

(2010) 11 KL CK 0184
In the High Court Of Kerala
Case No : O.P. (FC) No. 519 of 2010 (R)

Shaibu

APPELLANT

Vs

Manju and Darsa

RESPONDENT

Date of Decision : 08-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2010) 11 KL CK 0184

Hon'ble Judges : R. Basant, J;K. Surendra Mohan, J

Bench : Division Bench

Advocate : M.R. Sarin, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—This judgment must be read in continuation of the order dated 01.11.2010 passed by us. The petitioner is the respondent in a claim for maintenance u/s 125 Cr.P.C filed by the respondents herein, who are the wife and child of the petitioner. There has been a direction to pay interim maintenance. That direction is to pay interim maintenance only to the 2nd respondent, it is submitted. The grievance of the petitioner is that the main petition, i.e. M.C. No. 34 of 2010, is not being taken up for disposal by the Family Court. This obliges the petitioner to pay interim maintenance to the 2nd respondent @ Rs. 1,500/-per mensem. Paternity is admittedly not disputed and the direction is to pay interim maintenance only @ Rs. 1,500/- per mensem. We asked the learned Counsel whether such interim maintenance, as ordered, has already been paid. Admittedly the same has not been paid. The counsel was given time to take instructions. The learned Counsel for the petitioner after taking instructions submits that the entire amount payable as arrears on the basis of the interim order of maintenance shall be paid within a period of one month from this date. There may be a direction for expeditious disposal of the M.C, prays the learned Counsel.

2. The petitioner can deposit the entire amount payable as interim maintenance

under the orders of the Family Court. Thereafter the petitioner can move the Family Court for expeditious disposal of M.C. No. 34 of 2010. Needless to say, the Family Court must consider such request and pass appropriate orders. The petitioner must certainly show his bona fides by depositing the arrears of interim maintenance payable. He must continue to pay interim maintenance payable in accordance with the order. If such payment is made, the court below must consider the application for early disposal of M.C. No. 34 of 2010 in accordance with law and pass appropriate orders.

3. This petition is, in these circumstances, dismissed, but with the above specific observations.

4. The grievance of the petitioner is that a petition filed u/s 125 Cr.P.C is remaining without disposal. Admittedly there is an interim direction to pay maintenance @ Rs. 1,500/-per mensem. Has the interim maintenance been paid? The petitioner, who seeks invocation of the extraordinary constitutional jurisdiction, must certainly satisfy us that he has acted equitably and fairly. The learned Counsel prays for time to take instructions and submit before us whether the interim maintenance due has been paid and if not, what time will be required for the petitioner to make payment of interim maintenance already directed. If such payment is made, the O.P (F.C) No. 519 of 2010 4 petitioner can seek directions from the Family Court for expeditious disposal of the pending M.C. Anyhow, we give time to the learned Counsel to take instructions from the petitioner.

5. Call on 08.11.2010.