

**IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE-II
NEYYATTINKARA**

**Present: Smt.Nimmi Nair. M,
Judicial First Class Magistrate-II**

Wednesday, 20th November, 2024/ 29th Karthika, 1946

Crl.M.P No. 2289/2024

IN

M.C. No. 44/2024

Petitioners : 1. R. Malini, aged 46 yrs, D/o T.P. Rajendran Nair,
2. Aparna Chandran. M.R, aged 25 yrs, D/o A.R. Ratheesh
Chandran Nair.
(Both are residing at “Sivavilasom”, T.C 65/540, Thiruvallom,
Thiruvananthapuram)
(By. Sri. K. Kusumam, Advocate)

Respondent : A.R. Ratheesh Chandran Nair, aged 55 yrs, S/o Ramakrishna
Pilla (Late), residing at Ananda Bhavan, Menilam,
Thiruvallom, Thiruvananthapuram.
(By. Sri. Punchakary. G. Ravindran Nair, Advocate)

Section : U/s.20(1)(d) read with 23 of the Protection of Women from
Domestic violence Act, 2005.

Sentence or Order : The petition is allowed in part.

This Crl.M.P having been heard today, the Court passed the
following:

ORDER

This is an application filed by the petitioners under section 20(1)(d)
read with 23 of the Protection of Women from Domestic Violence Act, 2005.

2. **The averments in the application in brief are as follows:-** The
respondent No.1 is the husband of the 1st petitioner. The second petitioner is the
daughter of the 1st respondent. The marriage between the 1st respondent and the 1st
petitioner was solemnized as per the religious rites and ceremonies on 10.05.1998
at N. Achuthan Nair Community Hall at Thiruvananthapuram. After the marriage,
the parents of the petitioner gave 75 sovereigns of gold ornaments and cash worth

of ₹5,00,000/- to the respondent. After the marriage, the 1st petitioner and 1st respondent resided together as husband and wife at the matrimonial house. From the wedlock, a girl child ie, Aparna Chandran.M.R was born on 27.02.1999 at St. Jude Medical Centre Hospital and she is now aged 25 years. The first petitioner further submitted that her husband and her sister-in-law used to treat her unfairly and she suffered from physical and verbal assault at their hands.

3. The first respondent is obligated, both legally and ethically, to ensure a just and adequate provision for the maintenance of the petitioners. But he never ever paid anything, apart from some occasional payment during this entire marital life. The first petitioner is now a cardiac patient and also having some gynecological issues. She alleges that her husband is not taking any interest in her daughter and that the expenses for family needs are being borne by her. The first Respondent has working as Assistant Commandant, K.A.P 3rd Battalion at Adoor and he is drawing a monthly salary of not less than ₹2,50,000/-. Petitioner further submitted that she need an amount of ₹30,000/- per month for meeting her and child monthly expenses. The first petitioner and her child are facing physical, mental and economic abuse and hence the petitioners filed the petition for getting maintenance of ₹30,000/- from the first respondent. Due to the ongoing domestic violence by the respondents against the petitioners, she has filed an application under section 12 of the Protection of Domestic Violence Act and also under section 23(2) of the Protection of Women from Domestic Violence Act, seeking relief in the form of protection, residence, and maintenance order etc.. This court,

after being convinced on a preliminary basis that domestic violence has been committed by the respondents against the petitioner, issued an interim protection order under section 18 of the Protection of Women from Domestic Violence Act. The petitioners are requesting an amount of ₹30,000/- per month from the first respondent as maintenance for food and clothing for herself and her child. Hence, this petition.

4. After the issuance of notice to the respondents. Notice was served on the respondents. The respondents appeared before the court and they filed an objection stating that the application is not maintainable either in law or in facts. The 1st respondent admitted the marriage and relationship between the parties, while denying any allegations of harassing or ill-treating the petitioner and her child. The first respondent has been responsible for taking care of the child's affairs. The first respondent submitted an objection, indicating that she has established a township in Thiruvallam Junction, adjacent to the Parasuramasway Temple and near B.N.V School. Additionally, there are two two-storied buildings situated within the educational complex. She is earning an income exceeding ₹1,00,000/- per month from various ventures, including her dental hospital, Abhinav Traders, Jemina Beauty Parlour, and a real estate company. Furthermore, she earns ₹50,000/- as a partner in a finance venture and an additional ₹50,000/- monthly from fixed deposits. The first petitioner is notably affluent, serving as a custodian of gold reserves pledged by financially stable person, along with generating income through money lending activities. The first respondent

submitted that out of the monthly income, after recoveries, he has a salary of ₹20,000/- per month and he has little to spare as he constantly dependent on outside food. The petitioners only aim is to make him suffer as much as possible. The petitioners have requested a monthly amount of ₹30,000/- by the first respondent towards the expenses of them. Therefore, he requested the dismissal of the petition.

5. Heard the learned counsel for the petitioners and learned counsel for the first respondent.

6. The points arise for consideration are:-

- 1) Whether the petitioners are entitled to get maintenance under section 20(1)(d) of the Protection of Women from Domestic Violence Act, as prayed for?
- 2) What should be the order as to costs?

7. **Point No.1:-** It is an undisputed fact that the 1st petitioner is the wife of the 1st respondent, with whom she had a child named Aparna Chandran. M.R. The petitioners have alleged acts of domestic violence, including physical abuse, mental harassment, and failure to provide maintenance, which constitutes economic abuse. While the 1st respondent denies committing any domestic violence, this has not been proven in court at this stage and will be further examined during the trial. The marriage between the 1st respondent and first petitioner was solemnized on 10.05.1998 at N. Achuthan Nair Community Hall at Thiruvananthapuram. At the time of marriage, the parents of the petitioner gave 75 sovereigns of gold ornaments and cash worth of ₹5,00,000/- were given to the

first respondent. After the marriage, the first petitioner lived along with the respondents in the matrimonial house. The allegation of domestic violence against the petitioner is that the 1st respondent has subjected the petitioner to physical and mental harassment and by demanding more dowry. Therefore, based on the submissions in the application and accompanying documents, this court is prima facie satisfied that domestic violence has been committed by respondents against the petitioners.

8. The core question which is to be discussed in this application is what is the amount of maintenance to be given by the 1st respondent to the petitioners. On going through section 20 of the Protection of Women from Domestic Violence Act, it is clear that the object of granting interim or permanent maintenance is to ensure that the dependents spouse is not reduced to destitution or vagrancy on account of the failure of the marriage. According to Section 20 (i) (d) of Protection of Women from Domestic Violence Act provides that the maintenance granted under the Domestic Violence Act to an aggrieved person and children, would be given effect to, in addition to or maintenance awarded under any other law in force. On going through the provisions of Protection of Women from Domestic Violence Act, it is clear that the Magistrate when satisfied that the application filed by the aggrieved women discloses that the respondent is committing or has committed an act of domestic violence or that there would be likely that the respondent may commit the act of domestic violence, the magistrate is empowered to pass an order on the basis of the affidavit of the

aggrieved persons.

9. Next question is what are the factors to be considered by the court in order to fix the quantum of maintenance to the aggrieved women. The 1st respondent is an able-bodied person. In Reema Salkan v. Sumer Singh Salkan reported in **2018 KHC 6722** it is held that the plea of husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is an able-bodied person. Since the 1st respondent is an able-bodied person, he cannot absolve from the liability of paying maintenance to the 1st petitioner and her child.

10. In the present case, the affidavit filed by the first respondent stated that the 2nd petitioner is 25 years old child and is with the 1st petitioner and she is a law graduate. Child is defined in Section 2(b) of the Protection of Women from Domestic Violence Act. It reads as follows:-

'(d) Child means any person below the age of eighteen years and includes any adopted, step or foster child.'

11. In the present case, it is not in dispute that daughter Aparna Chandran. M.R is residing with her mother. She is admittedly unmarried. She is thus not in a position to take the burden of education expenditure of her daughter Aparna Chandran. M.R which is quite substantial for undergoing the professional course. We may usefully refer to Section 21 of the Hindu Adoptions and Maintenance Act, 1956 which defined the term 'Dependents'. Clause (v) of Section 21 encompasses unmarried daughter as dependent. Having regard to the

relevant provisions therefore, there can be no doubt that the unmarried daughter is entitled to receive maintenance amount from her father. The Honourable High Court of Kerala Single Bench observed that “the legal position emerges is that by virtue of Section 125 (1) of Cr.P.C, an unmarried daughter, who attained majority, could not claim maintenance in the ordinary circumstance, viz. merely on the ground that she does not have means for her sustenance. At the same time, even though the unmarried daughter, who attained majority, is entitled for maintenance, where such unmarried daughter is by reason of any physical or mental abnormality or injury is unable to maintain herself, for which, pleadings and evidence in this regard are mandatory”.

12. The Honourable Apex Court in **Aditi Alias Mithi(s) v. Jitesh Sharma (s) reported in 2023 SCC Online 1451** held that the liability and responsibility of the father to maintain the child continues till the child attains the age of Majority.

13. The Honourable High Court of Kerala Single Bench further said that the legal proposition is that an unmarried Hindu daughter can claim maintenance from her father till she is married resorting to Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956, provided she pleads and proves that she is unable to maintain herself, for enforcement of which right her applications/suit must be under section 20 of the said Act. This court is of the observed that no evidence let into show that the second petitioner has any physical or mental abnormality, or she has any injury so that she could not

maintain herself and, therefore, grant of maintenance to the 2nd petitioner. The second petitioner is a 25 years age old lady, who is a practicing advocate and has attained majority. Hence, this court is of the opinion that, the second petitioner is not entitled to get interim maintenance.

14. Based on the various decisions rendered by the Hon'ble Apex Court and Hon'ble High Courts, I meticulously evaluated the pleading in the application, objections and the materials available on record for the determination of quantum of maintenance to be paid by the 1st respondent to the petitioners.

15. The Petitioners claimed for ₹30,000/- per month towards the interim maintenance for her and her child. The petitioner filed affidavit of assets and liabilities in the prescribed format. As per the affidavit filed by the petitioners, she is not working and she has no income. As per the affidavit, she has taken ₹15,00,000/- loan from the Indian Overseas Bank, Power House Road, Thiruvananthapuram, with a monthly E.M.I of ₹15,000/- per month. She claimed ₹30,000/- towards food, clothing and medical expenses, educational expenses for the child. Considering the interest of justice, for the purpose of this petition it is accepted by this court. The respondent is working as Assistant Commandant, K.A.P 3rd Battalion at Adoor and he is drawing a monthly salary of not less than ₹2,00,000/- per month.

16. The Affidavit of Disclosure filed by the first respondent would show that he was working as a Assistant Commandant, K.A.P 3rd Battalion at Adoor. His salary slip was produced before the court. The Salary slip would

indicate that the respondent monthly net pay salary is ₹1,24,550/- per month. The question to be considered here is whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home. It is stated in the objection filed by the respondent that the first petitioner earns an income of ₹1,00,000/- from rent and over ₹50,000/- monthly in interest from A.R. Finance. The petitioners filed an affidavit stating that an income of ₹12,000/- from rent should not preclude the husband from providing maintenance. As per the affidavit of the petitioners, the first petitioner has additional financial obligations, including a loan of ₹15,00,000/- from Indian Overseas Bank, Power House Road, Thiruvananthapuram. The petitioner indicated in her assets and liabilities statement that she pays ₹15,000/- as an E.M.I, for the loan amount taken. However, no documentation regarding the loan or E.M.I payments was produced before the court. It is the duty of the husband to maintain his wife and child to meet her reasonable needs and to provide her the same standard of living as she was accustomed to in her matrimonial home. Hence, even though the petitioners have income, a reasonable maintenance is to be awarded to her. Hence, the first petitioner is entitled to get a monthly interim maintenance of ₹15,000/- until further orders.

17. The criteria for determining the quantum of maintenance, the effect of the wife earning some income, etc. are now well settled in the celebrated decision of the Hon'ble Supreme Court in **Rajnish v. Neha (2020 (6) KHC 1)**. The pertinent question to be decided at this juncture is whether the 1st respondent

is entitled to pay maintenance to the applicant from the date of the application or from the date of this order. In a catena of decisions, it is held that even though a judicial discretion is conferred upon a court to grant maintenance either from the date of application or from the date of order in sec.125 (2) of Cr.P.C, it would be appropriate to grant maintenance from the date of the application in all cases, including Section 125 of Cr.P.C. In the interest of justice and fair play, the maintenance is to be awarded from the date of application. In para 118 of the Hon'ble Apex Court above decision it is held that it is necessary to issue directions to bring about the uniformity and consistency in the orders passed by all courts by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application. Hence, in the view of the decision rendered by the Hon'ble Apex Court this court orders the 1st respondent to pay maintenance awarded to the applicant from the date of application that is from 20.05.2024.

18. From the available records, it is seen that the first respondent is an able-bodied man and capable of earning income, and other inability as stated by the respondent can be looked upon merits at the time of after adducing evidence. As a husband, he has to maintain the Petitioner. The monthly income as stated by the petitioners may have fluctuated and it cannot be correct to say such an amount is the fixed income of the first respondent. There is no straitjacket formula for assessing the quantum of maintenance to be awarded to the applicant.

At present in this case, the issue of interim maintenance is to be decided on the basis of pleadings given by the applicant in the application. Hence, the first petitioner is entitled to get a monthly interim maintenance of ₹15,000/- until further orders.

19. **Point No.2:-** In the result, the application is allowed in part on the following term:-

- 1) The first respondent is directed to pay interim maintenance of ₹15,000/- per month to the first petitioner. Aforementioned amounts shall be paid on or before 10th day of every calendar month from the date of application from 20.05.2024 until further orders.

(Dictated to the Confidential Assistant,transcribed and typed by him, corrected and pronounced by me in Open Court on this the 20th day of November, 2024.)

Sd/-
**Judicial First Class Magistrate-II,
Neyyattinkara.**

//True Copy//

**Judicial First Class Magistrate-II,
Neyyattinkara.**