

Gram Nyayalaya, Iritty, Payam

Present:- Shri.Mohamed Mausoom P.T., BA.LL.B (Hons.), Nyayadhikari

Dated : 2nd day of May 2025/ 12th day Vaishakam 1947



CMP.No.26/2024

in

MC 12/2024

Shafeena Mangalodan
D/o. Abdul Khadar, Age.32,
Mannoor, Mangalodan House
Aaralam.

:

Petitioner

(Rep. by Adv.Manu M Thomas)

1. Shafeer .M.K
S/o Ummarkutti, Age 36
Marva Gardens, Manakkayi
Kayani

2. Ummarkutti
Age 60, Marva Gardens,
Manakkayi, Kayani

:

Respondents

3. Naseera.M.K
Age 52, Marva Gardens,
Manakkayi, Kayani

(Rep. by Adv. PK Sajeevan)

4. Sajad.M.K
S/o Ummarkutti,
Age 23,Marva Gardens,
Manakkayi, Kayani

ORDER

This is an application filed by the petitioner in MC 12/24 under section 23 of *Protection of Women from Domestic Violence Act, 2005* (hereinafter referred to as the '2005 Act').

2. The application in brief is as follows:- The applicant is the wife of the respondent no.1. She was expelled from the matrimonial house on 09.01.2023 and no maintenance has been given to her after her ouster by the first respondent. The petitioner has no job or other means to maintain herself whereas respondent no.1 is working abroad and earning Rs.2,00,000/- (Two Lakhs Rupees Only) per month. Hence, the petition seeking an interim maintenance of Rs. 10,000/- (Ten Thousand Rupees Only) per month.
3. The respondent no.1 entered appearance and filed objection inter alia contending as follows:- The petition is not maintainable as the petitioner eloped with a man and is now leading a life with him at Ernakulam. The petitioner deserted the respondent and their two children upon which the respondent filed a habeas corpus as **WP(C) 192/2024** before the *Hon'ble High Court of Kerala* which was dismissed on costs. The petitioner thereafter filed **OP 719/2024** before the *Hon'ble Family Court* for getting interim custody of their minor children and the same is pending litigation and she has also executed a power of attorney in order to contest the case for the reason that she is working at Ernakulam. Therefore, it is sufficient to conclude that she is earning sufficient income for her maintenance. The respondent no.1 is residing separately along with his children and the petitioner is not interested in living

with them. In order to prove that the petitioner is having a job at Ernakulam, a certified copy of the Power of Attorney executed by the petitioner and submitted before the *Hon'ble Family Court, Thalassery* in **OP 719/2024** is produced herewith.

4. Heard the learned counsel for both sides. Perused the application and the accompanying affidavits including the asset and liabilities affidavit filed by both parties.. The marriage between the petitioner and respondent no.1 is not at dispute. At this stage, the court is only concerned as to whether the petitioner has set up a prima facie case of domestic violence committed by the respondents. Since, there is no evidence before this court at this juncture, this court is bound to decide this application solely based on the facts stated in the affidavit sworn in by the applicant/petitioner. The same would prima facie disclose commission of acts of domestic violence within the meaning of section 3 of the 2005 Act against the applicant/petitioner herein.
5. Hon'ble Supreme Court in the locus classicus of section 20 of the 2005 Act, i.e., *Rajnish v. Neha and Another [AIR 2021 SC 569]* observed that while there is no straitjacket formula to determine the quantum of maintenance, it could be presumed that an able-bodied husband is capable of earning sufficient money to maintain his wife and children, and whether the wife is educated, earning money and could support herself is no answer to a claim of maintenance. Hence, it is only just and proper to grant an interim relief u/s

23(1) of the Protection of Women from Domestic Violence Act, 2005 until cogent evidence is adduced by the parties to the above petition. While deciding the quantum of maintenance to be awarded, this court is mindful of the fact that the children are currently being taken care of by the respondent no.1 and that there is a categorical admission by the applicant/petitioner regarding her job in the above said Power of Attorney executed by her which is at variance with the employment details furnished in the disclosure affidavit by the applicant/petitioner.

In the result the above application is partly allowed.

- A. The respondent No.1 is hereby directed to pay an interim maintenance of **Rs.2500/- (Two Thousand Five Hundred Rupees only)** to the petitioner from the date of this petition until further orders of the court.
- B. The parties are entitled to a copy of this order free of cost.
- C. Any person aggrieved by this order may prefer an appeal against this order within 30 days from the date of this order before the Hon'ble District and Sessions Judge, Thalassery.

(Pronounced on this the 2nd day of May 2025)



**Nyayadhikari
Iritty, Payam.**