



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 23RD DAY OF JULY 2024 / 1ST SRAVANA, 1946

CRL.REV.PET NO. 255 OF 2020

CRIMINAL REVISION PETITION FILED AGAINST THE JUDGMENT DATED 08.11.2019 IN CRA NO.37 OF 2017 OF ADDITIONAL SESSIONS JUDGE-III, MAVELIKKARA ARISING OUT OF THE JUDGMENT DATED 19.01.2007 IN MC NO.17 OF 2013 OF JUDICIAL MAGISTRATE OF FIRST CLASS, KAYAMKULAM
REVISION PETITIONER/APPELLANT/RESPONDENT:

B.PRAKASH
AGED 51 YEARS
S/O LATE N.BHARATHAN,
R/AT NARAYANEEYAM, PERINGALA MURI,
KAYAMKULAM VILLAGE,
WORKING AT 504 SS AND TC(GREF)C/O 99 APO,
PIN-930504, LPC/HAV NO.GS-174070H).
BY ADVS.
T.S.MAYA (THIYADIL)
SMT.K.A.SUNITHA

RESPONDENTS/RESPONDENTS/PETITIONERS/STATE:

- 1 LAZITHA S, AGED 45 YEARS
D/O SUKUMARI AMMA,
NOW RESIDING AT MADHAVAPURAM,
PERINGALA.P.O, KAYAMKULAM,
ALAPPUZHA, KERALA-690559.
FROM NARAYANEEYAM, KAKKANADU,
PERINGALA MURI, KAYAMKULAM.
- 2 AKASH.P.BHARATH,
AGED 19 YEARS
S/O LASITHA,
NOW RESIDING AT MADHAVAPURAM,
PERINGALA.P.O,
KAYAMKULAM, ALAPPUZHA,
KERALA-690559.
FROM NARAYANEEYAM,
KAKKANADU, PERINGALA MURI,
KAYAMKULAM.
- 3 ADARSH.P.BHARATH,
AGED 15 YEARS
S/O LASITHA,
NOW RESIDING AT MADHAVAPURAM,
PERINGALA.P.O, KAYAMKULAM,



ALAPPUZHA, KERALA-690559.
FROM NARAYANEEYAM, KAKKANADU,
PERINGALA MURI,
KAYAMKULAM, REP.BY HIS MOTHER LASITHA.S,
AGED 45 YEARS, D/O.SUKUMARI AMMA,
NOW RESIDING AT MADHAVAPURAM,
PERINGALA.P.O, KAYAMKULAM,
ALAPPUZHA, KERALA-690559.
FROM NARAYANEEYAM, KAKKANADU,
PERINGALA MURI, KAYAMKULAM,
REPRESENTED HIS MOTHER LAZITHA.

4 STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
THIRUVANANTHAPURAM,
THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

ADV.SMT SEENA C -PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 23.07.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**'CR'****P.G. AJITHKUMAR, J.**-----
CrI. Rev. Pet. No.255 of 2020
-----**Dated this the 23rd day of July, 2024****ORDER**

The respondent in M.C. No.17/2013 has filed this revision petition invoking the provisions of Section 397 read with Section 401 of the Code of Criminal Procedure, 1973.

2. Respondent Nos.1 to 3 are his wife and children. In M.C. No.17/2013 which was filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act), respondent Nos.1 to 3 sought various reliefs including maintenance. The trial court allowed the petition. Operative part of the order reads as follows:-

“(1) Respondent is restrained to commit physical abuse, verbal abuse, mental abuse, emotional abuse and threats against the petitioners.

(2) He shall not alienate or encumber the shared household 'Narayaneeyam' located in the property extending 30 cents comprised in Survey No.93/21/2 B at Kayamkulam Village.

(3)He shall not enter in the place of employment of 1st petitioner or attempt to communicate with her in any form, whatsoever



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including personal, oral or written or electronic or telephonic contact.

(4) Respondent is directed to pay Rs.5000/- (Five thousand) towards monthly rent to the 1st petitioner.

(5) Respondent shall pay a sum of Rs.4000/- (Four thousand) each to children Akash P. Bharath, Aged 12/13 and Adharsh P. Bharath, Aged 8/13.

1"petitioner is allowed to receive maintenance on behalf of children.

SHO Kayamkulam shall assist 1st petitioner to implement the order."

3. The petitioner preferred an appeal under Section 29 of the Act. The appellate court confirmed the order granting relief Nos.1, 3 and 5, modified relief No.2 and set aside relief No.4. The appellate court observed in regard to the monthly maintenance allowed in favour of respondent Nos.2 and 3, as follows:-

"The learned counsel for the first respondent contended that the appellant ceased to pay the amount to respondents 2 and 3 on account of majority. Admittedly the order passed by the trial court is not restricting granting of maintenance till the attainment of majority. As the relief granted under Protection of Women from Domestic Violence Act, 2005 is in addition, there is no restriction in claiming maintenance after attainment of majority."

Aggrieved by the said observation, concerning relief No.5, the petitioner filed this revision petition.



4. Despite receipt of notice, respondent Nos.1 to 3 did not choose to appear before this Court. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

5. It is noticed in the operative part of the order of the trial court itself that respondent No.2-the elder child, was aged 12 years and 3rd respondent-younger child, was aged 8 years in 2014.

6. The learned counsel for the petitioner would submit that the 2nd respondent attained majority on 23.04.2018 and the 3rd respondent on 17.05.2022. The learned counsel maintains that the provisions of the PWDV Act, Section 125 of the Code and Section 20(3) of the Hindu Adoption and Maintenance Act, 1956, cannot be interpreted to the effect that a male child is entitled to claim maintenance even after attaining majority. Therefore, the view taken by the appellate court that respondent Nos.2 and 3 are entitled to get maintenance even beyond their age of majority is wrong.

7. 'Child' is defined in Section 2(b) of the PWDV Act. It reads:

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



8. Section 20(1)(d) of the PWDV Act enables aggrieved persons to claim maintenance also for the children. Section 20(1)(d) reads as follows:

“(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.”

9. The parties to this case are indisputably Hindus. Therefore, the provisions in the Hindu Adoption and Maintenance Act may also be invoked in order for respondent Nos.1 to 3 to claim maintenance. Section 20 governs the obligation of a father to maintain his children. Section 20 of the Hindu Adoption and Maintenance Act reads:

20. Maintenance of children and aged parents.—

(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

10. When Section 2(b) emphasizes that a person below



the age of 18 years alone is a child, and such a child is entitled to claim maintenance under Section 20(1)(d) of the PWDV Act, there cannot be any doubt that a person who ceased to be a child is not entitled to claim maintenance under the said provision.

11. The learned Public Prosecutor brought to my notice the decision of the Apex Court in **Aditi Alias Mithi v. Jitesh Sharma [2023 SCC online 1451]** where it was held that the liability and responsibility of the father to maintain the child continues till the child attains the age of majority. The Apex Court held so in a different context, but that proposition of law has general application.

12. Section 125 of the Code is also clear enough to indicate that a minor child, whether male or female, alone is entitled to claim maintenance. In Hindu Adoption and Maintenance Act, there is no differential treatment inasmuch as a male child is concerned. Of course, under Section 20(3) of the Hindu Adoption and Maintenance Act, a daughter who is unmarried or is enable to maintain herself out of her own earnings or other property has the right to claim maintenance from her father. Thus, none of the said provisions entitles a



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male child who has attained majority to claim maintenance from his father.

The appellate court, therefore, went wrong in observing that under Section 20 of the PWDV Act, a child is entitled to claim maintenance even after attaining majority. While observing so, the appellate court did not advert to the definition of the child in Section 2(b) of the PWDV Act. When Section 20(1)(d) enables only children to claim maintenance, the said provision certainly is controlled by a definition contained in Section 2(b) of the PWDV Act. Therefore, the said observation of the appellate court is against the law and is liable to be reversed. Ergo, I hold that the obligation of the petitioner to pay maintenance to respondent Nos.2 and 3 is still their attaining majority.

This revision petition is allowed to the above extent.

Sd/-
P.G. AJITHKUMAR
JUDGE

SMF