

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. 356 of 2010 ()

**MC 1116/2009 of FAMILY COURT, MALAPPURAM
OP 1067/2009 OF FAMILY COURT, MALAPPURAM**
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REVISION PETITIONER/RESPONDENT:

**MUHAMMED ABDURAHIMAN SAQAFI,
S/O.MUHAMMED KUTTI MUSLIYAR, POONGATTIL HOUSE,
CHODALAPARA, VALAKKULAM AMSOM, PUTHUPARAMBU P.O
KOTTAKKAL POLICE STATION LIMIT.**

BY ADV. SMT.K.V.RASHMI

RESPONDENT(S)/PETITIONERS & STATE:

- 1. SALMATH, AGED 24 YEARS, D/O.MOIDUTTI,
KUNNAKKADAN HOUSE, PUTHUR AMSOM, CHERUKUNNU DESOM,
P.O.OTHUKKUNGAL, TIRURANGADI TALUK,
KOTTAKKAL POLICE STATION.**
- 2. SANIYA, AGED 2 ½ YEARS, (MINOR),
MINOR REPENDENT IS REPRESENTED BY GUARDIAN,
MOTHER IST RESPONDENT.**
- 3. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

**R3 BY PUBLIC PROSECUTOR KUM.MADHU BEN M.
R1 & 2 BY ADV. SRI.SIRAJ KAROLY**

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

OKB

K.HARILAL, J.

R.P(FC). No.356 of 2010

Dated this the 19th day of March, 2015.

O R D E R

The revision petitioner is the respondent in M.C. No.1116/2009 on the files of the Family Court, Malappuram, which was filed by the respondents herein claiming maintenance allowance from the revision petitioner under Section 125 of the Code of Criminal Procedure. According to the 1st respondent, her marriage with the revision petitioner was solemnised on 23.10.2003 and they lived together up to 2008. They were blessed with two daughters in the said wedlock. From 2008 onwards they are living separately due to matrimonial discordancy. The revision petitioner used to ill-treat her and when the physical as well as mental harassment had become intolerable, she was constrained to leave the company of the revision petitioner and left away with the second child (2nd respondent herein). She filed a complaint alleging

offence under Section 498A of the Indian Penal Code against the revision petitioner and the same is also pending. Now the elder daughter is with the revision petitioner and the younger daughter is with the respondent. According to the 1st respondent, she has no job or any sources of income and she is unable to maintain herself and the 2nd respondent. Now she is depending upon her family members. Whereas the petitioner is a religious scholar and he is a post graduate in English literature. He is working as Imam of Muhdeen Juma Masjid at Mooriyad in Kozhikode District. He had written and published several books. In addition to that, he is a real estate broker and having landed properties extending two acres. He is having a total monthly income of Rs.40,000/-. Hence, the respondents claimed maintenance allowance @ Rs.4,000/- and Rs.2,000/- respectively.

2. The revision petitioner filed a counter statement admitting the marital status of the 1st respondent and the paternity of the 2nd respondent. But he denied allegations

of cruelty and harassment levelled against him. He further admitted that he is a post graduate and employed as Imam of Muhdeen Juma Masjid at Mooriyad in Kozhikode District. When the revision petitioner was examined, he himself admitted that he had written and published several books. He produced Ext.B2 salary certificate, which shows that he is getting Rs.2,100/- per month. According to the revision petitioner, the maintenance allowance claimed by the respondents is not proportionate with his income.

3. After considering the evidence on record the learned Family Court Judge directed the revision petitioner to pay maintenance allowance @ Rs.2,500/- to the 1st respondent and Rs.800/- to the 2nd respondent from the date of petition. The legality of the entitlement of maintenance allowance and the correctness of the quantum of maintenance allowance fixed by the court below are under challenge in this revision petition.

4. The learned counsel for the revision petitioner advanced arguments challenging the findings whereby the

court below found the entitlement of maintenance allowance in favour of the respondents and fixed the quantum of maintenance allowance. According to the learned counsel, the 1st respondent refused to live with the revision petitioner and thereby she is not entitled to get maintenance allowance. So also, the quantum of maintenance allowance fixed by the court below is excessive and disproportionate with the income of the revision petitioner, which was evidenced by Ext.B2.

5. Per contra, the learned counsel for the respondents advanced arguments to justify the findings of the court below. According to him, there are sufficient grounds to live separately without forfeiting her right to claim maintenance allowance. So also, the quantum of maintenance allowance determined by the court below is proportionate with the income of the revision petitioner and the same is also just and proper.

6. In view of the rival submissions at the Bar, the question to be considered is whether there is any illegality

or impropriety in the finding that the respondents are entitled to get maintenance allowance from the revision petitioner.

7. The marital status of the 1st respondent and the paternity of the 2nd respondent are not in dispute. Admittedly, the respondents are living separately from the revision petitioner since 2008. According to the 1st respondent, when the marital discordancy culminated in physical and mental torture, she was constrained to leave the company of the revision petitioner and left away with the 2nd respondent, who was a feeding child only at that time. In the counter statement, the revision petitioner alleged that his wife is a kleptomaniac. But no evidence had been adduced to prove such an allegation affecting the dignity and status of a woman. The pendency of criminal prosecution under Section 498A of IPC is also admitted. There was no offer from the part of the revision petitioner to take back the respondents so as to resume cohabitation. The cumulative effect of the said conduct itself shows that

he is not interested to live along with the respondents and the same has also come out in evidence. Hence, the court below can be justified in the finding that the respondents have the right to live separately without forfeiting the right to maintenance and the revision petitioner is liable to pay maintenance allowance to the respondents.

8. What remains to be considered is whether the court below can be justified in quantification of maintenance allowance? Admittedly, the revision petitioner is a post graduate working as Imam of a Juma Masjid. Ext.B2 shows a salary of Rs.2,100/- only. But it has come out in evidence that the said salary alone is not the source of his income and as a religious scholar and a person holding high position in the community he is getting much more. His own evidence reveals that he has to spend nothing out of his pocket even for his marriage. Even though Ext.B2 shows Rs.2,100/- only, it is unbelievable that a post graduate in literature is working for Rs.2,100/- only. If he is getting so much amount only, much earlier, he

could have resorted to other jobs from which he could have obtained more amount to look after his wife and children. The husband has a statutory duty to pay maintenance allowance to his wife and children in accordance with their status and day-to-day requirements. When the revision petitioner is holding a high position in the society as well as in the community as a religious scholar, the respondents have the right to live with the standard of life on par with that of the revision petitioner. In the above view, I am of the opinion that the quantum of maintenance allowance fixed by the court below is just and proper, warranting no interference under the revisional jurisdiction.

9. The learned counsel for the revision petitioner sought for time to pay the arrear. Having regard to the facts and circumstances of the case, the revision petitioner is given four months time to pay the arrear provided that half of the entire arrear shall be paid within two months from today and the balance shall be paid within the next two months. In the event of default in payment of the first

instalment, this instalment facility will stand automatically vacated and the respondents will be at liberty to realise the entire arrear in lump sum.

This R.P(FC). is dismissed.

Sd/–
(K.HARILAL, JUDGE)

okb.