

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

RPFC.No. 67 of 2010 ()

AGAINST THE ORDER IN MC 33/2007 OF FAMILY COURT, ALAPPUZHA,
DATED 10-06-2009.

REVISION PETITIONER(S):

K.P. SIDHARTHAN, SON OF PADMANABHAN,
KOCHUVELI VEEDU, VARANADU P.O., CHERTHALA,
ALAPPUZHA DIST.

BY ADVS.SRI.P.SANTHOSH KUMAR (TR)
SRI.T.PSAJAN
SRI.L.ALOYSIUS THOMAS

RESPONDENT(S):

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1. VIJITHA, D/o.C.V. SUSEELAN,
VASUDEVA SADANAM, PERISSERY MURI, PULIYOOR VILLAGE.
 2. ATHULYA .S, AGED 3 YEARS,
D/o. VIJITHA, REP. BY HER MOTHER VIJITHA,
VASUDEVA SADANAM, PERISSERY MURI,
PULIYOOR VILLAGE.

R1 & R2 BY ADVS. SRI.V.MANOJ KUMAR
SRI. IYPE JOSEPH

THIS REV.PETITION (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
01-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SS

K. RAMAKRISHNAN, J.

.....
R.P.(F.C.) No.67 of 2010

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Dated this the 1st day of April, 2015

ORDER

Counter petitioner in M.C.33/2007 on the file of the Family Court, Alappuzha, is the revision petitioner herein. The first respondent herein is the wife of the revision petitioner and the 2nd respondent is the daughter born to them in the wedlock. The marriage between the revision petitioner and first respondent is the second marriage as far as both parties are concerned. At the time of marriage, she was given 42 sovereigns of gold ornaments. He demanded more dowry and started ill-treating her and demanding money for the purpose of starting a photo studio. When she failed to meet the unlawful demand, he started treating her cruelly and she was taken to her house for delivery and thereafter second respondent was born and he did not come and take the

respondents back and no maintenance was given thereafter. She has no income to maintain herself and the child. She requires ₹5,000/- as monthly maintenance for herself and the child. He is a photographer by profession and getting good income and capable of providing maintenance and he had neglected to maintain the respondents. So the petitioners have no other remedy, except to approach the court, seeking maintenance of ₹5,000/- for both the respondents under Section 125 of the Code of Criminal Procedure.

2. Revision petitioner appeared and filed counter admitting the marriage and paternity of the second respondent. According to him, she had left the house voluntarily and at the time of marriage, the father of the first respondent had promised to put up a photo studio for him in Alappuzha, but later he resiled from that promise. He was residing in their house and he was treated cruelly and sent out of the house. He had taken a rented house and resided there for eight months along with the first

respondent and at that time she became pregnant and she was taken to her house for delivery and he had met the delivery expenses and also provided maintenance to the child and the first respondent. Since the respondents did not come, petitions have been filed before the SNDP Sakha and though they intervened, the matter could not be settled. The Sakha office bearers have directed the first petitioner to go and live with the revision petitioner, but she did not prepare for the same. She is doing embroidery work and getting good income. He is an asthma patient, unable to do any work and the respondents are not entitled to get any maintenance. So he prayed for dismissal of the application.

3. First respondent was examined as PW1 and no documents were marked on her side. Revision petitioner was examined as CPW1 and one witness was examined as CPW2 and Exts. P1 to P4 and P5 series were marked on his side. After considering the evidence on record, the Family Court found that, the revision petitioner had neglected to maintain respondents and he is capable of being

maintenance and the respondents are not having any income and directed the revision petitioner to pay maintenance at the rate of ₹500/- to the first petitioner and ₹1,000/- to the second petitioner. The maintenance was directed to be paid from the date of petition. Dissatisfied with the same, the present revision has been filed.

4. Heard and perused the records.

5. The case of the respondents in the petition was that, after delivery he had not taken her back and no maintenance was provided. According to the revision petitioner, it was due to the adamant attitude of the first respondent that she did not join with him, though he is prepared to take them back. The marriage and birth of the second respondent in the wedlock was not disputed. it is also an admitted fact that, it is the second marriage for both the parties. Even in the counter statement, the allegation was that, at the time of marriage, the first respondent's father had agreed to put up a photo studio and he had resiled from that promise. Further Exts.B2, B3 and B4

produced on the side of the counter petitioner also will go to show that, the dispute was regarding non-fulfillment of the promise by the petitioner's father to put up a photo studio for the revision petitioner and also taking away certain gold ornaments given to PW1 at the time of marriage by her father. Further it is seen from the observation in Ext.P4 that, since the dispute between the parties could not be settled amicably, they have closed the petition. A reading of that observation will go to show that, the main dispute was regarding not providing a photo studio to the revision petitioner by the father of the first respondent as promised at the time of marriage and also non-return of the gold ornaments alleged to have been taken by the father of the first respondent, which was given to her at the time of marriage. Further the evidence of PW1 will go to show that, on account of not putting up the photo studio as promised by her father, she was ill-treated by the revision petitioner and that was the reason why she was not interested in going back and living with the revision

petitioner. Over all circumstances and also the evidence will go to show that, the dispute between them arose when the father of the first respondent alleged to have resiled from the promise said to have been made by him for putting up a photo studio for the revision petitioner. So under the circumstances, the court below was perfectly justified in coming to the conclusion that the first respondent was residing separately from the revision petitioner. Further it is brought out in the evidence of CPW1 that, after delivery he had not provided any maintenance and he was not aware of the prospects of the second respondent as well. That shows that, he had neglected to maintain them as contended by the respondents in their petition.

6. It is an admitted fact that he is a photographer by profession. It is true that he had produced Ext.P5 series medical prescriptions to show that he is undergoing treatment for some disease, but there is no evidence adduced on his side to show that, he is totally incapacitated from doing any work. Further the fact that, if

the photo studio is put up, he is able to work in spite of his ailments, namely asthma, shows that he can carry on his profession as a photographer and earn a reasonable income and provide maintenance to the respondents. So under the circumstances, courts below were perfectly justified in coming to the conclusion that, he is capable of maintaining the respondents and in spite of that fact, he had neglected to maintain them and he is liable to pay maintenance to the respondents.

7. Though a contention was raised that, the first respondent is conducting a beauty parlour, no document has been produced to prove this fact. Merely because she got some temporary employment is not a ground to deny maintenance to her, as she will have to do some work and maintain herself, that will not be a ground for denying maintenance to them which the revision petitioner is liable to pay maintenance as per law. So the court below was perfectly justified in coming to the conclusion that the first respondent is without any means to

maintain herself and the second respondent, who is aged 5^{1/2} years at that time. So under the circumstances, court below was perfectly justified in coming to the conclusion that, respondents are entitled to get maintenance from the revision petitioner. Considering the status of the parties, the amount of ₹500/- as monthly maintenance to the first respondent and ₹1,000/- as maintenance to the second respondent fixed by the court below from the date of petition cannot be set to be excessive, warranting interference at the hands of this court. So the revision lacks merits and the same is liable to be dismissed.

In the result, the revision petition is dismissed. Office is directed to communicate this order to the concerned court, immediately.

Sd/-
K. Ramakrishnan, Judge

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P.A. to Judge