

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

RPFC.No. 90 of 2010 ()

AGAINST THE ORDER MC 99/2009 of FAMILY COURT, KASARAGOD.

REVISION PETITIONER(S)/RESPONDENT:

MUHAMMED KABEER, AGED 26 YEARS,
S/O.KAKKAN IBRAHIM HAJEE, R/AT SHAREEFA MANZIL,
RAHMANIYA NAGER, MUTTATHODY VILLAGE,
KASARAGOD DISTRICT.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENT(S)/PETITIONER:

A.AYISHA, AGED 36 YEARS, D/O.M.A.MOOSA,
R/AT BALANADUKKAM, KANNARA, CHATTAMCHAL,
THEKKIL P.O., KASARAGOD DISTRICT.

BY ADV. SRI.SANU.S.PANICKER

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 12-03-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No.90 of 2010

Dated this the 12th day of March, 2015

ORDER

The petitioner is the respondent in M.C.No.99 of 2009 on the files of the Family Court, Kasaragod, which was filed by the respondent herein claiming maintenance allowance under Section 125 of the Code of Criminal Procedure from the petitioner herein. According to the respondent, she is the legally wedded wife of the petitioner herein and the petitioner herein has been neglecting and refused to pay maintenance allowance to her from 2009 onwards. She has no job or income and she is unable to maintain herself. But the petitioner herein has sufficient means to pay maintenance allowance to the respondent. He is

conducting real estate business and earning a monthly income of ₹20,000/-.

2. Per contra, the petitioner filed a counter statement admitting the marital status of the respondent; but denied the allegation that he refused to pay maintenance allowance to the respondent. Though he admitted the legal status of the respondent, he contended that, at the time of marriage, he was aged only 22 years and the respondent was aged 36 years. He was constrained to marry her under the special circumstance. In the counter affidavit, he has narrated the whole story from the moment when he met the respondent at first. The sum and substance of the contention is that the respondent enticed the petitioner and led him to marry her. It is also contended that he was cheated by the respondent by way of pretending that she was unmarried. But, as a matter of fact, she was married and having two children. Later, he came to know that he was purposefully cheated by the respondent. She

is also suffering from psychiatric disorder. He has no means to pay maintenance allowance to the respondent.

3. After considering the evidence on record, the court below directed the petitioner to pay maintenance allowance at the rate of ₹3,000/- per mensem. The entitlement of maintenance allowance and the correctness of the quantum of amount fixed by the court below, as maintenance allowance, are under challenge in this revision petition.

4. The short question that arises for consideration is, whether there is any illegality or impropriety in the finding that the respondent is entitled to get maintenance allowance from the petitioner. The marital status of the parties are not disputed. Even though he contended that he was constrained to marry her under the special circumstance, those facts have no relevancy at all while considering the right of the respondent to get maintenance allowance from the petitioner, in view of his own admission that he

married the respondent under the provisions of the Special Marriage Act. In the above view, there is no illegality in the finding that the respondent is entitled to get maintenance allowance from the petitioner. If the respondent has cheated him by enticing him to marry her, it is for the petitioner to work out remedies, if any, provided under law; but those issues do not arise for consideration in a proceeding under Sec.125 of the Cr.P.C.

5. What remains to be considered is the correctness of the quantum of maintenance allowance determined by the court below. It is the case of the respondent that she has no job or income and she is unable to maintain herself. The petitioner failed to produce any evidence to show that she has means or any source of means; whereas admittedly the petitioner was working in the Gulf country. He has no case that he was unhealthy or physically disabled or incapacitated to do work so as to earn his livelihood. A physically able bodied man is having sufficient

earning capacity to provide livelihood for his family. I do not find any reason to interfere with the finding of the court below that being a healthy man having sufficient earning capacity, he can provide ₹3,000/- per mensem to his wife. Considering the status and day-to-day living expenses of the respondent, I am of the opinion that the direction to pay maintenance allowance at the rate of ₹3,000/- per mensem is just and proper. I do not find any reason to interfere with the findings of the court below.

Hence, this revision petition will stand dismissed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge