

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-1, MAVELIKARA

Present :- Sri. Japhinraj. J.B, Judicial First Class Magistrate – I

Dated this the 7th day of April, 2025.

CMP 3582 in MC 9/19

- Petitioners :
1. Jijo Stephen jacob, aged 33, S/o Jacob, Pallattu house, Manganam P.O, Kottayam
(Now residing Door No. 5, 111RD Floor No. 410, K.S. Habeen Manzil, 4th Crosss, Bellandur office Accenture, Bellandur, Bangalore)
 2. P. S. Jacob S/o Stephen, Pallattu house, Manganam P.O, Kottayam.
 3. Lillikutty W/o Jacob....do....
(Adv. Arun Raju)
- Respondents :
1. Smithamol Sunny Aged 32, W/o Jijo Stephen Jacob, Aattumalikkal, Arunoottimangalam Vettiyyar Village, Mavelikara Taluk.
 2. Steev Jacob, aged 2 years, Minor represented by mother Smithamol Sunny...do
 3. Adam Stephen, aged 7 months.....do.....
(By Adv. P. Anil)

The petition having been heard on 07.04.2025, the court today passed the following.

ORDER

This is a petition filed by the respondent in original MC to constitute a medical board to examine the third respondent.

1. **The petition averments in brief is as follows:** The petitioner is the first respondent in the original application. The marriage between the petitioner and the first respondent was solemnized on 28th January 2015 as per Christian religious rites. The third respondent was born on 10-07-2018. After birth, the child suffered from childhood illnesses, and upon diagnosis, it was found that the child had mild dilation of the pulmonary artery. The doctors advised that as the child grows older, the condition would naturally improve

without requiring treatment. However, in CMP 5582/2019 and CMP 1892/2024, the first respondent has alleged that the third respondent suffers from heart-related diseases and requires surgery. To date, the respondent has not presented any documents related to the third respondent's treatment to the court, apart from some outpatient receipts. For the fair and just disposal of this case, it is essential to ascertain the current medical condition of the third respondent. Therefore, the petitioner seeks a directive to Alappuzha Vandanam Medical College to establish a medical board to examine the third respondent.

2. **The first respondent filed an objection contending as follows:** The respondent in a proceedings under the Protection of Women from Domestic Violence Act is not entitled to seek reliefs. The allegations in this petition are against OP(Div) 1325/2019, which was filed by the petitioner. It appears that this petition is intended to delay the proceedings, especially after the first respondent filed a petition to strike off the defense. The petitioner denied paternity of the third respondent and sought a DNA test in 2024 before the Honorable Family Court; however, the petition was dismissed. As early as 2019, the respondent had submitted documents regarding the treatment of the third respondent. Although the petitioner had agreed to provide treatment for the third respondent at a private hospital, he failed to fulfill this commitment and neglected to maintain the respondents. The petitioner has filed this petition fully aware of the urgent need for surgery for the third respondent. An amount of Rs. 7 lakhs is required for the surgery, and the petitioner is obligated to cover this expense. The petitioner has not stated any issues with the hospital where treatment is currently being provided. According to the examination conducted at Aster Medicity Hospital on 27-12-2024, it was determined that the left atrium (LA) and left ventricle (LV) were

dilated, and a surgical closure of the VSD was recommended. Hence the respondents seeks to dismiss the petition.

3. Heard both Sides.

4. **The points that arise for consideration are:**

1. Is an order directing the constitution of a medical board to ascertain the condition of the third respondent necessary?
2. What shall be the order?

5. **Point No.1:** The petitioner seeks the constitution of a medical board to determine whether surgery is necessary for the third respondent's heart condition. From the statements made in the petition itself, it is evident that the petitioner acknowledges that the third respondent has mild dilation of the pulmonary artery. The provisions of the PWDV Act clearly indicate that only an aggrieved person is entitled to seek remedies under the Act, which include protection orders, monetary reliefs, residence orders, custody orders, and other related reliefs. Subsection (2) of Section 28 of the PWDV Act allows the court to devise its own procedure for the disposal of applications filed under Section 12, claiming such reliefs. Therefore, the prayer made by the present petitioner (the original respondent) in the petition under the PWDV Act can only be granted if it is necessary for adjudicating the application filed under Section 12 or Section 23, Subsection (2). Although the counsel for the petitioner relied on Rule 10(3) of The Protection of Women From Domestic Violence Rules during the hearing to support the prayer, the rule does not appear to be relevant to the present context. According to the petitioner, for the fair and just disposal of the petition filed under Section 12 of the PWDV Act, the present medical condition of the third respondent is a material factor. From the Section 12 application, it is clear that the petitioner is claiming maintenance for the third respondent, citing his heart condition as one of the

grounds. There is no dispute regarding the existence of the heart condition. The contention lies in whether surgery is necessary for the third respondent. In the objection filed against this petition, the respondent has explicitly stated that surgery for the third respondent is essential, requiring an amount of 7 lakh rupees. It is further asserted that the petitioner (original respondent) is bound to provide this amount. However, the petitioner has not sought any relief in the application seeking monetary aid from the original respondent for the purpose of the third respondent's surgery. In the absence of a request for such relief, the necessity of surgery or any other treatment for the heart condition of the third respondent does not constitute a material fact. Hence I am of the view that prayer of the petitioner is not essential for the just decision of the case.

6. **Point No.2:** In the result, the petition is dismissed.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in the open court on this the 7th day of April, 2025.)

Judicial First Class Magistrate-I,
Mavelikara.