

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.239 of 2010 ()

AGAINST THE ORDER IN MC 914/2009 of FAMILY COURT, MALAPPURAM
DATED 16-03-2010

REVISION PETITIONER(S)/PETITIONER :

VASUDEVAN, S/O.LATE KUNUCHUNNI,
AGED 32 YEARS, KAVUNGALTHODU HOUSE, THOOTHATHA P.O.
PERAL AMSOM, EDATHARA DESOM, PERINTHALMANNA TALUK.
PERINTHALMANNA POLICE STATION.

BY ADV. SMT.K.K.RAZIA

RESPONDENT(S) :

1. RESMIRAJ,D/O.RAJAN, 22 YEARS,
THAZHATHEPURAKKAL HOUSE, PANCHAPADAM
SREEKRISHNAPURAM-11, AMSOM, KODARMANNA DESOM
OTTAPPALAM TALUK.

2. ANU (MINOR)D/O.RESMIRAJ.-DO-

R1&2 BY ADV. SRI.K.M.SATHYANATHA MENON

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.239 of 2010

Dated this the 19th day of March, 2015

ORDER

The petitioner is the respondent in M.C.No.914/2009 on the files of Family Court, Malappuram. The above M.C. was filed by the respondents herein, who are the wife and minor child of the petitioner herein, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to the first respondent, her marriage with the petitioner was solemnized on 31.3.2002 and they are blessed with the second respondent herein. It is the case of the respondents that, the petitioner has been neglecting to maintain them and he is refused to pay maintenance allowance since 10.1.2009. The first respondent has no job or any sources of income, whereas, the petitioner is a carpenter, getting Rs.400/- per day. He is employed in a furniture shop. In addition to that, he has own house and landed property fetching Rs.2,000/- per month. She claimed an amount of Rs.3,000/- to her and Rs.1,500/- to

the second respondent.

2. The petitioner filed a counter statement admitting the marital status of the first respondent and the paternity of the second respondent. He contended that, the respondents have refused to live along with him after 2009. It is his case that the first respondent is able enough to maintain herself and the second respondent. She is employed in a private establishment at Coimbatore and earning Rs.4,000/- per month. He made an offer to pay maintenance allowance to the second respondent but, according to him he is unable to pay maintenance allowance as claimed by the first respondent. He admitted that, he is a carpenter but, getting only Rs.2,50/- per day only. He has to look after his mother.

3. After considering the rival contentions, the court below directed the revision petitioner to pay maintenance allowance at the rate of Rs.2,000/- to the first respondent and Rs.1,000/- to the second respondent. The legality and propriety of the entitlement of maintenance allowance and the correctness of the quantum of maintenance allowance determined by the

court below is under challenge in this revision petition.

4. The marital status of the first respondent and the paternity of the second respondent are not disputed. Though, he contended that the first respondent refused to live with him, no evidence had been adduced to show that she refused to live with him without sufficient cause. In short, he miserably failed to discharge the burden of proof caste on him under Sub section 4 of Section 125 Cr.P.C. In the absence of any evidence to prove the said contentions, the court below is justified, in the entitlement of maintenance allowance, in favor of the respondents.

5. What remains to be considered is, whether the quantum of maintenance allowance determined by the court below is proportionate with the income of the petitioner? Admittedly, he is a carpenter and according to the petitioner he is getting only Rs.2,50/- per day. Whereas, the first respondent contended that, he is getting Rs.4,00/- per day. Though, he contended that the first respondent employed in a private company at Coimbatore. No evidence had been adduced to prove the

said contention.

6. In the absence of evidence, it can be safely concluded that the first respondent has no job or income and she is unable to maintain herself and the second respondent. The petitioner has a liability to pay maintenance allowance in accordance with the day to day expenses for the livelihood of the respondents 1 and 2. Even if, Rs.2,50/- is taken as his admitted income, I am of the opinion that the quantum of maintenance allowance determined at the rate of Rs.2,000/- to the first respondent and Rs.1,000/- to the second respondent is just and proper. I do not find any reason to interfere with the implied order under challenge.

Hence this revision petition will stand dismissed.

Sd/-
K.HARILAL
JUDGE

vs

/TRUE COPY/

PA TO JUDGE