



(1)

IN THE COURT OF GRAM NYAYALAYA IRITTY, PAYAM

Present:- Sri. Mohamed Mausoom.P.T, BA. LL.B(H)

Nyayadhikari

Dated this the 19th day of January 2026/ 29th day Pausham 1947

Crl.M.P. 1692/2024

in

M.C. 39/2024

Petitioner/Petitioner[']no.1 : Neethu.T.M
W/o.Madhu, Age 34
Thenamakkal House,
Kakkad Estate
Tholambra P.O,
Thalassery Taluk
(Maloor Police Station Limits)

(Rep. by Adv.Saneesh.P.K
& Adv.Dikhil.N.C)

V/s.

Respondent/Respondent : Madhu.P
S/o.Mundayodan Balan Nair, Age 44
Punathil House, Kolayad
Kolayad.P.O,Thalassery Taluk
(Kannavam Police Station Limits)

(Rep. by Adv.Rajesh Khanna)

The above interim application was heard on 15.01.2026 and the Court passed the following:-

ORDER

This is an application under section 23(2) of The Protection of Women from Domestic Violence Act,2005 (hereinafter referred to as 'Act' for short) seeking an interim order of maintenance for the petitioner hereinabove and for her two minor children from the respondent hereinabove.

2. The petitioner is the original petitioner no.1 in M.C.39/2024 on the file of this court and the respondent is the husband of the petitioner as well as the original respondent in M.C.39/2024. Though one minor daughter of the parties was arrayed as petitioner no.2 in the main application, she is not a party to the above interim application. Another minor son of the parties is not a party to any of the said applications. The main application was presented seeking one or more reliefs envisaged in the Act, as an 'aggrieved person', by the petitioner against the respondent under section 12(1) of the Act.

3. The averments in the above application (supported by an accompanying affidavit) in brief:-

The facts stated in the main application(M.C.39/2024) may be viewed as part of this application as well. The petitioners' life is at a standstill on account of the cruelty and drinking behaviour of the respondent. The petitioner as well as her minor children are depending on their relatives as they have no other means/income. The respondent is now (*on the date of application*) engaged in the building construction sector having an average monthly income of Rs.25,000/- (Twenty Five Thousand Rupees Only) and is liable to maintain the petitioner and her minor children since she is an aggrieved person under the Act. Hence, the above application for passing an interim order awarding an interim maintenance to the tune of Rs.5,000/- (Five Thousand Rupees Only) per month to the petitioner and Rs.3,000/- (Three Thousand Rupees Only) per month each, for her two minor children.

4. Brief history of the litigation in chronological order:-

It is much imperative to elucidate the brief history of the prior proceedings in the above *lis* considering the peculiar facts and circumstances and the subsequent conduct thereof by the respondent. The above interim application was originally presented along with the main application before the Learned

Magistrate, JFMC Kuthuparamba on 18.06.2024 and the Learned Magistrate upon perusal of the same and application of mind, issued service of notice after fixing the date of hearing for appearance of the parties to 28.09.2024. The non-compliance of section 13 of the Act by the Learned Magistrate regarding the fixation of date for appearance of parties can be attributed to the impracticality of the same in view of the high pendency of the criminal cases before the criminal courts. '*Impossibilium Nulla Obligatio Est*' (The impossible is no legal obligation) and '*Lex Non Cogit Ad Impossibilia*' (The law does not compel one to do impossible things) are two well recognised and established legal principles under the criminal jurisprudence in India. The same was affirmed and reiterated by the Hon'ble Supreme Court as well as the Hon'ble High Court of Kerala in various judicial pronouncements. [*Bharathan v. Arjunan* 2022 KER 27372 C. S. Dias, J.] [2025 INSC 1110 *Mansi Brar Fernandes v. Shubha Sharma* J. B. Pardiwala, *R. Mahadevan, JJ.] Upon service of notice, the respondent entered appearance and vakalat was filed on 28.09.2024. Thereafter, the Learned Magistrate referred the parties for Mediation and the matter was not settled in mediation and henceforth the respondent filed his reply only to the original application on 22.01.2025, though the respondent had every opportunity on several adjournments prior to 22.01.2025 as well as on the same day itself, for filing any reply to the above interim application. Nothing prevented the respondent from filing the reply if he indeed had serious contentions or bringing the attention of the Learned Magistrate to the same by way of oral submissions. Nevertheless, on 22.01.2025, upon receipt of the reply to the main application, the Learned Magistrate, (in exercise of his discretionary powers under section 28(2) of the Act) decided to proceed with petitioner's evidence thereby considering the prayer sought in the interim application along with the main application and the original application was posted for petitioner's evidence. While so, the Hon'ble District & Sessions Judge, Thalassery vide order no.A3-138/16835/2025 dated 22.08.2025, directed the Learned Magistrate to transfer the above case along with the entire records to this Gram Nyayalaya and in obedience of the said

order, the Learned Magistrate on 02.09.2025 transmitted forthwith the entire case records after giving due intimation to both sides as well as fixing the date for appearance of this Nyayalaya to 18.10.2025. Upon receipt of the same, the parties entered appearance before this court. When the entire case records and prior proceedings were perused by this court in detail, the above interim application was found to be pending. Upon inquiry into the same on 15.12.2025, the Learned Counsel for the petitioner submitted that the petitioner has not received any amount towards maintenance till date. This court, (after taking due consideration of the fact that the main application is only at the stage of tendering of petitioner's evidence and the possibility of further delay in final adjudication of the main application thereby ending up causing further hardship to the petitioner and her two minor children), decided to consider the above interim application and gave opportunity to the respondent to file reply. It was also noted that the affidavit disclosing the assets & liabilities was not yet filed by the respondent and a specific direction was given on the same day to the respondent in this regard. At last on 07.01.2026, the respondent filed a counter statement by way of a sworn affidavit which was nothing but a mere replica of his previous submissions in the counter statement to the main application (after altering the dates) which he had earlier filed on 22.01.2025. A disclosure affidavit was also filed on the same day by the respondent (the genuineness of which will be discussed in detail in subsequent paragraphs). Despite an inordinate delay of more than one year in submitting the counter statement and several adjournments, when the above application was posted for hearing the parties, on 15.01.2026, the Learned Counsel for the respondent turned up seeking another adjournment. At that juncture, this court had no doubt with regard to the intention of the respondent to cause further delay in disposing of the above application thereby abusing the process of the court. Mentioning the relevant portion from the mandatory directives laid down in this regard in paragraph 74 of the decision of the Hon'ble Supreme Court in *Rajnish v. Neha and Another AIR*

2021 SC 569 would be appropriate at this point, considering the conduct of the respondent and the Learned Counsel appearing on his behalf.

'74. ... 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...'

The above said direction without any ambiguity, indicate the priority to be given by the Magistrates while considering a prayer for interim maintenance. Hence, this court heard the oral submissions put forth by the Learned Counsel for the petitioner and proceeded to adjudicate the above application, after due consideration of the fact that the same would not cause prejudice to the respondent since the counterstatement and disclosure affidavit has been already brought on record.

5. The respondent in his reply, merely reproduced the entire averments of the main application originally presented by the petitioner and specifically denied everything except the factum of marriage between the parties, the paternity of the two minor children and subsistence of prior domestic relationship, which was categorically admitted.

6. The submissions in the reply of the respondent in brief (relevant for the purposes of adjudicating the above interim application alone):-

After the marriage, the respondent took decent care of the family by riding an autorickshaw self-owned by him. Thereafter, the respondent switched to the business in Coimbatore by setting up a grocery shop taken on lease. Later, by partnering with four other individuals, he expanded his business from 2013 to 2016 and thereafter set up own business for a further period of two more years. While the respondent went to Coimbatore, he had leased out his autorickshaw and the income derived out of it was received by the petitioner

herself. While the respondent returned home in the year 2018 upon the demise of his father, his business was taken over by the landlord of the building and he could not proceed against him legally due to language barrier and subsequent COVID pandemic scenario. The respondent has no job or source of income and barely manages to maintain himself and his mother from wages received from occasional labour. An amount of Rs.6,000/- (Six Thousand Rupees Only) per month is more than enough for the petitioner and her two minor children to maintain themselves which the petitioner can very well derive out of her tailoring works and part time employment at an Plan Estimate Office. In addition to that, the petitioner's family has a rubber estate spanning two acres generating an income of Rs.30,000/- (Thirty Thousand Rupees Only) and the petitioner's father owns a lottery shop. Hence, the above application be dismissed awarding costs to the respondent.

7. Perused the entire records in M.C.39/2024 as well as the records in the above interim application. Both parties had filed affidavits disclosing the details of the particulars regarding their assets and liabilities. Perused the same as well.

8. The only point that arises for consideration :-

Whether the petitioner is entitled to an order U/s 23(1) of the Act, awarding an interim maintenance to the tune of Rs.5000/- per month and Rs.3,000/- each per month for herself and her two minor children respectively as prayed for?

9. The Point :- The factum of marriage between the parties and the prior domestic relationship stands admitted. At the outset, it is pertinent to note that no evidence was adduced at this stage by either parties and hence a finding can only be arrived at based on the facts stated in the affidavit sworn in by the petitioner and the written submissions made by the respondent by way of

counter affidavit and the disclosure affidavits filed by the parties. The facts deposed in the affidavit prima facie discloses that the respondent committed domestic violence against the petitioner while they lived together in the shared household though the respondent denies the same. The court is of the view that the acts/omissions/conduct allegedly committed by the respondent, if proved, would fall within the meaning of 'physical abuse', 'verbal and emotional abuse' as well as 'economic abuse' as defined U/s 3 of the Act. Considering the facts and circumstances, this court is of the view that it would be just and proper to award interim maintenance to the petitioner and her minor children.

10. Now with regard to the quantum of maintenance, the petitioner submitted that she has no job or sources of income while on the other hand, the respondent earns an amount of Rs.25,000/- (Twenty Five Thousand Rupees Only) on an average in a month from the construction work as well as an autorickshaw owned by him. Though both averments were categorically denied by the respondent, in his disclosure affidavit filed before this court, he swears that he is only having a general expense of Rs.2,000/- (Two Thousand Rupees Only) per month for himself. He further swears on oath that he incurs a monthly expense of Rs.2,000/- (Two Thousand Rupees Only) per month approximately for maintaining his dependents, who are his mother and one minor son. It is pertinent to note that though the respondent has nowhere in his counter statement made any submissions regarding the fact that he is having the custody of the minor son, he has disclosed the same in the said affidavit. Though the disclosure affidavit and counterstatement was filed on the same day, the omission regarding the factum of custody of one of the minor child in the hands of the respondent was only indicated in the disclosure affidavit probably on account of the former being sworn in by the respondent and the latter being reproduced verbatim from the counterstatement previously filed in the main application approximately a year ago. Interestingly, there is absolutely nothing disclosed as to the particulars regarding the nature of job or monthly

income or earnings of the respondent in the disclosure affidavit. In para 15 of the counter affidavit, the respondent swears that he has no job or income currently (as on 07.01.2026) and he lives by a meager income obtained as wages from occasional labour. The respondent was bound to disclose his actual income or approximate thereof irrespective of the fact that the same is very low. Every entry with respect to his income/ job details in the said affidavit is entered as NA (not applicable) by making a mockery of the mandatory directions of the Apex Court in *Rajnesh. (cited supra)* as well as the Hon'ble High Court of Kerala which continuously reiterated and affirmed those principles in subsequent decisions. Interestingly, the respondent who suppressed his nature of job, salary or wages or sources of income has put meticulous effort to swear particulars regarding the assets/liabilities of his spouse/petitioner herein. He deposed that the petitioner is having a monthly income of Rs.25,000/- (Twenty Five Thousand Rupees Only) per month and further discloses that she works at a canteen, contradicting his own submissions in the counterstatement that she is engaged in tailoring works and has a part time job at a Plan Estimate Office. The respondent has in fact sworn in two affidavits on the same day, making contradictory particulars regarding the job/employment of the petitioner. Nevertheless, it is not discernible from the material on record as to how the respondent managed to maintain himself and his dependents, namely his mother and one minor son with 'occasional labour' since 2018 until the date of filing the above counterstatement. The respondent's conduct is nothing but wilful suppression of material facts regarding his nature of job, income and current financial position so as to mislead the court in passing a just and proper order with regard to the reliefs sought. The conduct of the respondent has in fact jeopardised this Court for making an objective and fair assessment of the approximate amount to be awarded towards maintenance at the interim stage. The Learned Counsel for the respondent has made an ingenious attempt to supersede the guidelines and mandatory directions of the Hon'ble Supreme Court in *Rajnesh. (cited supra)*.

11. Para 78 of **Rajnesh. (cited supra)** is extracted here under:

'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 Cr.P.C., and for contempt of Court.'

This court is of the view that the materials put forth, particularly the Disclosure Affidavit deposed by the respondent on oath, contains false statements or misrepresentations and the Learned Counsel for the respondent had a noble duty to give due notice of the mandatory directions of the Apex Court and the consequences of its violation to the respondent who is merely a layman.

12. Due to the vagueness in material particulars, the irresponsible nature of pleadings and the self-contradicting entries made on oath in the disclosure affidavit, this court further scrutinised the said affidavit in detail and was shocked to find material that would prima facie attract criminal liability on the respondent and his 'accomplice' if any. Every signature of the respondent at the foot of all pages in the affidavit was different from one another. On further comparison of the signature and handwriting in the said affidavit with the counteraffidavit and vakalath, both samples were found to be prima facie mismatching. Since these are not the issues at hand as far as the above interim application is concerned, this Court refrains for the time being from making any further remarks about the conduct of the respondent or any one who acted on his behalf. It is safe to conclude that the said affidavit cannot be relied on by this court to arrive at any decision in deciding the quantum of interim maintenance.

13. In view of the aforesaid discussion, this court is inclined to rely only on the averments of the petitioner in deciding the quantum of interim maintenance to

be awarded to the petitioner and her two minor children, which is the sole reliable material which is available before this court until evidence is adduced by the parties. Moreover, it would be not only necessary but also appropriate to invoke S.106 of the Evidence Act, 1872 since the income, assets and liabilities of the respondent are within his personal/special knowledge. The petitioner contends that she has no job or income and is dependent on her relatives for survival. The parties got married in the year 2012 and hence the duration of domestic relationship is indeed a considerable period. The averments with regards to the acts of domestic violence in the main application prima facie indicate that the petitioner was repeatedly subjected to domestic violence which are serious in nature. The petitioner has made every effort to recollect and state the specific acts/conduct of the respondent along with the dates of occurrence to the best of her memory. The two minor children though not a party to the above application are nothing but secondary victims and it is immaterial as to whether they are a party to the above application or not in view of the provisions envisaged under section 20 of the Act. Filing of original application for maintenance by wife, with or without impleading the children, cannot be a hurdle for minor children blessed from the marriage between the parties to the application to claim interim maintenance (*Anil Kumar Singh v. State of U. P. and Others 2017 CriLJ 1483.*) The living expenses of the two minor children would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be also factored in while awarding child support especially considering the age and current educational stage of the two minor children. No doubt, the petitioner and her minor children are entitled to a standard of living to which they were accustomed to, prior to the separation of parties hereinabove.

14. This court has weighed the status of the parties, reasonable needs of the petitioner and the dependent minor children, the fact regarding the educational qualifications of the petitioner, the fact regarding existence of any independent

source of income. Also, the reasonable costs of litigation for a non - working wife (like the petitioner herein) that would have incurred in pursuing this application for the past more than one year are also to be weighed in, while arriving at a proper and just decision regarding the quantum of maintenance to be awarded. *'The maintenance amount awarded must be reasonable and realistic, avoiding 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'* **Rajnesh.(cited supra)**. It is indeed doubtful as to whether the said observations in **Rajnesh.(cited supra)** would come in rescue of the respondent considering the fact that he has possibly violated almost every mandatory directions of the Apex Court. The respondent also has no such case that he is not an able bodied man warranting him from seeking any exemption whatsoever. Guidelines in **Rajnesh.(cited supra)** also empowers the court to do some guess work while estimating the income when all the sources or correct sources are not disclosed by the parties as in the instant case. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the respondent/husband does not disclose the exact amount of his income, an adverse inference can be drawn by the Court. The respondent has no such case that he has paid a single penny towards maintenance to the petitioner or her two minor children. Therefore, it is safe to conclude that the respondent is having adequate income and is financially sound and the conduct of the respondent was only to obtain a favourable order of maintenance with small quantum thereby burdening the petitioner.

15. In view of the reasons and precedents discussed in the preceding paragraphs, this court is of the view that the petitioner and her two minor children are entitled to the amount prayed for wholly. Moreover, considering the mandatory direction of the Apex Court in **Rajnesh(cited supra)**, the

respondent is liable to pay the interim maintenance due from the date of this application, i.e.18.06.2024.

In the result, the above application is allowed.

- A. The respondent is hereby directed by way of an interim order **U/s.23(1) of The Protection of Women from Domestic Violence Act, 2005** to pay an amount of **Rs.5,000/- (Five Thousand Rupees Only) per month to the petitioner and Rs.3,000/- (Three Thousand Rupees Only) per month each to the two minor children** of the petitioner towards interim maintenance from the date of above application i.e. from **18.06.2024**. The interim maintenance awarded to the two minor children shall be also paid by the respondent to the petitioner herself, for and on behalf of the children.
- B. The interim maintenance so awarded shall be considered as an interim maintenance so awarded **U/s. 125 of the Code of Criminal Procedure,1973** for the purposes of its enforceability.
- C. The respondent is granted a period of **two weeks from the date of this order** for clearing the entire arrears of maintenance till date, failing which the petitioner would be at liberty to approach this court for its proper execution.
- D. Issue a copy of this order free of cost to both parties.
- E. Communicate this order to SHOs of the Police Stations concerned.
- F. Communicate this order to the Women Protection Officer, Kannur District.

(Pronounced in the open court on this the 19th Day of January, 2026)


Nyayadhikari