH 2025 / 23RD PHALGUNA, 1946

OP(CRL.) NO. 104 OF 2025

AGAINST THE ORDER DATED 19.11.2022 IN CRL.M.P. NO.295 OF
2019 IN MC NO.115 OF 2019 OF FAMILY COURT, KOLLAM

PETITIONER/RESPONDENT/RESPONDENT:

RATHEESH.S
AGED 45 YEARS
S/O G.SURENDRAN, OF PADMA BHAVANAM,
THEKKENADA POST, NADUVILA VILLAGE,
VAIKOM, PIN - 686141

BY ADV.
R.KISHORE

RESPONDENTS/PETITIONERS/PETITIONERS & STATE:

- 1 SREELEKSHMI.S
D/O SREEDEVIAAMMA, AGED 33 YEARS,
KALLUVILAPUTHENVEEDU, PUNUKKANNOOR,
ALUMMOODU POST, KOTTENKARA VILLAGE,
PIN - 691577
- 2 ADHI NARAYANAN
S/O SREELEKSHMI.S, AGED 7 YEARS,
KALLUVILAPUTHENVEEDU, PUNUKKANNOOR,
ALUMMOODU POST, KOTTENKARA VILLAGE
REPRESENTED BY HIS GUARDIAN SREELEKSHMI.S



2025:KER:22087

O.P.(CRL) NO.104 OF 2025

2

D/O SREEDEVIAMMA, AGED 35 YEARS,
KALLUVILAPUTHENVEEDU, PUNUKKANNOOR,
ALUMMOODU POST, KOTTENKARA, PIN - 691577

3 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031

BY ADVS.
SRI.M.P. PRASANTH, PUBLIC PROSECUTOR
BINU GEORGE
HEMALATHA(K/1287/1999)
AVANI P.S.(K/004719/2024)

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
14.03.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**“C.R.”****JUDGMENT**

This Original Petition has been filed challenging the interim order of maintenance passed by the Family Court, Kollam, in a proceeding under Section 125 of the Criminal Procedure Code (for short, Cr.P.C.).

2. The petitioner is the husband of the 1st respondent and the father of the 2nd respondent. The marriage and paternity are not in dispute. The respondents filed a petition for maintenance as M. C. No.115/2019 before the Family Court, Kollam against the petitioner. They also filed an application for interim maintenance as CrI.M.P. No.295/2019. The Family Court, after hearing both sides, granted interim monthly maintenance of Rs.5,000/- (Rupees Five thousand only) each to respondents 1 and 2. The said order is under challenge in this Original Petition.

3. I have heard the learned counsel for the petitioner, Adv. R. Kishore and the learned counsel for respondents 1 and 2, Adv. Binu George.



4. The learned counsel for the petitioner submitted that the impugned order is not sustainable for non-compliance with the specific direction of the Supreme Court in ***Rajnish v. Neha and Another*** [(2021) 2 SCC 324] regarding the requirement of the parties in a proceeding under Section 125 of Cr.P.C. to file an affidavit disclosing their assets and liabilities. The learned Counsel for the respondents 1 and 2, on the other hand, submitted that since the Family Court has ordered the payment of the interim maintenance based on all relevant materials, mere failure to take on record the asset affidavits shall not render its order invalid.

5. The Supreme Court in ***Rajnish (supra)*** laid down a procedure to streamline the grant of maintenance in maintenance proceedings. The Court also set out criteria for determining the quantum of maintenance, the date from which maintenance was to be awarded, how to enforce orders of maintenance, and the fixing of payment of interim maintenance. Noticing that in maintenance proceedings the



wife tends to exaggerate her needs and the husband tends to conceal his actual income, the Supreme Court made it mandatory to file an Affidavit of Disclosure of Assets and Liabilities by the parties in all such proceedings, including pending proceedings before the Family Court/ District Court/ Magistrate's Court concerned, as the case may be, throughout the country. A uniform format for the Affidavit of Disclosure of Assets and Liabilities to be filed in such proceedings was prescribed. The format of the said affidavit was annexed as Enclosures I, II and III with the judgment. Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, the Supreme Court framed guidelines in the exercise of the powers under Article 136 read with Article 142 of the Constitution of India. The guidelines framed by the Supreme Court are as follows:

"72.1. (a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before



the Family Court / District Court / Magistrate's Court concerned, as the case may be, throughout the country.

72.2. (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings (*Kaushalya v. Mukesh Jain*, 2020 (17) SCC 822 : 2019 SCC OnLine SC 1915). On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

72.6. (f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party



may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under O.11 CPC. On filing of the affidavit, the court may invoke the provisions of O.10 CPC or S.165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke S.106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended / supplementary affidavit, which would be considered by the court at the time of final determination.

72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under S.340 CrPC, and for contempt of court.

72.9. (i) In case the parties belong to the economically weaker sections ("EWS"), or are living below the poverty line ("BPL"), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (j) The Family Court / District Court / Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.



72.11. (k) A professional Marriage Counsellor must be made available in every Family Court."

6. A slew of directions in the form of guidelines issued by the Supreme Court in **Rajnesb** (supra) and extracted above are mandatory in nature and must be followed in all maintenance cases by all Courts dealing with maintenance throughout the country. The judgment in **Rajnesb** (supra) was delivered on 04/11/2020 and the guidelines therein have been circulated to all the Courts in India for compliance. After the judgment in **Rajnesb** (supra) was rendered, the Supreme Court in the judgment in **Aditi Alias Mithi v. Jithesh Sharma** [(2023) SCC OnLine SC 1451] which was delivered on 06/11/2023 noticed that guidelines in **Rajnesb** (supra) have not been followed by many courts in the country while fixing the maintenance, either interim or final. The Supreme Court expressed its deep concern in not adhering to the mandatory guidelines given in **Rajnesb** (supra) so far as the requirement of filing the Affidavit of Disclosure is concerned. Accordingly, the Supreme Court has issued directions to re-



circulate a copy of the judgment containing guidelines for expeditious disposal of cases involving grant of maintenance to judicial officers in all High Courts across the country. However, it is quite unfortunate to notice that, despite the specific directions of the Supreme Court in **Rajnish** (supra) and **Aditi Alias Mithi** (supra), various Courts in the State, like in the present one, are passing orders, either interim or final, fixing maintenance, without there being any Affidavit of Disclosure on record filed by the parties. This Court can take judicial notice of the said fact from the number of Original Petitions [(OP(Crl.))] and Revision Petitions [(RP(FC))] filed before this Court challenging the interim as well as final order of maintenance passed without bringing on record the Affidavit of Disclosure of the parties in terms of the directions in **Rajnish** (supra).

7. Coming to the facts of the case, admittedly, neither of the parties has filed the disclosure affidavit in terms of the decision rendered by the Apex Court in **Rajnish** (supra). However, the Family Court disposed of the interim maintenance application as per the impugned order



considering the pleadings. The petitioner herein, while considering the application for interim maintenance, pointed before the Family Court that the 1st respondent did not file the affidavit showing her assets and liabilities. However, the Family Court took the view that since the petitioner himself did not file the affidavit, he could not take up such a contention. Guideline No.72.1(a) in **Rajnesb** (supra) specifically says that the parties in all maintenance proceedings, including pending proceedings, throughout the country, shall file an Affidavit of Disclosure of Assets and Liabilities before the concerned court as a mandatory requirement. Guideline No.72.2(b) in **Rajnesb** (supra) makes it mandatory for the applicant making a claim for maintenance to file a concise application accompanied by the Affidavit of Disclosure of Assets. It was further observed that based on the pleadings filed by both parties and the Affidavits of Disclosure, the court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage. It is true that guideline No.72.3 says that the respondent also



must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks, and the court may not grant more than two opportunities for submission of the affidavit of Disclosure of Assets and Liabilities to the respondent. But the mere fact that the petitioner herein did not file an Affidavit of Disclosure as directed in **Rajnesh** (supra) would not absolve the 1st respondent from filing such an affidavit. Since the impugned order is passed without the affidavits of both parties, it cannot be sustained and is liable to be set aside. The matter is required to be remitted back for fresh consideration in accordance with the law by complying with the directions in **Rajnesh** (supra). The counsel for the 1st respondent submitted that the 1st respondent has now filed an Affidavit of Disclosure of Assets and Liabilities before the Family Court.

In the light of the above findings, this Original Petition is disposed of as follows:

- i. The impugned order granting interim maintenance is set aside.



- ii. The parties shall appear before the Family Court on 20.03.2025.
- iii. Crl. M.P. No.295/2019 is remitted to the Family Court for fresh disposal.
- iv. The petitioner shall file an affidavit disclosing his assets and liabilities in terms of the directions in **Rajnesh** (supra) within a period of ten days from the appearance of the parties before the Family Court.
- v. The Family Court is directed to reconsider the application for interim maintenance and pass an order in accordance with law within a period of two weeks thereafter.
- vi. If the petitioner fails to file the affidavit as directed above, the Family Court is free to pass order based on the pleadings of the parties and considering the affidavit filed by the 1st respondent.



vii. In case the Family Court passes an order of interim maintenance, it shall grant maintenance with effect from the date of the petition.

viii. All the Courts in the State dealing with maintenance cases are directed to strictly follow the guidelines of the Supreme Court in ***Rajnesh*** (supra) that before passing a final order of maintenance or interim order of maintenance, the parties should be directed to file Affidavit of Disclosure of Assets and Liabilities and the order should be passed based on the pleadings, evidence as well as the disclosure made in the affidavits.

ix. The Registry shall forward a copy of this judgment to all the Courts in the State dealing with maintenance cases.

**Sd/-
DR. KAUSER EDAPPAGATH
JUDGE**



APPENDIX OF OP(CRL.) 104/2025

PETITIONER'S EXHIBITS

- Exhibit P1** TRUE COPY OF ORDER DATED 19/11/2022
PASSED BY THE FAMILY COURT, KOLLAM IN
CRL.M.P NO-295/2019 IN MC NO-115/2019 IN
THE FILE OF THE SAID COURT.
- Exhibit P2** TRUE COPY OF MC-115/2019 IN THE FILE OF
THE FAMILY COURT, KOLLAM
- Exhibit P3** TRUE COPY OF CRL.M.P NO-295/2019 IN MC
NO-115/2019 IN THE FILE OF THE FAMILY
COURT, KOLLAM
- Exhibit P4** TRUE COPY OF THE OBJECTION FILED BY THE
PETITIONER HEREIN TO THE SAID CRL.M.P
NO-295/2019 IN MC NO-115/2019 IN THE
FILE OF THE FAMILY COURT, KOLLAM
- Exhibit P5** TRUE COPY OF THE COMPROMISE DATED
12/02/2020 EXECUTED BY THE PETITIONER
HEREIN AND THE 1ST RESPONDENT IN MC NO-
115/2019 IN THE FILE OF THE FAMILY
COURT, KOLLAM

RESPONDENTS' EXHIBITS: NIL