

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. 300 of 2010  
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AGAINST THE ORDER IN MC NO. 637/2009 of FAMILY COURT,  
MALAPPURAM DATED 19-04-2010.

REVISION PETITIONER/RESPONDENT:  
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MUHAMMED ASHARAF,  
S/O.KUNHALAN, EZHUPATHINGADAN VEEDU,  
CHEMRAKKATTUR,  
AREACODE, MALAPPURAM DISTRICT.

BY ADVS.SRI.K.M.SATHYANATHA MENON  
SMT.M.T.SHEEBA

RESPONDENTS/PETITIONERS:  
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1. E.N.NASEEMA, D/O. VEERANKUTTY MUSALIAR,  
EDASSERI MALAYIL VEEDU, RAHATH MANZIL,  
IRATTAMOOZHI,CHEEKKODE P.O.,  
VAZHAKKAD, MALAPPURAM DISTRICT

2. MUHAMMED SINAN - MINOR,  
REPRESENTED BY MOTHER THE FIRST RESPONDENT

BY ADV. SRI.P.SAMSUDIN

THIS REV.PETITION(FAMILY COURT) HAVING BEEN  
FINALLY HEARD ON 19-03-2015, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:

**K. HARILAL, J.**

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**R.P.(FC) No. 300 of 2010**  
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**Dated this the 19<sup>th</sup> day of March, 2015**

**ORDER**

The petitioner is the respondent in M.C.No.637 of 2009 on the files of the Family Court, Malappuram. The above M.C. was filed by the respondents herein, who are the wife and child of the petitioner, under Section 125 of the Code of Criminal Procedure, claiming maintenance allowance from the petitioner.

2. According to the averments in the petition, the 1<sup>st</sup> respondent is the legally wedded wife of the petitioner. Their marriage was solemnized on 10/2/2002 and the 2<sup>nd</sup> respondent is the child born in that wed-lock. Now the petitioner has been neglecting to maintain them and refused to pay maintenance

allowance. The 1<sup>st</sup> respondent has no job or income and the 2<sup>nd</sup> respondent is a minor school going student. The 1<sup>st</sup> respondent is unable to maintain herself and the 2<sup>nd</sup> respondent and now they are depending upon the parents of the 1<sup>st</sup> respondent for their livelihood; whereas the petitioner has sufficient means to pay maintenance allowance to them as he was employed abroad and getting ₹25,000/- per month and also another sum of ₹20,000/- from his chips business at Vellamunda, Wayanad.

3. The petitioner filed a counter statement admitting the marital status of the 1<sup>st</sup> respondent and the paternity of the 2<sup>nd</sup> respondent. He denied the allegation of cruelty and harassment meted out to the 1<sup>st</sup> respondent. So also, he denied the allegation that he is employed abroad and getting ₹25,000/- per month. According to him, he had worked in Gulf country for four years only and now he is working as a coolie. It is also contended that the amount claimed

for maintenance allowance is disproportionate with his income and it is excessive.

4. After considering the rival contentions, the court below directed the petitioner to pay maintenance allowance at the rate of ₹3,000/- to the 1<sup>st</sup> respondent and ₹750/- to the 2<sup>nd</sup> respondent. The legality of the entitlement of the maintenance allowance and the correctness of the determination of the quantum of maintenance allowance are under challenge in this revision petition.

5. The learned counsel for the petitioner advanced arguments assailing the findings whereby the court below directed the petitioner to pay maintenance allowance at the rates referred above. According to the learned counsel petitioner, the quantum of maintenance allowance determined by the court below is disproportionate with the income of the petitioner and the expenses of the respondents. It is also contended that though he was returned from the

Gulf Country and now working as coolie on daily wages, the court below went wrong by relying on his pleadings in the counter statement that he could sent ₹6,50,000/- to the 1<sup>st</sup> respondent, while they were living together. According to the learned counsel, the said amount cannot be taken as a determinant factor to determine the quantum of compensation to the respondents.

6. Per contra, the learned counsel for the respondents advanced arguments to justify the findings, whereby the court below directed the petitioner to pay maintenance allowance. According to the learned counsel, the quantum of maintenance allowance determined by the court below is proportionate with the admitted income which stands proved in evidence. Though in the pleadings, the petitioner contended that the 1<sup>st</sup> respondent had refused to live with him, no evidence had been adduced to prove the said contention, in view of the

burden of proof cast on him under sub-section (4) of Sec.125(1) of the Cr.P.C. In the above view, the court below can be justified in determining the entitlement of the maintenance allowance, in favour of the respondents.

7. What remains to be considered is the correctness of the quantum of maintenance allowance only. The marital status of the 1<sup>st</sup> respondent and the paternity of the 2<sup>nd</sup> respondent are not disputed. It is also admitted that he has not paid any amount towards the maintenance allowance of the respondents after 2009. So also, he admitted that he had been working in the Gulf country for four years. As rightly observed by the court below, there are specific pleadings in the counter statement that while he was working in Gulf country, he could easily sent ₹6,50,000/- to the 1<sup>st</sup> respondent. What can be inferred from the above pleading is that while he was working in the Gulf country, he had earned sufficient

income. But, at present, his case is that he returned from the Gulf country and now working as coolie and he is getting a meagre amount as daily wages. The petitioner has no case that he is unhealthy or physically challenged or incapacitated to do any work for the livelihood of his family. A physically able bodied man is presumed to be having sufficient earning capacity to maintain his family, even if his contention that he is a coolie worker and he is working on daily wages also. As such, I am of the opinion that he can earn at least ₹400/- to ₹500/- per day in the year 2010. If that be so, I cannot find fault with the court below for determining the quantum of maintenance allowance at the rate of ₹3,000/- per month to the 1<sup>st</sup> respondent and ₹750/- per month to the 2<sup>nd</sup> respondent. The petitioner has statutory liability to pay maintenance allowance to his wife and child according to their requirements. No doubt, income of the petitioner is a determinant factor. But,

as observed above, if he is a coolie worker, he can earn ₹400/- to ₹500/- per day and in the above view, the quantum of maintenance allowance determined by the court below is just and proper, warranting no interference under the revisional jurisdiction.

This revision petition is accordingly dismissed.

Sd/-  
**(K. HARILAL, JUDGE)**

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P.S. to Judge