

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 19TH DAY OF FEBRUARY 2024 / 30TH MAGHA, 1945

OP (CRL.) NO. 858 OF 2023

AGAINST MC NO.120 OF 2015 OF FAMILY COURT, KANNUR

CMP NO.501 OF 2022 OF FAMILY COURT, KANNUR

PETITIONER/RESPONDENT:

RAFEEL @ MUHAMMED RAFI
AGED 46 YEARS, S/O MAHAMOOD,
RESIDING AT " THUNDIYIL HOUSE",
NEAR HYDROSE MOSQUE, P.O KAKKAD,
KANNUR, PIN - 670002

BY ADVS.

SRI.ABDUL RAOOF PALLIPATH
SRI.K.R.AVINASH (KUNNATH)
SRI.E.MOHAMMED SHAFI
SRI.PRAJIT RATNAKARAN
SMT.KRISHNAPRIYA R.

RESPONDENT/PETITIONER:

C.M FOUSIYA
AGED 38 YEARS, D/O S.K.P. YUSAF,
THUNDIYIL HOUSE,
NEAR HYDROSE MOSQUE, P.O.KAKKAD,
KANNUR, PIN - 670002

BY ADV MOHAMMED NIHAD

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
19.02.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

BECHU KURIAN THOMAS, J.**O.P.(CrI.) No.858 of 2023**Dated this the 19th day of February, 2024**JUDGMENT**

Petitioner is the husband in a matrimonial relationship with the respondent. M.C. No.120/2015 before the Family Court, Kannur, was filed by the respondent claiming maintenance. The Family Court directed maintenance to be paid at the rate of Rs.3,500/- per month to the respondent-wife. Since the payment was not regular, an application was filed to recover the maintenance due.

2. According to the learned counsel for the petitioner, by virtue of an agreement entered into between the parties, a copy of which is produced as Ext.P1, the total liability was fixed at Rs.4,00,000/- towards maintenance to the wife and the agreement itself acknowledges the receipt of Rs.2,00,000/- while the balance Rs.2,00,000/- as per the agreement, was paid by cash and therefore the petitioner sought permission to adduce oral evidence to prove the payment of Rs.2,00,000/-. However, by the impugned order, the Family Court refused to grant permission to the petitioner to adduce

oral evidence. It is in such circumstances that the petitioner has approached this Court.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. Petitioner's request to adduce oral evidence to prove the payment is unwarranted in the peculiar circumstances of the case. The document produced as Ext.P1 acknowledges the receipt of Rs.2,00,000/- and also stipulates that the balance of Rs.2,00,000/- ought to be paid. There is nothing on record to prove that the balance Rs.2,00,000/- has been paid. It is difficult to believe that despite the dispute between the parties, the balance was paid by the petitioner without obtaining any receipt or acknowledgement. Further, respondent has stoutly denied the payment of the balance of Rs.2,00,000/-.

5. In such circumstances, the oral evidence sought to be adduced would not advance the case of the petitioner except to delay the payment. The attempt is only to delay the payment of money to the wife, which will defeat the purpose of the statutory provision for payment of maintenance. The impugned order of the court does not warrant any interference. There is no perversity in the impugned

order warranting any interference. The Family Court has considered the matter properly.

Therefore, I find no merit in this original petition, and it is dismissed.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE AGREEMENT DATED 26.03.2021
Exhibit P2	A TRUE COPY OF THE PETITION IN CMP 501/2022 IN MC 120/2015 BEFORE THE HON'BLE FAMILY COURT, KANNUR
Exhibit P3	A TRUE COPY OF THE COUNTER IN CMP 501/2022 IN MC 120/2015 BEFORE THE HON'BLE FAMILY COURT, KANNUR
Exhibit P4	A TRUE COPY OF THE PETITION IN CMP 291/2023 IN MC 120/2015 BEFORE THE HON'BLE FAMILY COURT, KANNUR
Exhibit P5	A TRUE COPY OF THE COUNTER IN CMP 291/2023 IN MC 120/2015 BEFORE THE HON'BLE FAMILY COURT, KANNUR
Exhibit P6	A TRUE COPY OF THE PETITION FILED BY THE PETITIONER IN CMP 501/2022 IN MC 120/2015 BEFORE THE HON'BLE FAMILY COURT, KANNUR DATED 05.07.2023
Exhibit P7	A TRUE COPY OF THE CHIEF AFFIDAVIT FILED BY THE PETITIONER IN CMP 501/2022 IN MC 120/2015 BEFORE THE HON'BLE FAMILY COURT, KANNUR DATED 05.07.2023
Exhibit P8	A TRUE COPY OF THE ORDER IN CMP NO. 501/2022 IN MC 120/2015 DATED 30.03.2023