

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.170 of 2010 ()

**-----
AGAINST THE ORDER IN MC 523/2009 of FAMILY COURT, MALAPPURAM
DATED 08.01.2010**

REVISION PETITIONER/RESPONDENT :

**-----
PRAMOD KUMAR,
S/O.LATE NARAYANAN @ NANU, AGED 31 YEARS
VAYALAVALAPPIL HOUSE, EDAPPAL.P.O, THUYIAM
KALLANMUKKU.**

**BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN**

RESPONDENT(S)/PETITIONER :

**-----
SAJIMOL, D/O.VASU, AGED 22 YEARS,
PADALI HOUSE, V.P.QUARTERS, KOTTATHARA
KANDUKURUMBAKKAVU TEMPLE, PONNANI.P.O.**

BY ADV. SRI.P.VENUGOPAL (1086/92)

**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.170 of 2010

Dated this the 19th day of March, 2015

ORDER

The revision petitioner is the respondent in M.C.No.523 of 2009 on the file of Family Court, Malappuram. The above M.C. was filed by the respondent herein, who is the divorced wife of the petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to the respondent, she has no job or any sources of income and she is unable to maintain herself. Whereas, the petitioner is employed in Soudi Arabia as a driver of container lorry and earning Rs.40,000/- per month. In addition to that, he has agricultural income of Rs.10,000/- per month. She claimed maintenance allowance at the rate of Rs.5,000/- per month.

2. The petitioner filed a counter statement admitting that the respondent is his divorced wife, but contended that she is able enough to maintain herself and he is not getting so much amount as claimed by the

respondent as his monthly income. It is also contended that, after the divorce, he had paid Rs.1 lakh to the respondent towards her maintenance allowance and thereby, he discharged the liability under Section 125(1) (A) of Cr.P.C. According to him, he is only a coolie and earning Rs.2,50/- per day only. He admitted that, he was employed as a driver in Soudi Arabia for three years. After considering the rival contentions, the court below directed the petitioner to pay maintenance allowance at the rate of Rs.3,000/- per month. The entitlement and correctness of quantum of maintenance allowance determined by the court below is under challenge in this revision petition.

3. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.

4. The learned Counsel for the petitioner contended that, the court below has failed to appreciate Ext.D2 agreement in its correct perspective. So also, it is argued that the quantum of maintenance allowance determined by the court below is not proportionate with the income of the petitioner and it is excessive.

5. Per contra, the learned Counsel for the

respondent advanced arguments to justify the entitlement of maintenance allowance and the quantum of maintenance allowance determined by the court below. The learned Counsel drew my attention to Ext.D2 agreement and contended that, even if Ext.D2 agreement is taken as its face value, the said agreement does not show that Rs.1 lakh was paid to the respondent either towards maintenance allowance or compensation. The quantum of maintenance allowance determined by court below is just and proper as proportionate with the admitted income of the petitioner.

6. As regards the contentions that Rs.1 lakh had been given after the divorce towards compensation, the only evidence available on record is Ext.D2 agreement. As rightly contended by the learned Counsel for the respondent, even if Ext.D2 is taken at its face value, that does not prove that Rs.1 lakh had been given to the respondent either towards maintenance allowance or towards compensation. That apart, none of the witnesses in the said agreement had been examined to prove the said agreement. Though, RW2 was examined to

prove the said contention admittedly, he was not a witness in the agreement. To fortify the above argument, the learned Counsel for the respondent cited **Rajesh R.Nair v. Meera Babu [2013 (1) KLT 899]**. Going by the above decision, it is seen that, this court after considering the validity of the agreement created to waive the right conferred under Section 125 of the Cr.P.C., held that an agreement by which a wife waives her right guaranteed under Section 125 will only be an agreement against the public policy and it is void. In the above view of the matter, Ext.D2 agreement pails to insignificance.

7. What remains to be considered is, whether the quantum of maintenance allowance determined by the court below is just and proper. The petitioner has no case that, he is unhealthy or physically disabled or incapacitate to do work, so as to earn livelihood. He admitted that, he is a coolie and he is getting Rs.250/- per day. He admitted that, he was a driver by profession and worked in Soudi Arabia for 3 years. It cannot be believed that, a driver by profession is engaged in a coolie work and getting Rs.250/- per day. When as rightly noted by the

court below, a manual labourer is getting not less than Rs.400/- per day. He has no case that, he is physically incapable to continue his profession as a driver.

8. In the above view, his contention that, he is a coolie and getting Rs.250/- per day only is liable to be rejected at the threshold. Even if, his contention that, he is getting only Rs.250/- per day is accepted at its face value, the quantum of maintenance allowance determined at the rate of Rs.3,000/- to the respondent is proportionate with his income, particularly, when he has no other liabilities. In the above view, I also find that the quantum of maintenance allowance determined by the court below is just and proper, warranting no interference under revisional jurisdiction.

Hence this revision petition is dismissed accordingly.

Sd/-
K.HARILAL
JUDGE

VS

/TRUE COPY/

PATO JUDGE