

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. 280 of 2010 ()

MC 12/2009 of FAMILY COURT, KALPETTA

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REVISION PETITIONER(S)/RESPONDENT:

**SENEEB, AGED 33 YEARS,
S/O. SAINULABDEEN, CHANDRATHIL VEEDU, KANAMOODU,
PARAYIL, EDAVA.P.O, VARKALA, THIRUVANANTHAPURAM.**

BY ADV. SRI.P.SAMSUDIN

RESPONDENT(S)/PETITIONERS:

- 1. UMAIBA, AGED 29 YEARS,
D/O. ALAVI, NAMBOORIKKANDI VEEDU,
MANANGUVAYAL 4 CENT COLONY, MEENANGADI - 673 582.**
- 2. SUMAYYA, AGED 6 YEARS,
(MINOR REPRESENTED BY THE MOTHER IST RESPONDENT)**

R1 & R2 BY ADV. SMT.K.VBHADRAKUMARI

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

OKB

K.HARILAL, J.

R.P(FC). No.280 of 2010

Dated this the 12th day of March, 2015.

O R D E R

1. The revision petitioner is the respondent in M.C.No.12/2009 on the files of the Family Court, Kalpetta. He is the husband of the 1st respondent and the father of the 2nd respondent. The above M.C. was filed by the respondents herein claiming maintenance allowance under Section 125 of the Code of Criminal Procedure from the revision petitioner herein. According to the 1st respondent, the petitioner had neglected her and refused to pay maintenance allowance to the respondents 1 and 2. She has no job or income and she is unable to maintain herself; whereas the petitioner is a construction worker having sufficient means to pay maintenance allowance to them. In addition to the said earnings, he is also getting Rs.50,000/- per year from his landed property. The respondents claimed maintenance allowance @ Rs.1,500/- per month.

2. The petitioner filed a counter affidavit challenging the marital status of the 1st respondent, as the legally wedded wife, and the

paternity of the 2nd respondent as the child born out of the said wedlock. According to him, the 1st respondent is able enough to maintain herself. He denied the allegation that he is a construction worker. He has no means to pay maintenance allowance as claimed by the respondents. After considering the evidence on record, the court below directed the petitioner to pay maintenance allowance @ Rs.1,000/- to the 1st respondent and Rs.750/- to the 2nd respondent. The legality and propriety of the said direction are under challenge in this revision petition.

3.The learned counsel for the revision petitioner advanced arguments challenging the legality of the entitlement of the respondents to get maintenance allowance under Section 125 of the Cr.P.C. But going by the impugned order under challenge, it could be seen that, to prove the legal validity of the marriage, the 1st respondent was examined as R.W.1 and two witnesses, viz; P.Ws. 2 and 3, were examined in evidence. Ext.A1 marriage certificate was also produced to prove the legal validity of the marriage. After considering the evidence of P.Ws.1 to 3, the court below found that nothing was brought out to discredit the evidence of P.W.1 which stood in terms with the averments in the petition. So also the evidence of P.W.1 gets assurance from

the evidence of P.Ws.2 and 3. The court below observed that though these witnesses were examined at length and into minute details, nothing brought out to discredit their evidence and the two witnesses were stood by their consistent stand that they have witnessed the marriage between the 1st respondent and the revision petitioner. Thus, the witnesses have succeeded in proving the customary marriage. I do not find any reason to interfere with the said finding in the absence of any kind of perversity in the appreciation of evidence. Therefore, I find that the court below can be justifiable in finding that the marriage between the revision petitioner and the 1st respondent is legally valid and thereby the respondents are entitled to get maintenance allowance from the revision petitioner under Section 125 of the Cr.P.C.

4.The learned counsel for the revision petitioner further contended that the quantum of maintenance allowance determined by the court below is disproportionate with the income of the revision petitioner. It is the case of the 1st respondent that the revision petitioner is a construction worker. But the revision petitioner contended that he is a coolie worker only. But P.W.2, who was examined as an independent witness,

has given evidence that the revision petitioner was a construction worker and he had close association with the revision petitioner. There is no case for the revision petitioner that the evidence tendered by P.W.2 is false. There is no independent evidence to prove the claim of the revision petitioner that he is a coolie worker only. Thus, the revision petitioner failed to prove that he is a coolie worker only, whereas the 1st respondent succeeded in proving that the revision petitioner is a construction worker, by adducing independent evidence. As rightly held by the court below, if the revision petitioner is a construction worker, he will get at least Rs.350/- or Rs.300/- per day.

5. Thus, considering the income which is being derived by the revision petitioner, I cannot find fault with the court below in finding that the respondents 1 and 2 are entitled to get maintenance allowance at the rate of Rs.1,000/- and Rs.750/- respectively, per month. The revision petitioner is liable to pay maintenance allowance in accordance with the status of the parties and the day-to-day living expenses, etc. On a proper balancing of the income of the revision petitioner with the day-to-day expenses of the respondents, 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.

This revision is devoid of merits and dismissed accordingly.

Sd/-
(K.HARILAL, JUDGE)

okb.