

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 18TH DAY OF NOVEMBER 2013/27TH KARTHIKA, 1935

RPFC.No. 290 of 2010 ()

AGAINST THE ORDER IN MC 418/2009 OF FAMILY COURT, MALAPPURAM

REVISION PETITIONER/RESPONDENT :

KURIYANTE PURAKKAL ISMAYIL,
S/O.MUHAMMED, TIRUR TALUK, MANGALAM AMSOM
KOOTTAYIL DESOM, ARYAN KADAPPURAM, KOOTTAYI P.O.
MALAPPURAM DISTRICT.

BY ADVS.SRI.BABU S. NAIR
SMT.M.T.SHEEBA

RESPONDENTS/PETITIONERS :

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1. OTTAYIL HAJIRA, D/O.IMBICHIBAVA,
TIRUR TALUK, RAIRAMANGALAM AMSOM, DESOM
ELARAN KADAPPURAM, THANUR P.O.,
MALAPPURAM DISTRICT
PIN-676 302.
 2. JASI SANIYA-MINOR DAUGHTER,
REPRESENTED BY THE IST RESPONDENT - MOTHER.
 3. ARASIBANU - MINOR DAUGHTER,
REPRESENTED BY THE IST RESPONDENT-MOTHER.

R1 TO R3 BY ADV. SRI. ESM. KABEER

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 18-11-2013, ALONG WITH RP(FC) NO. 34/2010 & CONNECTED CASES,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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K.HARILAL, J.

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R.P.(FC) No.290 of 2010

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Dated this the 15th day of July, 2015

ORDER

The revision petitioner is the respondent in M.C.No.418/09 on the files of the Family Court, Malappuram, filed by the respondents herein, who are the wife and children of the petitioner, claiming maintenance allowance from the petitioner under Section 125 of the Code of Criminal Procedure. According to the 1st respondent, she is the legally wedded wife of the petitioner and the respondents 2 and 3 are the children born in that wedlock. So, they are entitled to get maintenance allowance under Section 125 of the Code of Criminal Procedure. But he has neglected to maintain them and refused to pay maintenance allowance. The 1st respondent has no job or any other sources of income and she is unable to maintain herself and the respondents 2 and 3; whereas

the petitioner is an exporter of prawns and he has a mechanized boat and properties, which would fetch a monthly income of ₹30,000/-. He is getting a total income of ₹55,000/- per month. Hence, they claimed maintenance allowance @ ₹3,500/- to the 1st respondent and ₹2,500/- and ₹2,000/- to the 2nd and 3rd respondents respectively.

2. The petitioner admitted the marital status of the 1st respondent and the paternity of the children. But he contended that the income alleged by the 1st respondent is not correct and he does not have any prawn business or fishing boat. He is employed in mixing ice with fish and getting ₹125/- per day. So, the quantum of maintenance allowance claimed is disproportionate with his income.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. The marital status of the 1st respondent and the paternity of the respondents 2 and 3 are not disputed. So also, there no evidence to show that the petitioner has been

paying maintenance allowance to the respondents. There is no evidence to show that the 1st respondent has any job or any other sources of income. Therefore, it can be safely concluded that she is unable to maintain herself. In that context, the court below is justified in finding that the respondents are entitled to get maintenance allowance.

5. Coming to the quantum of maintenance allowance, admittedly, the petitioner is a worker engaged in mixing ice with fish. He has no case that he is physically disabled or incapacitated to do work so as to earn livelihood for his family. An able bodied man is presumed to be having sufficient earning capacity. The husband is liable to pay maintenance allowance in accordance with the living status of the wife and children, standard of life and their day to day needs. "Maintenance" includes provision for food, clothing, shelter, medical attendance, educational expenses etc. Here, the respondents 2 and 3 are school going children and a considerable amount is required to meet

their educational expenses. In the above view of the matter, I find that the quantum of amount determined by the court below is reasonable, just and proper and no interference is called for under revisional jurisdiction.

6. Having regard to the facts and circumstances of the case, the revision petitioner is given five months' time to pay the arrear, provided that, the revision petitioner shall pay half of the entire arrear within a period of three months from today and the remaining balance shall be paid within the next two months. In the event of failure to pay the first instalment within the specified time, this instalment facility will stand cancelled automatically and the Family Court will be free to enforce the realisation of entire arrear in lump sum.

The revision petition is dismissed.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge