

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE &

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

THURSDAY, THE 24<sup>TH</sup> DAY OF MARCH 2022 / 3RD CHAITHRA, 1944

MAT.APPEAL NO.759 OF 2018

AGAINST THE ORDER/JUDGMENT IN OP 679/2014 OF FAMILY COURT,

KOZHIKODE

**APPELLANT/RESPONDENT:**

P.V.G. MENON

S/O.LATE AIR COMMODORE P.A.MENON (RETD.), AGED 53,  
PRESIDENT & CEO, VANN CONSULTING PVT. LTD., GLOBAL  
INCUBATION SERVICES (GINSERV), CA SITE (1), H.A.L  
3RD STAGE, BEHIND HOTEL LEELA PALACE, KODI HALLI,  
BANGALORE - 560 008.

BY ADV SRI.SRINATH GIRISH

**RESPONDENTS/PETITIONERS:**

- 1 ANJANA MENON  
W/O.P.V.G. MENON, AGED 46.
- 2 NIHARIKA MENON( MINOR AGED 13)  
D/O.P.V.G.MENON
- 3 NAKUL MENON (MINOR AGED 13)  
S/O.P.V.G.MENON.  
ALL RESIDING AT 'RACHANA', NO.5, NELLICODE HOUSING  
COLONY, NEAR KAVU BUS STOP,MAVOOR ROAD,  
P.O.CHEVAYUR, KOZHIKODE-673 017(MINOR RESPONDENTS 2  
& 3 REPRESENTED BY THEIR MOTHER THE 1ST RESPONDENT)

BY ADV SRI.K.P.BALASUBRAMANYAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON  
14.03.2022, THE COURT ON 24.03.2022 DELIVERED THE FOLLOWING:

**A.MUHAMED MUSTAQUE &  
SOPHY THOMAS, JJ.**

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Mat.Appeal No.759 of 2018  
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Dated this the 24<sup>th</sup> day of March, 2022

**J U D G M E N T**

**Sophy Thomas, J.**

The respondent/husband in O.P No.679 of 2014 on the file of Family Court, Kozhikode is the appellant herein. His wife and children were the petitioners in that O.P. They filed that O.P under Sections 10, 24 and 25 of the Hindu Marriage Act and under Sections 18, 20(1)(d) and 26 of the Protection of Women from Domestic Violence Act, for judicial separation, permanent alimony, compensation and injunction.

2. Brief facts necessary for the appeal are as follows:

The marriage between the appellant and the 1<sup>st</sup> respondent was solemnised on 20.10.1994 as per Hindu rites and custom, and minor respondents 2 and 3 were born in their lawful wedlock. The appellant was an officer in Indian Air Force and he was having

Master's Degree in Marketing Management from Jamnalal Bajaj Institute of Management. At the time of marriage, he was working as Multimedia Specialist with Siemens Information Systems, Mumbai. The 1<sup>st</sup> respondent was a Post Graduate in English Literature having Montessori training at Bangalore. After marriage, they shifted to Mumbai and subsequently, to Bangalore where the appellant was working as President and CEO of VANN Consulting Pvt.Ltd. The matrimonial life of the 1<sup>st</sup> respondent was miserable due to the cruel nature and behavioural problems of the appellant. She was treated like a slave and the appellant had no love or affection towards her. Unable to bear with the cruelty and violence meted out to the 1<sup>st</sup> respondent, she along with her children shifted to her paternal house at Calicut, and from March 2011 onwards, they are living separate. The appellant was not looking after the respondents and he failed even to maintain the children. He was demanding divorce from the 1<sup>st</sup> respondent after branding her as a mental patient. As she does not want her children to be known as the children of a divorcee, she sought for a decree for judicial separation, permanent alimony, compensation for physical and

mental torture, and also for an injunction restraining the appellant from disposing the schedule property.

3. The appellant/respondent opposed that O.P, and strongly denied the allegations of ill-treatment levelled against him. He had alleged mental illness and bipolar disorder against the 1<sup>st</sup> respondent. In fact, she tortured him for the lavish life of herself and her parents. She left her matrimonial home on 26.03.2011 along with the children under the instigation of her parents, and to extort money from him. Their matrimonial life was not smooth due to the arrogant nature of the 1<sup>st</sup> respondent. It is true that, the appellant was the President and CEO of VANN Consulting Pvt. Ltd. But, now that Company is running on huge loss. Due to the harassment made by the 1<sup>st</sup> respondent, the appellant often became ill, and he is finding it difficult to concentrate on his business. So, the income has come down since 2014. The 1<sup>st</sup> respondent was employed in Providence School at Chevayur, Kozhikode, and only to extort money from the appellant, she deliberately resigned that job. The appellant had taken the 1<sup>st</sup> respondent to various Psychiatrists and Psychologists. But, she was not ready to co-operate with the

treatment. The appellant was paying maintenance to the respondents as ordered by the court. But, he was not even allowed to visit his children. The appellant is entitled to get a decree of divorce on the ground of cruelty, insanity and desertion, and he is taking steps for the same. The respondents are staying at the paternal house of the 1<sup>st</sup> respondent along with her parents and so, they need not pay any rent for their accommodation. There is no basis for claiming monthly maintenance of Rs.60,000/- for the respondents. The claim of Rs.75 lakh towards permanent alimony is ridiculous. The 1<sup>st</sup> respondent had not undergone any mental stress or trauma at the hands of the appellant, and so, she is not entitled to get any amount as compensation. His property at Kozhikode was attached with ulterior motive. So, he prayed for dismissal of the O.P.

4. After formulating necessary issues by the Family Court, the parties went on trial. PW1 was examined and Exts.A1 to A26 series were marked from the side of respondents/petitioners. No oral evidence was adduced by the respondent/husband. Ext.B1 series were marked from his side.

5. After hearing both sides, and on analysing the facts and evidence, the Family Court found that, the 1<sup>st</sup> respondent/wife was entitled for a decree for judicial separation, monthly maintenance of Rs.20,000/-, compensation of Rs.5 lakhs and also injunction prohibiting the appellant from alienating the schedule property. The respondents 2 and 3, the minor children, were also awarded monthly maintenance at the rate of Rs.15,000/- each from the date of petition i.e. 25.08.2014.

6. The appellant is not challenging relief No.1 in the decree, for judicial separation. He is challenging relief Nos.2 to 6 for injunction, compensation as well as the monthly maintenance.

7. Now let us find out whether any interference is called for in relief Nos.2 to 6 granted by the Family Court, as per the impugned decree.

8. Section 25 of the Hindu Marriage Act deals with permanent alimony and maintenance. It reads as follows:

**“25. Permanent alimony and maintenance** .- (1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the

husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent....”.

9. Obviously, the Family Court exercising jurisdiction under the Hindu Marriage Act, at the time of passing any decree, can order a gross sum or such monthly periodical sum towards maintenance and support, for a term not exceeding the life of the applicant. The 1<sup>st</sup> respondent was granted a decree for judicial separation as per the impugned decree and the appellant is not challenging that decree.

10. Ext.A12 certificate issued from the Presentation Higher Secondary School, Kozhikode will show that, the 1<sup>st</sup> respondent was a Teacher there, from 01.06.2011 to 31.03.2014. PW1, the 1<sup>st</sup> respondent, deposed that thereafter she has no job or income. The appellant did not adduce any evidence to show that the

1<sup>st</sup> respondent is still working as a Teacher in any schools, and she is getting income. As there is no evidence to show that, the 1<sup>st</sup> respondent is having her own job and income to maintain her, going by Section 25 of the Hindu Marriage Act, on passing a decree for judicial separation under Section 10 of the Hindu Marriage Act, she was entitled to ask for permanent alimony either as a gross sum or monthly/periodical sum.

11. The 1<sup>st</sup> respondent was claiming Rs.60,000/- towards monthly maintenance of herself and her children, or a lumpsum amount of Rs.75 lakhs as permanent alimony. Only the wife/husband is entitled for permanent alimony as per Section 25 of the Hindu Marriage Act, and the children will not get any amount under that head. Moreover, Ext.A4, the order in M.C No.369 of 2011, shows that, the respondents had filed case against the appellant claiming maintenance and it was allowed in their favour granting Rs.8,500/- per month to the 1<sup>st</sup> respondent and Rs.7,500/- each to the children. The court found that, though the 1<sup>st</sup> respondent was eligible to get Rs.15,000/- as her maintenance, since she was working in a school at that time, earning monthly

income of Rs.6,500/- per month, that amount was deducted and the balance amount was awarded.

12. The respondents incorporated Sections 18, 20(1)(d) and 26 of the Protection of Women from Domestic Violence Act in their petition to claim maintenance.

13. Section 18 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as the 'D.V. Act') deals with the protection orders which a Magistrate can pass on a petition filed by the aggrieved person. Section 20(1)(d) of the D.V. Act clearly says that, while disposing of an application under subsection 1 of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence, and such relief may include, but is not limited to 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. Here no petition was seen filed by the 1<sup>st</sup> respondent under

Section 12(1) of the Domestic Violence Act.

14. Section 26(1) of the D.V Act reads thus:

**“26. Relief in other suits and legal proceedings.—**

(1) Any relief available under sections 18, 19,20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act”.

15. As we have already seen, the respondents had already filed M.C case under Section 125 Cr.P.C against the appellant herein, and obtained an order. So, even if they wanted to get the maintenance amount enhanced, they could have approached the Family Court under Section 127 Cr.P.C and not by invoking Section 20(1)(d) of the D.V Act. So, the order to pay monthly maintenance to the children at the rate of Rs.15,000/- is to be set aside reserving their right to approach the Family Court with a separate petition for enhancement of maintenance if they propose to do so. Relief Nos.2 and 4 are set aside to that extent.

16. The 1<sup>st</sup> respondent was praying for permanent alimony on monthly basis or a consolidated sum not less than Rs.75 lakhs. The Family Court awarded monthly maintenance of Rs.20,000/- to the

1<sup>st</sup> respondent. In the M.C she was already awarded monthly maintenance of Rs.8,500/-. It was found that, the appellant was a well qualified professional taking lecture classes in IIM, IIT etc. Ext.A26 series were relied upon to find the employment of the appellant. Ext.B1 series documents also will show that the appellant was earning Rs.69 lakhs in the year 2014-15 though in later years his annual income had a decline. Admittedly, the appellant is having the schedule property at Chevayur Kozhikode extenting 25 cents with a building, and he is having a residential plot at Bangalore also. Whereas the 1<sup>st</sup> respondent is not having any job or income at present.

17. Section 25 of the Hindu Marriage Act says that, while awarding permanent alimony and maintenance, the respondent's income and other property, if any, and the income and property of the applicant, conduct of the parties and other circumstances of the case etc. to be taken into account, and what seems to be just to the court, shall be ordered.

18. Considering the financial capacity and potential of the appellant as a high professional, and the properties and buildings

owned by him at Bangalore and Calicut, we deem it just and proper to award a lumpsum amount of Rs.30 lakhs as permanent alimony instead of the monthly maintenance of Rs.20,000/- ordered by the Family Court.

19. Regarding the compensation part, the 1<sup>st</sup> respondent contended that, she was subjected to mental and physical cruelties by the appellant and for that reason, she had claimed Rs.25 lakhs as compensation. The Family Court ordered compensation of Rs.5 lakhs for the simple reason that, the 1<sup>st</sup> respondent is not having much income and she is living at the expense of her parents. She lost her peaceful family life and she suffered much damages. But, it has not been stated what sought of specific damages she had suffered. The trauma in a marital discord is common to both parties. Here both are alleging mental ailment and behavioural problems against each other. The 1<sup>st</sup> respondent was taken to Psychologists and Psychiatrists for treatment and she is admitting that fact, even though she was alleging it as a trap. There was no factual basis for awarding compensation of Rs.5 lakhs as damages to the 1<sup>st</sup> respondent. So, the decree is liable to be set aside with

respect to relief No.5.

20. The appellant contended that, the 1<sup>st</sup> respondent obtained an injunction order prohibiting him from alienating the schedule property, to see that, he is being thrown to the street. Section 25 of the Hindu Marriage Act specifically says that, the permanent alimony and maintenance ordered under that Section may be secured, if necessary, by a charge on the immovable property. So, the injunction order granted by the Family Court was against the spirit of Section 25 of the Hindu Marriage Act. So, relief No.6 in the impugned decree is liable to be set aside and a charge only to be created on the schedule property, to secure payment of the permanent alimony.

In the result, the appeal is allowed in part as follows:

- (1) Relief Nos.4, 5 and 6 in the impugned decree are set aside, and relief No.2 is partly set aside.
- (2) Relief No.2 in the impugned decree is modified by granting permanent alimony of Rs.30 lakhs to the 1<sup>st</sup> respondent.
- (3) The permanent alimony ordered will be a charge over the

petition schedule property owned by the appellant.

- (4) If any amount was already paid by the appellant towards maintenance of the 1<sup>st</sup> respondent as per the impugned decree, that can be adjusted towards the permanent alimony to be paid.
- (5) No order as to costs.

Sd/-

**A.MUHAMED MUSTAQUE  
JUDGE**

Sd/-

**SOPHY THOMAS  
JUDGE**

smp