

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

RPFC.No.151 of 2010 ()

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AGAINST THE ORDER IN MC 356/2009 of FAMILY COURT, MALAPPURAM
DATED 28-10-2009**

REVISION PETITIONER(S)/RESPONDENT :

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MUHAMMED RAFEEQ, AGED 25 YEARS,
S/O.ABDULLAKUTTY, VARIKKODAN HOUSE, KODOOR P.O.
PERINTHALMANNA, MALAPPURAM.**

**BY ADVS.SRI.C.V.MANUVILSAN
SRI.P.G.SURESH
SMT.K.VIDYA MANUVILSAN
SRI.M.R.VIBIN**

RESPONDENT/PETITIONER :

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AMEENA, AGED 20 YEARS,
D/O.UNNEENKUTTY HAJI, PERINGODAN HOUSE, KLARI SOUTH
EDARIKKODE P.O, .PERUMANA AMSOM, KARUKA DESOM
TIRUR, MALPPURAM.**

R, BY ADV. SRI.K.K.MOHAMED RAVUF

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 19-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

K.HARILAL, J

R.P.(FC).No.151 of 2010

Dated this the 19th day of March, 2015

ORDER

The petitioner is the respondent in M.C.No.356/2009 on the files of Family Court, Malappuram. The above M.C was filed by the respondent herein, who is the wife of the petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. Their marriage was solemnized on 9.9.2007. According to the respondent, the petitioner has been neglecting to maintain her and refused to pay maintenance allowance to her. She has no job or any other sources of income for her livelihood. Whereas, the petitioner is employed as a driver abroad and in addition to that, he has sufficient income from his agricultural activities also. She claimed maintenance allowance at the rate of Rs.5,000/- per month.

2. The petitioner herein filed a counter statement admitting the marital status of the respondent,

but he denied the other allegations in the M.C. According to the petitioner, the respondent herself left the marital home, without sufficient reasons. It is also contended that, she is blind and a considerable amount is required for the treatment of her eyes. But the fact of blindness was suppressed at the time of marriage. He admitted that, he is working abroad but, he is employed as a cleaner and getting an amount of 600 Riyals only as monthly salary. His is not a driver by profession, as contended by the respondent. After considering the rival contentions, the court below directed the revision petitioner to pay maintenance allowance at the rate of Rs.4,000/- per month. The legality and propriety of the entitlement of maintenance allowance and the correctness of the quantum of maintenance allowance determined by the court below are under challenge in this revision petition.

3. The learned Counsel for the petitioner advanced arguments challenging the findings whereby, the court below directed the revision petitioner to pay maintenance allowance as referred above. Firstly, the

learned Counsel contended that, a joint trial conducted by the court below is vitiated by the procedural irregularity in view of the Sections 7 and 10 of the Family Court Act. It is the argument that, according to Section 7, the Family Court has jurisdiction to try all the cases, coming under Sub section (1)(a) to (g) and Sub section 2(a) & (b) of Section 7. But according to Section 10, Family Court cannot try an O.P. claiming recovery of gold ornaments and an M.C. claiming maintenance allowance together at a joint trial. The learned Counsel further contends that, according to Sub section 1 of Section 10, while considering the O.P. claiming recovery of gold ornaments, Code of Civil Procedure is applicable and for trying an M.C. claiming maintenance allowance, Code of Criminal Procedure or the rules made thereunder are applicable. Therefore, so long as different procedures are contemplated separately for trying O.P. and M.C, both cases cannot be tried jointly.

4. In view of the above argument, the question to be considered is, whether a joint trial of original petition

claiming recovery of gold ornaments and M.C. claiming maintenance allowance is vitiated by a procedural irregularity? As rightly submitted by the learned Counsel for the petitioner, according to Section 7(a) and (b) of the Family Court Act, the Family Court shall have and exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force, in respect of suits and proceedings of the nature referred to in the explanation and be deemed to be District Court or as the case may be subordinate Civil court, for the area as to which jurisdiction of the Family Court extends.

5. Similarly, according to Sub section 2 of Section 7 of Family Court shall also have jurisdiction exercisable by a Magistrate of First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure. According to Sub section 1 of Section 10, the provisions of the Civil Procedure Code shall apply to the suits and proceedings, before a Family Court and Family Court shall be deemed

to a Civil Court. Similarly, the provisions of Code of Criminal Procedure or the rules made thereunder shall apply to the proceedings under Chapter IX of the Code of Criminal Procedure before a Family Court. If that be so, the point to be considered is, whether the joint trial is vitiated by procedural irregularity, when the court applies both proceedings at a time in joint trial. Put it differently, what is the legal effect and impact of a joint trial, in the matter of procedure? I am of the opinion that, joint trial is a consolidated procedure intended only for collecting evidence together, for determination of the issues involved in the case. I do not find any provision either in the Family Court or in the Code of Criminal Procedure or Code of Civil Procedure or in the Evidence Act preventing collection of evidence jointly, when the parties and subject matter are the same. It is to be borne in mind that facts are same and the Evidence Act 1872 is applicable for both procedure; but the weighing and appreciation of evidence are always different and distinct. Coming to the instant case, it could be seen that the Family Court has framed

two issues. The first issue is, whether the wife is entitled to get any and what amount of maintenance allowance and the second issue is whether the wife is entitled to get back any and what amount towards value of ornaments and currency.

6. Thus, I am satisfied that the court below has framed distinct and different issues, since different procedures are to be followed in the joint trial. Coming to the evaluation also, it is seen that, the evidence collected together or jointly are seen marshelled separately under different issues and considered differently and distinctly. There is no overlapping of procedure. Therefore, I am of the opinion that, the procedure of joint trial adopted by the court below is not vitiated by procedural irregularity and by joint trial no prejudice has been caused to the petitioner.

7. Secondly, the learned Counsel contended that, the respondent left the home without sufficient cause. At the same time, he contended that, the respondent was a blind woman at the time of marriage

and the said blindness was suppressed to him and he was cheated by the said suppression. It is implied in the above contentions that, he has no interest to live along with the wife as he was cheated by suppression of blindness. But, no evidence has been adduced to show that he was cheated by suppressing the blindness of the respondent.

8. More over, coming to Sub section 4 of Section 125(1), I am of the opinion that since Sub section 4 is an exception of Section 121(1)(a), the burden is heavy on the petitioner's to prove that, she refused to live with him, without sufficient reason. No evidence has been adduced to prove that the respondent refused to live with him. It is pertinent to note that the petitioner stayed away from mounting the witness box, so as to prove the fact in issue, which arose from the contentions in the counter statement. Therefore, I find that the court below can be justified in finding the entitlement of maintenance allowance, in favor of the respondents.

9. Thirdly, the learned Counsel contended that the quantum of amount determined by the court below is

disproportionate with the salary of the petitioner which is evidenced by Ext.B5. Ext.B5 shows that, he is getting a salary of 600 Riyals equal to Rs.7,500/- Indian Rupees. But, going by the evidence of RW1, he admitted that the petitioner had been working abroad for the last more than 7 years and the company is providing him free food and accommodation. In addition to that, the court below has observed that a definite pointer towards his financial capacity is the fact that, recently he has contracted his third marriage. As rightly observed by the court below, it could be reasonably presumed that the petitioner was so confident of his fiscal capacity to maintain three wives at a time. Though, his personal law permits him to marry more than once, the very same personal law insists him to maintain all the wives equally and do justice to all. If that be so, he is liable to pay maintenance allowance to all the wives equally. In the above view, I am of the opinion that the quantum of maintenance allowance determined by the court below is just and proper, warranting no interference under revisional jurisdiction.

Hence the revision petition is dismissed
accordingly.

Sd/-
K.HARILAL
JUDGE

VS

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PA TO JUDGE