

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. 302 of 2010 ()

MC 991/2009 of FAMILY COURT, MALAPPURAM

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REVISION PETITIONER/RESPONDENT:

**ABDUL HAMED @ HAMEED,
S/O.ABDULLA HAJI, CHORAKUTHU HOUSE, EDAYATOOR,
MELATTUR VILLAGE, PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT.**

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

RESPONDENT/PETITIONER:

**HAFSATH, D/O.UMMER,
PULIYAKKATTIL HOUSE, AILAKKARA, VENGOOR P.O,
PATTIKKAD VIA, MELATTUR VILLAGE, PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT-679 325.**

**BY ADV. SRI.K.M.SATHYANATHA MENON
BY ADV. SRI.V.S.HARIKRISHNAN (VAZHUTHACAUD)**

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

OKB

K.HARILAL, J.

R.P(FC). No.302 of 2010

Dated this the 13th day of February, 2015.

O R D E R

The revision petitioner is the respondent in M.C. No.991/2009, which was filed by the respondent herein, who is the wife of the petitioner claiming maintenance allowance from the petitioner under Section 125 of the Code of Criminal Procedure. He is the husband of the respondent. Their marriage was solemnised on 11/1/1990 and they are blessed with two children. At the time of marriage, the petitioner was employed in Saudi Arabia and four months after the marriage he left for Saudi Arabia. Thereafter, he lost his job and came back. Thereafter, he has begun to ill-treat the respondent with cruelty and frequently harassed her on demand of money. At last, on 5/9/2007 she was driven out from her matrimonial home. Thereafter, he has been neglecting to maintain the respondent and the children and refused to pay maintenance allowance to them. According to the respondent, the petitioner has sufficient means to pay maintenance allowance to them. He is a driver by profession and owns lorries. She claimed maintenance allowance @ Rs.2,000/- per month.

2. The respondent filed a counter statement admitting the marriage as well as the paternity. According to him, he has pronounced Talak and the respondent is his divorced wife only. It is also contended that at the instance of the family members of both the petitioner and the respondent, he had given a total amount of Rs.1,25,000/- towards Iddat expenses and Mathah. So she is not entitled to get any amount towards maintenance. After considering the rival contentions, the court below directed the petitioner to pay maintenance allowance @ Rs.1700/- per month from the date of filing the M.C. The entitlement of maintenance allowance and the correctness of the quantum of maintenance allowances fixed by the court below are under challenge in this revision petition.

3. According to the petitioner, he had pronounced Talak and had paid Rs.1,25,000/- towards Iddat expenses and Mathah. The respondent contended that she does not know any such Talak and even now the marital tie subsists in the eye of law.

4. After considering the evidence on record, the court below observed that there is no reliable evidence or even attempt to adduce evidence to show that the petitioner had pronounced Talak and he had paid Rs.1,25,000/- towards Iddat expenses and

Mathah. I do not find any reason to interfere with the said finding. Since the right to maintenance is a statutory right conferred under Section 125 of the Cr.P.C., the burden is heavy on the petitioner to prove his contentions so as to decline the said right. However, a divorced wife is also entitled to get maintenance allowance under Section 125 of the Cr.P.C. Therefore, the court below can be justified in finding that the respondent is entitled to get maintenance allowance from the petitioner.

5. What remains to be considered is as to whether the quantum of maintenance allowance determined by the court below is just and proper. The petitioner himself admitted that he is a lorry driver and holding heavy licence and badge. He was well placed abroad. The court below observed that he is a healthy able-bodied man and he has no case that he is physically disabled or incapacitated to drive the vehicle. Being the driver of heavy vehicles, he is capable enough to earn Rs.400/- - Rs.500/- per day. He is liable to pay maintenance allowance to his wife in accordance with her status and day-to-day requirement proportionate with his income. In this analysis, the court below can be justified in directing the petitioner to pay maintenance

allowance @ Rs.1700/- per month. I do not find any reason to interfere with the quantum of maintenance allowance determined by the court below.

6. The learned counsel for the petitioner urged for granting six months time to pay the arrear amount due to the respondent. Having regard to the facts and circumstances of the case, the petitioner is given four months time to pay the entire arrear to the respondent provided that half of the entire arrear shall be paid within two months from today and the balance amount shall be paid within the next two months, failing which this instalment facility will stand vacated and the respondent will be at liberty to realise the entire amount in lump sum.

This R.P(FC). is dismissed.

Sd/–
(K.HARILAL, JUDGE)

okb.