

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

RPFC.No. 415 of 2010 ()

AGAINST THE ORDER/JUDGMENT IN CMP 1236/2004 of FAMILY COURT, KANNUR
DATED 11.11.2010.

ARISING OUT OF MC 28/1996 of J.M.F.C., TALIPARAMBA

REVISION PETITIONER(S)/PETITIONER:

PERUMBADATH VEETIL KRISHNAN,
S/O.CHATHU, AGED 51 YEARS, PATTUVAM P.O.
PATTUVAM AMSOM DESOM, TALIPARAMBA TALUK
KANNUR DISTRICT.

BY ADVS.SRI.V.A.SATHEESH
SRI.V.T.MADHAVANUNNI
SRI.J.ABHILASH

RESPONDENT(S)/RESPONDENT & STATE:

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1. GREESHMA, D/O.LALITHA (MINOR)
AGED 14 YEARS, CHATHOTH HOUSE, SREEKANDAPURAM P.O.
SREEKANDAPURAM AMSOM DESOM, TALIPARAMBA TALUK
KANNUR DISTRICT REP. BY HER MOTHER AND GUARDIAN
CHATHOTH LALITHA, D/O.GOVINDAN, AGED 46 YEARS,
CHATHOTH HOUSE, SREEKANDAPURAM P.O.
SREEKANDAPURAM AMSOM DESOM, TALIPARAMBA TALUK
KANNUR DISTRICT- 673 001
 2. STATE REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.

R,R1 BY ADV. SRI.M.SASINDRAN
ADV. SMT. MADHUBEN - PUBLIC PROSECUTOR.

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 06-04-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

acd

P.D. RAJAN, J.

R.P.(FC) No. 415 of 2010

Dated this the 6th day of April, 2015

ORDER

The revision petitioner is the counter petitioner in M.C.No.28/1996 of the Judicial First Class Magistrate Court, Taliparamba. As per the direction in M.C.No.28/1996, a sum of ₹500 was allowed as maintenance to the minor child from 29.1.1996 to 28.9.1999 and 29.9.1999 to 28.9.2005. Even after the above direction, there was no payment from his side and he resisted the application by filing C.M.P.No.1236/2004 under S.127 Cr.P.C. and contended that he is not liable to pay the above maintenance amount. The Family Court dismissed the petition and directed the revision petitioner to deposit the amount before court within 15 days

and to pay costs to the minor child.

2. The revision petitioner u/s.127 Cr.P.C. contended that in consequence of any decision of a competent Civil Court, any order made u/s.125 should be cancelled or varied. That request was not considered by the Family Court, which amounts to illegality. In A.S.No.96/96 of the Sub Court, Payyannur observed that 'it cannot be found that the plaintiff is the father of the child born to the defendant'. Therefore, he is not liable to pay maintenance.

3. The respondents resisted the above contention and contended that this issue was considered by the Sessions Judge, Thalassery in revision petition No.21/2000 and in that judgment, it was observed that the question whether the 1st respondent was born to the revision

petitioner was not an issue, which was required to be considered by a Civil Court. Therefore, the learned Sub Judge, Payyannur observed that there is no evidence to begot the 1st respondent. In other words, there is no finding that the revision petitioner is not the father of the minor child. Therefore, since there is no finding with regard to the paternity of the minor child, the mere observation made in A.S.96/96 is not sufficient.

4. According to Section 127 of the Code of Criminal Procedure, alteration can be made in the allowance granted to a person in the changed circumstances. According to Section 127, on proof of a change in the circumstances of any person, receiving under section 125 a monthly allowance for the maintenance or interim maintenance or ordered

under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be. According to Section 127(2), where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under Section 125 should be cancelled or varied, he should cancel the order or vary the same accordingly.

5. In this context, I have considered the judgment in A.S.No.96/1996 by Sub Court, Payyannur, in which the revision petitioner was examined as PW1 in the trial Court. He was shown as the father of the child in Ext.B1

document. The wife adduced evidence and stated that on 5.12.1995 a female child was born to her at the Government Hospital, Taliparamba and to that effect Ext.B1 was produced. The learned Sub Judge without relying on any evidence observed that the claim of paternity of the child on the plaintiff is not sustainable without reliable proof on that point. Based upon that observation, the learned counsel submitted that a specific finding in A.S.96/96 is supporting him to invoke Section 127(2) of the Cr.P.C. to vacate the order passed by the learned Magistrate in M.C. But, I cannot agree with the argument. Nothing has been produced before this Court or in the Family Court to show that he was not access at the time when the mother gave birth to the child.

Therefore, I cannot discard the finding recorded by the Court in M.C.No.28/1996. There is no illegality in the finding of the Court below and therefore, the revision petitioner is directed to deposit the arrears as directed in M.C. and the this Revision Petition is accordingly dismissed.

P.D. RAJAN, JUDGE.

acd

