

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

RPFC.No. 60 of 2012 ()

AGAINST THE ORDER IN MC 48/2011 of FAMILY COURT, THODUPUZHA
DATED 26-12-2011

REVISION PETITIONER/COUNTER PETITIONER:

VINOD

S/O.NARAYANAN, AGED 42 YEARS

RESIDING AT KUMARANKULATH HOUSE, MAZHUVADI,
KANJIKUZHI P.O., KANJIKUZH Y VILLAGE, THODUPUZHA TALUK,
KANJIKUZH Y POLICE STATION, IDUKKI DISTRICT.

BY ADV. SRI.GEORGEKUTTY MATHEW

RESPONDENT(S)/PETITIONERS:

1. SHYMA @ RAJI,
D/O.KRISHNAN, AGED 40 YEARS,
RESIDING AT KUMARANKULATH HOUSE, CHEMBAKAPPARA,
CHELACHUVADU P.O., KANJIKUZHI VILLAGE,
THODUPUZHA TALUK, IDUKKI DISTRICT,
KANJIKUZHI POLICE STATION.

2. VEDHANTHU, S/O.SHYMA, AGED 16 YEARS,

3. SIDHARDH, S/O.SHYMA, AGED 11 YEARS,

2ND AND 3RD RESPONDENTS ARE MINORS REPRESENTED BY THEIR
MOTHER,SHYMA @ RAJI, D/O.KRISHNAN, AGED 40 YEARS,
RESIDING AT KUMARANKULATH HOUSE, CHEMBAKAPPARA,
CHELACHUVADU P.O., KANJIKUZHI VILLAGE,THODUPUZHA TALUK,
IDUKKI DISTRICT, KANJIKUZHI POLICE STATION.

R1 BY ADV. SRI.LATHEESH SEBASTIAN

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 09-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.60 of 2012

Dated this the 9th day of September, 2015.

O R D E R

The revision petitioner is the respondent in M.C.No.48/11 on the files of the Family Court, Thodupuzha, filed by the respondents herein, who are the wife and children of the petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to the 1st respondent, she is the legally wedded wife of the petitioner and the respondents 2 and 3 are the children born out of the said wedlock. Altogether there are four children and two of them have attained majority. The case of the 1st respondent is that the petitioner has neglected to maintain them and refused to pay maintenance allowance to them from 2008 onwards. He is having 5 Acres of property and earning Rs.24,000/- per month. The 1st respondent has no job or any source of income and she is unable to maintain

herself and the respondents. It is also contended that the petitioner is having illicit relationship with another lady and he ill treated the 1st respondent with cruelty at the time when they were cohabiting together. The respondents claimed maintenance allowance @ Rs.3,000/- each per month.

2. The petitioner admitted the relationship claimed by the respondents, but opposed the claim for maintenance and denied the allegation that he neglected them and refused to pay maintenance allowance to them. According to him, the respondents are residing in a property having 3.75 cents belonged to him. The 1st respondent is working as a beautician-cum- tailor and from the said jobs she is earning Rs.20,000/- per month. It is further contended that she is having 2 Acres of landed property where there is cultivation of coffee, pepper, etc. The 1st respondent was examined as P.W.1 and the petitioner was examined as R.W.1. No documentary evidence had been adduced from either side. After analysing the evidence on record, the court below directed the

petitioner to pay maintenance allowance @ Rs.2,000/- to the 1st respondent and Rs.1,000/- each to the respondents 2 and 3. The legality of the entitlement of maintenance allowance and the correctness of the quantum fixed by the court below are under challenge in this revision petition.

3. The marital status of the 1st respondent and the paternity of the respondents 2 and 3 are not disputed. It has come out in evidence that the respondents are residing separately for the last three years and no amount has been paid to them towards maintenance by the petitioner during this period. Though he contended that the 1st respondent is a beautician-cum-tailor and she is earning Rs.20,000/- per month and that she owns 2 Acres of cultivating land, no evidence had been adduced to substantiate the said contentions. After analysing the oral evidence of the 1st respondent, the court below arrived at a finding that the petitioner has failed to prove that the respondents are residing separately without any reason. Even though he raised a serious allegation

doubting the chastity of the 1st respondent, no evidence had been adduced to substantiate the alleged illicit relationship. I am of the opinion that raising false allegations, doubting the chastity of a woman without proof or material, will amount to cruelty and the same is a sufficient cause for residing separately without forfeiting her right to claim maintenance allowance. In the above analysis, the court below is justified in finding that the respondents are entitled to get maintenance allowance from the petitioner.

4. What remains to be considered is, whether the court below is justified in determining the quantum of compensation. As has been held above, even though the petitioner contended that the 1st respondent is getting a monthly income of Rs.20,000/- as beautician-cum-tailor, he miserably failed to prove the said contention. On the other hand, it has come out in evidence that the petitioner is conducting an 'Ashramam'. So also, it was brought out in evidence that the petitioner was working as a 'Santhi' in a temple. The petitioner has no case that he is

physically disabled or incapacitated to do work so as to earn livelihood for his family. "Means" provided under Section 125 of the Cr.P.C. signifies not only movable or immovable property in the shape of salary, agricultural income or rent, but also the earning capacity of a physically able bodied man. Similarly, "maintenance" includes provision for food, shelter, residence, medical attendance, educational expenses of the children, etc. A husband is liable to pay maintenance allowance to his wife and children in accordance with their living status, standard of life and the day-to-day requirements. The 2nd respondent is aged 16 years and the 3rd respondent is aged 11 years. A substantial amount is required to meet their educational expenses. In the above view, I find that the quantum determined by the court below is just and reasonable and no interference is warranted under revisional jurisdiction.

5. The learned counsel for the revision petitioner sought for some time to pay the arrear. Having regard to the facts and circumstances of the case, the

petitioner is given four months time to pay the arrear, provided that half of the entire arrear shall be paid within two months and the remaining balance shall be paid within the next two months. In the event of failure to pay the first instalment, this instalment facility will stand automatically vacated and the 1st respondent is at liberty to realise the entire arrear in lump sum, in accordance with law.

This R.P(FC) is dismissed.

Sd/—
K. HARILAL, JUDGE

okb.