

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

RPFC.No. 21 of 2005 ()

AGAINST THE ORDER IN MC 166/2004 of FAMILY COURT, MANJERI

REVISION PETITIONER(S)/REVISION PETITIONERS:

- 1. JUMAILATH, D/O.PUTHENPURAYIL HAMZA, AGED 26 YEARS
PACHATTIRI AMSOM, PARAVANNA DESOM, PARAVANNA P.O.**
- 2. SHIFA, (MINOR)
DO. DO.**
- 3. SAIHANA, (MINOR)
DO. DO.**

BY ADV. SRI.K.P.MUJEEB

RESPONDENT(S):

**SAINUDHEEN, S/O.KUNHIKADAR, AGED 33 YEARS
CHEEMBALINTEPURAKKAL HOUSE, BEACH ROAD
CHEERAN KADAPPURAM P.O.**

R BY ADV. SRI.JAMSHEED HAFIZ

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 20-05-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

sab

K.HARILAL, J.
=====

R.P.(F.C) No.21 of 2005
=====

Dated this the 20th day of May, 2015

ORDER

The revision petitioners are the petitioners in M.C.No.166/2004 on the files of the Family Court, Manjeri. The above M.C was filed by the petitioners seeking maintenance allowance from the respondent under Section 125 of the Code of Criminal Procedure. The court below rejected the claim of the 1st petitioner and directed the respondent to pay maintenance allowance @ ₹400/- and ₹350/- respectively to the petitioners 2 and 3. The legality of the entitlement of maintenance allowance of the 1st petitioner and the correctness of the quantum of maintenance allowance fixed for the petitioners 2 and 3 are under challenge in this revision petition.

2. Heard the learned counsel for the respondent.
3. The short question that arises for consideration in

this revision petition is, whether there is any illegality or impropriety in the findings whereby the court below rejected the maintenance claim of the 1st petitioner and whether the quantum of maintenance determined by the court below for the petitioners 2 and 3 is correct and justifiable?

4. The marital status of the 1st petitioner and paternity of the 2nd and 3rd petitioners are not disputed. According to the 1st petitioner, her marriage with the respondent was on 25th July, 1996 and they lived together till 2½ years before the filing of the M.C. It is the case of the 1st petitioner that the respondent neglected them and refused to pay maintenance allowance though the respondent had sufficient means. The respondent is working as a cook in a hotel and earning ₹300/- per day; whereas the 1st petitioner has no job or income and she is unable to maintain herself and children. From the very beginning of the marriage, the respondent harassed her both physically and mentally

demanding more money and ornaments. When her life in the matrimonial home became miserable, she was constrained to leave the company of the respondent. The petitioners 2 and 3 are school going children and a considerable amount is required for their day to day expenses.

5. Per contra, the respondent contended that the 1st petitioner is living separated from him without any valid reason. The brothers of the 1st petitioner are abroad and they are financially in a good position. So, the 1st petitioner is not interested to live along with the respondent. He denied the averment that he is getting ₹300/- per day. According to him, he is physically disabled due to the shivering of the body intermittently and he is unable to do any hard work.

6. Going by the impugned order under challenge, it is seen that the court below has meticulously scrutinized the oral evidence given by the 1st petitioner. In cross

examination, it has come out in evidence that she was living separately on her own volition without sufficient reasons. After considering the evidence on record elaborately, the court below observed that there is no reasonable ground to live separately without forfeiting the right of maintenance. In revision, this Court is not inclined to re-appreciate the entire oral evidence unless it is found that the findings made by the court below is perverse or unsustainable in law. In the absence of any kind of such perversity, this Court is not inclined to unsettle the findings whereby the court below rejected the claim of the 1st petitioner.

7. Coming to the quantum of maintenance fixed for the petitioners 2 and 3, the question to be considered is, whether the quantum of maintenance determined by the court below is just and proper?

8. The respondent himself admitted that he is working as a cook. But, according to him, he is suffering from shivering of the body, intermittently, and he is unable to do

any hard work. But, it is pertinent to note that no medical evidence had been adduced to show that he was physically disabled or incapacitated to do work so as to earn for the livelihood of his children. The respondent himself in the cross examination admitted that he used to work in different hotels. Moreover, he made an offer that if the petitioners come and stay with him, he will be able to maintain them. The said offer itself shows that he has sufficient means to maintain his family. The petitioners 2 and 3 are school going children and a substantial amount is required for their education, food, clothing, medical expenses etc.

9. Having regard to the fact that the respondent is working as a cook, it could be reasonable presumed that he has sufficient means to maintain his family. The father has responsibility as well as liability to maintain his children in accordance with their standard of life and day to day requirements. According to the decision in **Ajith Kumar**

v. Shaima (2009 (2) KLT 452), maintenance obviously includes provision for food, clothing, residence, education, medical expenses etc.

10. In the above view of the matter, I find that the quantum of maintenance determined by the court below is inadequate and the respondent is liable to pay enhanced maintenance allowance to the petitioners 2 and 3. Consequently, the respondent is directed to pay maintenance allowance @ ₹1,000/- per month to the 2nd petitioner and ₹800/- per month to the 3rd petitioner from the date of petition.

This revision petition is allowed in part.

**K.HARILAL,
JUDGE.**

stu

//True copy//

P.Ato Judge