

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

RPFC.No.283 of 2010 ()

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AGAINST THE ORDER IN MC 614/2006 of FAMILY COURT, PALAKKAD
DATED 17-03-2010
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REVISION PETITIONER/RESPONDENT :

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JAYARAM,
ANJANAM, VEETAMPARA, OTTAPALAM TALUK
PALAKKAD DISTRICT, NOW RESIDING AT KURUPATHERI
VALIYA VEEDU(H), VAROD PO, OTTAPALAM
PALAKKAD DISTRICT.**

BY ADV. SRI.K.B.ARUNKUMAR

RESPONDENT(S)/PETITIONERS 2 AND 3:

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- 1. ANJANA(MINOR),
D/O.JAYARAM, KORAMKANDATH HOUSE, AMBALAVATTOM PO
PALAKKAD, REPRESENTED BY HER MOTHER K.SWAPNA, .**
 - 2. ANJITH(MINOR),
D/O.JAYARAM, KORAMKANDATH HOUSE, AMBALAVATTOM PO
PALAKKAD, REPRESENTED BY HER MOTHER K.SWAPNA**

**R1 AND R2 BY ADV. SRI.SOJAN MICHEAL
ADV. SRI.N.N.ARUN BECHU**

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 13-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

K.HARILAL, J

R.P.(FC)No.283 of 2010

Dated this the 13th day of February, 2015

ORDER

The petitioner and respondents are the respondent and petitioners 2 and 3 respectively in M.C.No.614/2006 on the file of Family Court, Palakkad, which was filed by the respondents and their mother under Section 125 of the Code of Criminal Procedure, seeking maintenance allowance. The first petitioner in MC is the wife of the revision petitioner herein, and the respondents 1 and 2 herein are the children born in the said wedlock. The marriage with the mother of the respondents was solemnized on 23.5.1999 and they were lived together up to 2006. According to the mother of the respondents, from the very beginning of the marriage she was treated with cruelty and both physical and mental harassment by the petitioner herein, and eventually she was constrained to leave the company of the petitioner with the children fearing danger to her life. The mother of the respondents have no job or income and she is

depending upon her parents for their livelihood. She is unable to maintain herself and the respondents. Whereas the petitioner is a military pensioner, getting Rs.5,000/- per month and in addition to that, he is working as representative of a company by name M/s Haritha Mineral Water Company. He owns two taxi authoriskshaws. He has landed properties also. His aggregate monthly income is Rs.20,000/-. But after 2006, he failed to pay maintenance allowance to the respondents. The MC was filed claiming maintenance allowance to the mother also but subsequently, she got employment and her claim was not pressed. The court below, considered the claim of respondents 1 and 2 only.

2. The petitioner admitted the marriage and paternity of the respondents. It is also admitted that, he is a military pensioner getting pension. But according to him, the monthly compensation is only Rs.2,000/-. He admitted that, he is working as a representative of Haritha Mineral Water Company but, he is getting only Rs.75/- as daily wages. He has to repay the housing loan and look after his aged parents. The mother of the respondents is

able enough to maintain herself and the respondents. After considering the evidence on record, the court below directed the petitioner to pay maintenance allowance at the rate of Rs.1,000/- each per month to the respondents. The quantum of amount directed to be paid by the petitioner to the respondents is challenged in this revision petition.

3. Going by the impugned order, it is seen that, at the time of filing the MC, the first respondent was aged 11 years and the second respondent was aged 10 months. Though, the mother also claimed maintenance allowance, later the said claim was withdrawn when she got a job. The mother of the respondents had given evidence to the effect that the respondents have no sources of income, other than the income of their parents. Admittedly, the petitioner gets military pension and he has offered to pay Rs.500/- per month to the respondents. The petitioner retired from military services 8 years ago. He has conceded that he is getting pension and the pension pass book is with him, and that would show the exact pension, which is being received by him. But he didn't produce the

pension book. From the above conduct the court below has rightly held that an adverse inference could be drawn against the petitioner that, had it been produced, the pension book would have shown the exact income of Rs.5,000/- as claimed by PW1. Though he admitted that, he is working as a representative in Haritha Mineral Water Company, he contended that he is getting only Rs.75 as daily wage. Had it been so, as contended by the petitioner, he could have produced his Salary Certificate or any kind of documentary evidence issued by the company to prove that he is getting Rs.75 only as his daily wage. In the absence of such evidence, an adverse inference under Section 114(g) can be drawn against him with respect to his claim that he is getting Rs.75 only from the Haritha Mineral Water company. PW 1, in her evidence asserted that the petitioner owns two autorikshaws. When the petitioner was examined in evidence, he was confronted with a question whether he owns two autorikshaws. At first, he denied the said contentions. But later, he himself admitted that, he was the registered owner of the said vehicles. His explanation was that his

name was incorporated in the registration certificate at the instance of the financier who captured the vehicle from the hirer for non-payment of dues.

4. The court below rightly rejected his belated explanation, on the basis of the incredible stand which he had taken in the court. In that circumstance, the evidence of PW1 that the petitioner owns two autorikshwas would be accepted beyond doubt. The court below observed that the petitioner is aged 41 years only and he is a healthy man. An healthy able bodied man is presumed to be having sufficient capacity to earn for the livelihood of his children. The first respondent was studying at school level. Even though at the time when the petition was filed, the second respondent was only 10 months age, now she also may be a school going student. A substantial amount is required to meet the educational expenses of the respondents. They have the right to claim maintenance allowance in accordance with the income of their father and to live with the standard of life at par with that of their father.

5. Having regard to the admitted income of the

petitioner, I am of the opinion that, the direction to pay maintenance allowance at the rate of Rs.1,000/- per month is just and proper, warranting no interference under the revisional jurisdiction.

6. Coming to the arrear if any, the petitioner is given four months time to pay the arrear, provided that half of the entire arrear shall be given within a period of two months and the balance within the next two months. In case of any default, this instalment facility will stand automatically canceled and respondent is at liberty to realise the entire amount in lump sum by proper proceedings.

This revision petition is disposed of accordingly.

Sd/-
K.HARILAL
JUDGE

/TRUE COPY/

PA TO JUDGE

VS