

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.318 of 2010 ()

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AGAINST THE ORDER IN MC 913/2009 of FAMILY COURT, MALAPPURAM
DATED 13-05-2010
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REVISION PETITIONER/RESPONDENT :

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SULAIMAN, S/O.MUHAMMEDALI MUSALIAR(LATE)
KIZHAKKE KONATH PUTHAN VEEDU, VALIYANGADI
PULPPAPARAMBU, MALAPPURAM.**

BY ADV. SRI.A.C.SANKARA VARMA

RESPONDENT/PETITIONER :

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SUBAIDA, D/O.MUHAMMED, PARAMBAN HOUSE,
KAKKAPPARATHA, EDAKKARA P.O., PIN-679 331
MALAPPURAM DISTRICT.**

BY ADV. SRI.P.VENUGOPAL (1086/92)

**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.318 of 2010

Dated this the 13th day of February, 2015

ORDER

The petitioner is the respondent in MC No.913/2009 on the files of Family Court, Malappuram, which was filed by the respondent herein, claiming maintenance allowance under section 125 of the Code of Criminal Procedure. According to the respondent, she is the wife of the petitioner. They were married on 6.10.1995 and cohabited together till 10.12.2008. Thereafter, the petitioner neglected her and refused to pay maintenance allowance. Three children were born in the said wedlock. The respondent claimed Rs.5,000/- per month as maintenance allowance. According to her, she has no job or any other sources of income. So she is unable to maintain herself and now depending upon her other family members. Whereas, the petitioner is a fish merchant earning Rs.20,000/- per month. In addition to that, he has sufficient income from the real estate and auto mobile brokerage. He is getting Rs.10,000/- per

month in that account also.

2. The revision petitioner admitted the marriage and paternity of the children. Further he admitted that, after deserting the respondent, he married again and again. Similarly, he admitted that he is a fisher man. But according to him, his daily income is only Rs.100/- - 150/-, from fish vending. He claims that he is looking after the children and the said claim is not disputed by the wife. But, there is no offer to take the wife and look after her. The petitioner has no case that the respondent is capable of maintaining herself, so the quantum of maintenance allowance alone was under consideration before the trial court.

3. After considering the rival contentions, the court below directed the revision petitioner to pay maintenance allowance at the rate of R.1,200/- per month to the respondent. The correctness of the quantum of maintenance allowance determined by the court below is under challenge in this revision petition.

4. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent. In view of

the rival contentions, the question that arises for consideration is whether the quantum of amount directed to be paid by the petitioner to the respondent is proportionate with the income of the petitioner. In the pleadings, it is his case that he is getting Rs.100/- - 150/- only per day from the fish vending. But in evidence, he admitted that he is getting Rs.200/- per day and is going for work for 25 days a month. Further, he admitted that he is working for three hours only a day and he is having sufficient spare time to engage himself in any other profitable avocation. In view of the above submission, the case of the respondent that the petitioner is engaged in real estate and auto mobile brokerage and getting sufficient income in that account also cannot be brushed aside. As rightly held by the court below, if he is earning Rs.200/- from fish vending for three hours, certainly he can earn more amount by fish vending for more time, at least 6 hours. It is a matter of common knowledge that fish vending is a profitable avocation. At any rate, it can be safely concluded that, being a healthy able bodied man engaged in fish vending, he can earn at least Rs.500/- per

day. The petitioner himself admitted that he married another woman by name Abhida in the year 2003. The said conduct of the petitioner itself shows that, he was so confident of his income to maintain more than one wife at a time. His personal law permits him to marry more than once; but the personal law itself insists that he should maintain all wives equally by doing justice to all.

5. In the above view, the court below can be justified in directing the petitioner to pay maintenance allowances at the rate of Rs.1,200/- to the respondent. Thus the quantum of amount determined by the court below is just and proper warranting no interference under the revisional jurisdiction.

The revision petition is dismissed.

Sd/-
K.HARILAL
JUDGE

VS

/TRUE COPY/

PA TO JUDGE