

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 8TH DAY OF JULY 2014/17TH ASHADHA, 1936

OP(CRL.).NO. 121 OF 2014 (Q)

[M.C.NO.9/2006 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II,
KOCHI]

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PETITIONER:

K.HUSSAIN, AGED 43 YEARS,
S/O. LATE KHALID, SEENATH MANZIL, H.NO.VIII/995,
KAPPALANDIMUKKU, KOCHI-2.

BY ADV. SRI.M.SHYJU.

RESPONDENT:

T.S.SELMA, AGED 33 YEARS,
D/O. T.K.SULAIMAN, KANNANTHARA NIKARTHIL HOUSE,
THANGAL NAGAR, PALLURUTHY, KOCHI-682 006.

THIS O.P (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 08-07-2014, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

Prv.

O.P.(CRL.).NO.121/2014-Q:

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF JUDGMENT DTD.6.5.2008 IN M.C. NO.9/2006 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOCHI.**
- P2 : COPY OF THE CERTIFICATE OF SCHOOL EDUCATION DTD.7.6.2014 ISSUED BY THE HEADMASTER H.E.H.M.M HIGH SCHOOL, MATTANCHERRY.**
- P3 : COPY OF THE SALARY CERTIFICATE OF THE PETITIONER DTD.29.5.2014 ISSUED BY THE EMPLOYER AND ATTESTED BY THE FOREIGN OFFICE OF SAUDI ARABIA AND CONSULATE GENERAL OF INDIA, JEDDAH, SAUDI ARABIA.**
- P4 : COPY OF PETITION TO SET ASIDE EXPARTE ORDER DTD.17.6.2014.**
- P5 : COPY OF THE DELAY CONDONATION PETITION DTD.17.6.2014.**

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

P.A. TO JUDGE.

Prv.

K.RAMAKRISHNAN, J.

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O.P.(CRL).NO.121 OF 2014

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Dated this the 8th day of July, 2014

JUDGMENT

This Criminal petition is filed by the petitioner, seeking early disposal of the application filed by him to set aside the exparte order passed in M.C.No.9/2006 of Judicial First Class Magistrate Court-II, Kochi, under Article 226 of Constitution of India.

2. It is alleged in the petition that the petitioner is the counter petitioner in MC.No.9/2006 on the file of the Judicial First Class Magistrate Court-II, Kochi. The respondent herein filed an application under section 3 of Muslim Women (Protection of Rights on Divorce) Act, 1986. He was working as a helper in Saudi Arabia. On account of some suspicious in the conduct of the respondent, he divorced the respondent herein. She filed MC.9/2006 before the Judicial First Class Magistrate Court-II, Kochi, stating that, he is working as an Engineer in Gulf and his monthly salary is ₹.60,000/- per month. He came to know about the proceedings only recently. It was revealed that, the respondent obtained exparte order dated 06.05.08 evidenced by Ext.P1, which was passed on the basis of evidence adduced by the respondent alone, stating that, the petitioner herein, who is the respondent in the case, was an Engineer and getting higher income as monthly salary. In fact

he is a high school dropout and discontinued his studies at 8th standard and he was only getting monthly salary of 1000 Saudi Rials. When he came to know about the exparte order passed against him, he filed Exts.P4 and P5 petitions on 17.06.2014 to set aside the exparte order and filed an application for condone the delay of 2224 days in filing the petition. It is also in the meantime, warrant was issued against him for the recovery of the amount. So the petitioner has no other remedy, except to approach this court, seeking the following relief:-

- (i) to direct the Judicial First Class Magistrate Court-II, Kochi to immediately dispose Exhibits p4 and P5 petitions.
- (ii) pass an order setting aside the Ext.p1 order in M.C.No.9/2006 on the file of the Judicial First Class Magistrate Court-II, Kochi.

3. Report was called for from the learned Magistrate Court, regarding the present stage of the case and time required for disposal of this applications and the learned Magistrate sent a report which reads as follows:-

On 06.05.2008, an exparte order was passed directing the respondent to pay the petitioner an amount of ₹.18,30,000 towards her claim of reasonable and fair provision and maintenance for the iddat period. On 19.10.2013, the court ordered attachment of the respondent's property pursuant to the request of the petitioner. The case was adjourned from time to time for report. The case stood posted to 19.07.2014. On 17.06.2014, the respondent filed an application to advance the case, it was allowed and the case was

advanced to that day. The petitioner was also represented through counsel that day. The respondent filed applications to recall warrant, set aside the ex parte order as well as to condone the delay of 2224 days in filing the petition. The application to recall warrant was allowed. The copies of the other petitions were served on the counsel so represented and the case was posted to 19.07.2014 for objection and hearing.

It is most humbly submitted that the objections have not come. Since the delay is of 2224 days, it is not sure whether evidence is to be taken or not to condone the same. Even if evidence is to be taken. I shall take my earnest effort to dispose of the petition at the earliest, at any rate, within 30.08.2014.

The above report is submitted for favour of necessary action.

4. Though, earlier this court has ordered notice on admission to the respondent, she remained absent.

5. The prayer in the petition was to issue direction to the learned Magistrate to dispose of Exts.P4 and P5 petitions filed by him at the earliest. It is seen from the report that, the learned Magistrate has already recalled the warrant issued against the petitioner, on the basis of the application filed by him for that purpose and the case is posted to 19.07.2014 for objection to the application by the respondent in that application. It is also mentioned in the report that, even if evidence is taken, in that application the application can be disposed of on or before 30.08.2014. So under the circumstances, this court feels that the

report of the learned Magistrate can be accepted and the petition can be disposed of accordingly.

So the report of the learned Magistrate that, the petition filed by the petitioner namely, Ext.P4 and P5 petitions in MC.No.9/2006 pending before that court will be disposed of on or before 30.08.2014 is recorded and the petition is disposed of accordingly. No further direction is required in this regard.

With the above observations and directions, this Criminal Miscellaneous case is disposed of. Office is directed to communicate this order to the concerned court immediately.

sd/-

K.RAMAKRISHNAN, JUDGE

R.AV