

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

RPFC.No. 351 of 2010 ()

MC 380/2009 of FAMILY COURT,KOZHIKODE

REVISION PETITIONER(S)/PETITIONER:

**AJIDAS N.A., S/O.APPUKUTTAN, 33 YEARS,
16/602, 'VALIYA VEEDU', KUNNATHOORMEDU AMSOM DESOM
P.O.KUNNATHOORMEDU, PALAKKAD DISTRICT
PALAKKAD-678013.**

**BY ADVS.SRI.VINOD SINGH CHERIYAN
SRI.R.SUDHISH**

RESPONDENT(S)/RESPONDENT:

- 1. N.K.SUBITHA, D/O.SREENIVASAN N.,
AGED 27 YEARS, 38/130 B, RESIDING AT LAVANYA
ATHANIKKAL EAST, PUTHIYANGADI AMSOM, EDAKKAD
DESOM, P.QWEST HILL, KOZHIKODE-673005.**
- 2. SAKTHI SWAROOPA, AGED 2 YEARS (MINOR)
MINOR 2ND RESPONDENT REPRESENTED BY GUARDIAN
MOTHER 1ST RESPONDENT.**

BY ADV. SRI.S.SANTHOSH KUMAR (BALARAMAPURAM)

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 27-02-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

R.P(FC). No.351 of 2010

Dated this the 27th day of February, 2015

O R D E R

The petitioner is the respondent in M.C. No.380 of 2009 on the files of the Family Court, Kozhikode. The above M.C. was filed by the respondent herein, who is the wife of the petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to the respondent, she is the legally wedded wife of the petitioner and their marriage was solemnised on 30/5/2007. The 2nd respondent is the child born out of the said wedlock. At the time of marriage the 1st respondent was given 120 sovereigns of gold ornaments. But the petitioner sold the gold ornaments and misused the amount realised from the said sale. At the time of marriage she was working as a Lecturer in Vedavyasa Arts and Science College, Kozhikode. At the instance of the petitioner, she was constrained to resign the said job on his assurance that he had arranged another job for her in a college at Coimbatore. But she did not get that job as the petitioner had not taken any effort for the same. From the very beginning of the

marriage itself the petitioner had ill-treated her with cruelty both physical and mental. On demand of more dowry the petitioner used to harass her and at last she was driven out from her marital home. Though earlier she had filed an M.C., No.45/2009, before the court below claiming maintenance allowance, the same was compromised on the assurance of the petitioner that she would not be ill-treated after the reunion. Unfortunately they lived together for a short period and eventually they fell apart due to irreconcilable marital discordancy. Apprehending danger to her life she left away from the company of the petitioner. Thereafter, she filed a criminal case alleging offence punishable under Section 498A of the Indian Penal Code against the petitioner and the same is still pending. She has no job or income and she is unable to maintain herself whereas the petitioner is earning a monthly income of Rs.15,000/-. He is working as an agent of a private insurance company and conducting an establishment, namely 'Alacrity Dimension' at Palakkad. According to the respondent, the petitioner has not paid any amount towards maintenance allowance after 2/12/2009 and thereafter the petitioner never cared to look after even the child. She claimed maintenance allowance @ Rs.5,000/- to the 1st respondent and Rs.2,000/- to the 2nd respondent, per month.

2. The petitioner filed a counter statement in the M.C. admitting the marital status of the 1st respondent as wife and the paternity of the 2nd respondent as the child born in that wedlock. He denied all the allegations levelled against him in that petition. According to him, he was not given so much of gold ornaments as alleged by the 1st respondent. According to him, the 1st respondent voluntarily resigned her job. According to the petitioner, neither he nor his family members have harassed the 1st respondent, either mentally or physically, as alleged in the petition. The allegation of dowry demand and harassment is only a cooked up story. It is also contended that the 1st respondent is able enough to maintain herself and the child, as she is well qualified and working at Bajaj Alliance as Business Officer and earning Rs.8,100/- per month. Besides, she is working as an agent of HDFC-IRGO General Insurance and earning Rs.5,000/- per month in that account. According to the petitioner, the 1st respondent used to pick up quarrel with the petitioner and his family members on flimsy reasons. She insisted him to shift their habitation to another house. He denied the allegation that he is earning Rs.50,000/- per month and he is working as an agent of a private insurance company and conducting an establishment, namely Alacrity Dimension.

3. On the above pleadings the petitioner was examined as P.W.1. Exts.A1 to A4 were marked. The respondent was examined as R.W.1 and Exts.B1 and B2 were marked.

4. Heard the learned counsel for the petitioner, who advanced arguments challenging the findings of the court below whereby the court below directed the petitioner to pay monthly maintenance allowance to the respondents at the rates referred above. According to the petitioner, the court below miserably failed to evaluate the evidence on record in its correct perspective. The court below ought to have found that she is residing separately without sufficient reasons and thereby she is not entitled to get maintenance allowance from the petitioner. The quantum of amount fixed by the court below is also disproportionate with the income of the petitioner.

5. In view of the rival contentions, the question to be considered is whether there is any illegality or impropriety in any of the findings whereby the court below directed the petitioner to pay maintenance allowance as referred above.

6. Going by the impugned order it could be seen that the court below has at first considered the point whether the respondents are entitled to get maintenance allowance from the petitioner. Going by the sequence of events occurred in the

marital life from 2007 to 2009, as narrated in detail, it could be seen that the marital discordancy started from the very beginning of their married life and gradually that culminated into the first M.C. seeking maintenance allowance. Though the said M.C. was settled by compromise and they started to live together, again they fell apart and started to reside separately due to irreconcilable discordancy in marital life. Thereafter, the discordancy is seen aggravated by filing a criminal complaint alleging offence under Section 498A of the IPC. The court below elaborately analysed each and every incident occurred in their marital life and arrived at a finding that the 1st respondent is justified in living separately without forfeiting her right to claim maintenance allowance. I do not find any kind of perversity in the appreciation of evidence from which those findings have been arrived at.

7. What remains to be considered is whether the court below can be justified in the determination of quantum of maintenance allowance. According to the 1st respondent, the petitioner is earning a monthly income of Rs.50,000/- by conducting an establishment, namely Alacrity Dimension, and also from his properties, whereas she has no job or income and she is unable to maintain herself. Though the petitioner contended that

the 1st respondent is well qualified and working at Bajaj Alliance as Business Officer and earning Rs.8,100/- per month besides working as an agent of HDFC-IRGO General Insurance and earning Rs.5,000/- per month, no evidence had been adduced to substantiate the said contention. Similarly, though he contended that he is working as an agent of Aviva Life Insurance and earning a meagre salary of Rs.3,000/-, no evidence had been adduced to substantiate the said contention also. The petitioner himself admitted that he has passed Mechanical Engineering course, but further asserted that he is an agent of Aviva Life Insurance Company and he did not obtain any job after his graduation. Though he contended that his daily average income is Rs.100/- only, it cannot be believed at any stretch of imagination that a B.Tech. Engineer gets only Rs.100/- per day, when a manual labourer gets Rs.600/- per day. The petitioner has no case that he is unhealthy or physically disabled or incapacitated to do work so as to earn for the livelihood for his family. An able-bodied man is presumed to be having sufficient earning capacity to maintain his family. If that be so, a B.Tech. Engineer can very well maintain his family by the earnings from his job, whatever it be. As regards income, the contention raised by the petitioner cannot be believed in any view of the matter.

8. The respondents, as the wife and the child of a B.Tech. Engineer, have the right to live with the standard at par with that of the petitioner. He is liable to pay maintenance allowance to the respondents in accordance with the family status and their day-to-day living expenses. In the above view, I am of the opinion that the quantum of maintenance allowance fixed at the rate of Rs.1,500/- and Rs.750/- respectively to the respondents 1 and 2, is just and proper. I do not find any reason to interfere with the impugned order under challenge.

This R.P(FC) is dismissed accordingly.

Sd/–
(K.HARILAL, JUDGE)

okb.