

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 22ND DAY OF SEPTEMBER 2022 / 31ST BHADRA, 1944

OP(CRL.) NO. 342 OF 2022

AGAINST THE ORDER DATED 09.05.2022 IN CMP 166/2022 IN CMP
NO.331/2019 IN MC NO.320/2008 OF THE FAMILY COURT, KOLLAM

PETITIONER/1ST RESPONDENT:

SREEJAYAN NAIR
AGED 58 YEARS
S/O.SAHADEVA THEMBRA,
KOCHUPUTHEN VEEDU, MEENAD VILLAGE
KOLLAM DISTRICT, PIN - 691 578
BY ADVS.
C.RAJENDRAN
B.K.GOPALAKRISHNAN
R.S.SREEVIDYA

RESPONDENTS/PETITIONERS & RESPONDENTS 2 AND 3:

- 1 P G GEETHAKUMARI
AGED 48 YEARS
GOPALAKRISHNA MANDIRAM,
MAMPALLIKUNNAM, CHATHANNOOR P O,
KOLLAM DISTRICT, PIN - 691572
- 2 DEVANANDAN
AGED 18 YEARS
S/O. SREEJAYAN NAIR
GOPALAKRISHNA MANDIRAM, MAMPALLIKUNNAM
CHATHANNOOR P O, KOLLAM, PIN - 691572
- 3 DEVANANDA
AGED 18 YEARS
D/O.SREEJAYAN NAIR
GOPALAKRISHNA MANDIRAM, MAMPALLIKUNNAM
CHATHANNOOR P O, KOLLAM, PIN - 691572
- 4 REGIONAL FIRE OFFICER
FIRE AND RESCUE SERVICE
FIRE FORCE JUNCTION
THIRUVANANTHAPURAM, PIN - 695009
- 5 STATION OFFICER
FIRE AND RESCUE STATION, CHAMAKKADA
KOLLAM, PIN - 691001

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**BY ADVS.
Mohan Lal B
ASWIN V. NAIR(K/1019/2017)
KARTHIK J SEKHAR(K/365/2021)
SR.PP-SRI.RENJIT GEORGE**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
22.09.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

JUDGMENT

Dated this the 22nd day of September, 2022

The petitioner, who is the husband of the first respondent and the father of the second and third respondents impugns order dated 09.05.2022 in CMP No.166/2022 in CMP No.331/2019 in M.C.No.320/2008.

2. As per the impugned order, attachment was effected with respect to Rs.3,24,000/- due from the petitioner to the respondents herein by way of maintenance in view of the order dated 11.12.2008 passed in M.C.No.320/2008.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. While challenging the order impugned, the learned counsel for the petitioner would submit that when notice received in CMP No. 331/2019, the

petitioner herein filed an objection stating that after passing the order of maintenance on 11.12.2008, the petitioner and the first respondent resided together as husband and wife along with children and during the said period, the petitioner maintained the wife and the children. Therefore, they are not entitled to get the amount of maintenance granted in M.C.No.320/2008 for the said period. But the court below did not consider the said aspect. According to the learned counsel for the petitioner, though the petitioner is liable to pay maintenance in view of the order dated 11.12.2008 in MC No.320/2008, he is not liable to pay maintenance for the period between May, 2012 to July, 2018.

5. According to the learned counsel for the petitioner, while passing the impugned order, the learned Family Court not considered the said contention.

6. Whereas, it is submitted by the learned counsel for the respondents that the story as put forwarded by the petitioner, stating that the petitioner and the first respondent lived together along with children during the period between May, 2012 to July, 2015, is absolutely false and no such joint stay at any point of time. Further, the said aspect not at all established in this matter.

7. On perusal of the order, it could be seen that though in the objection such a contention was raised, but nothing in the order as regards the said contention.

8. When the learned counsel for the petitioner is asked to justify the evidence in support of the said contention, he also submitted that no positive evidence in this regard available in this matter. It is relevant to note that in the year 2008, the wife and children filed M.C.No.320/2008 and the same was allowed on

11.12.2008, granting maintenance at the rate of Rs.2,000/- to the first respondent and Rs.1,000/- each to two minor children. Considering the amount in the present context, the same is too meagre and is quite insufficient to maintain the wife and the children. That apart, though staying together in between May, 2012 and July, 2018 is raised in the objection, the other side did not concede the same and no evidence available to substantiate the said contention. Admittedly, the petitioner was working as 'Rescue Officer' in Fire Station and now he has retired from the service. Rs.3,24,000/- from the pensionary benefits sought to be realised by the impugned order towards maintenance. In the absence of evidence to prove the alleged living together between May, 2012 and July, 2018, the said contention cannot be appreciated in any manner. In view of the matter, the impugned order does not require any

interference and the same stands confirmed.

9. It is submitted by the learned counsel for the petitioner that in obedience of the interim order of this Court dated 29.08.2022, Rs.50,000/- was deposited by the petitioner. The said submission is conceded by the learned counsel for the respondents also.

10. In view of the matter, the order of attachment shall be confined to Rs.2,74,000/- (Rupees two lakh and seventy four thousand only) alone and respondents 4 and 5 herein shall deposit the said amount before the Family Court. Therefore, the order impugned is modified in that way, with direction to the second and third respondents, who are fourth and fifth respondents herein, to deduct the said amount from the pensionary benefits of the petitioner and deposit before the Family court. Order passed by the Family Court, Kollam dated 09.05.2022 in CMP No.166/2022 in CMP No.331/2019 in

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M.C.No.320/2008 stands modified accordingly.

It is ordered that Rs.50,000/- deposited by the petitioner shall be released to the original petitioners/respondents 1 to 3 herein, forthwith.

Sd/-

**A. BADHARUDEEN
JUDGE**

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APPENDIX OF OP(CRL.) 342/2022

PETITIONER EXHIBITS

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| Exhibit P1 | A TRUE PHOTOCOPY OF THE COMMON JUDGMENT OF THIS HONOURABLE COURT IN MAT APPEAL NO. 388/2013 AND 525/2013 DATED 19 JULY 2019 |
| Exhibit P2 | A TRUE PHOTOCOPY STATEMENT OF THE REMITTANCE MADE BY THE PETITIONER HEREIN DURING APRIL 2022 |
| Exhibit P3 | A TRUE PHOTOCOPY OF THE PETITION FILED BY THE 1ST RESPONDENT BEFORE FAMILY COURT AS CMP NO.166/2022 IN CMP NO. 331/2019 IN MC NO.320/2008 FOR BLOCKING THE RETIREMENT BENEFITS DUE TO THE PETITIONER DATED 28/04/2022 |
| Exhibit P4 | A TRUE PHOTOCOPY OF THE OBJECTION FILED BY THE PETITIONER DATED 29/04/2022 |
| Exhibit P5 | A TRUE PHOTOCOPY OF THE ORDER PASSED BY THE HON'BLE FAMILY COURT, KOLLAM IN CMP NO. 166/ 2022 IN CMP NO. 331 /2019 IN MC NO. 320/ 2008 DATED 9TH MAY 2022 |
| Exhibit P6 | A TRUE PHOTOCOPY OF THE APPLICATION FOR RECALLING THE SAID NON BAILABLE WARRANT DATED 25/06/2022 FILED BEFORE THE HON'BLE FAMILY COURT, KOLLAM |