

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

RPFC.No. 60 of 2011 ()

MC 164/2007 of FAMILY COURT,ERNAKULAM DATED 22-04-2010

REVISION PETITIONER(S):

PAUL, AGED 44 YEARS,
S/O. CHACKO, PALATTY HOUSE, VAPPALASSERY
ANGAMALY, ERNAKULAM DISTRICT.

BY ADVS.SRI.V.S.CHANDRASEKHARAN
SMT.RENI RASHEED
SMT.D.MINI RAJAN
SMT.LEKSHMI SWAMINATHAN

RESPONDENT(S):

1. TASHI, AGED 38 YEARS,
D/O. LATE THOMAS, THARAYIL HOUSE
NEAR ST. THOMAS CHURCH, MALAYATTOOR, ERNAKULAM.

2. CHARLES, AGED 11 YEARS (MINOR)

3. CLINT, AGED 9 YEARS (MINOR)

(MINOR RESPONDENTS ARE REPRESENTED BY GUARDIAN
MOTHER IST RESPONDENT)

R1 TO R3 BY ADV. SRI.MANU ROY

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 24-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

RPFC.No. 60 of 2011

APPENDIX

PETITIONER'S ANNEXURES:

A1 : JUDGMENT DATED 22.04.2010 IN O.P.NO.805/2007 OF THE
FAMILY COURT, ERNAKULAM.

A2 : JUDGMENT DATED 22.4.2010 IN M.C.NO.164/2007 OF THE
FAMILY COURT, ERNAKULAM.

A3 : COPY OF THE MEDICAL REPORT.

A4 : COPY OF THE DEMAND NOTICE FROM THE TAHSILDAR DATED
9.11.2010.

RESPONDENTS' ANNEXURES : NIL

//True copy//

P.A to Judge

STU

K.HARILAL, J.

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R.P.(F.C) No.60 of 2011

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Dated this the 24th day of June, 2015

ORDER

The revision petitioner is the respondent in M.C.No.164/2007 on the files of the Family Court, Ernakulam, filed by the respondents herein, who are the wife and children of the petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to the 1st respondent, she is the legally wedded wife of the petitioner and the respondents 2 and 3 are the children born in that wedlock. Therefore, they are entitled to get maintenance allowance. But the petitioner has neglected to maintain them and refused to pay maintenance allowance from 23.07.2006. The 1st respondent has no job or any other sources of income and the 2nd and 3rd respondents are school going children. Thus, she is unable to maintain herself and the respondents 2 and

3; whereas the petitioner is conducting tours for the foreign travellers and earning ₹20,000/- per month. Besides, he is getting income from his family property. The petitioner resisted the said claim; but he admitted the marital status of the 1st respondent and the paternity of the respondents 2 and 3. He denied the allegation that he is getting ₹20,000/- per month from the tour business and he has cheated the 1st respondent by pretending that he is a B.Tech Engineer. It is also contended that the 1st respondent took away a sum of ₹18,730/- from the revision petitioner and left house along with the children. Thereafter, she is conducting cloth business by name "We for Garments" at Vyttila junction. It is also contended that the quantum of maintenance allowance claimed is disproportionate with his income. After considering the rival pleas and evidence let in by both parties, the court below directed the petitioner to pay monthly maintenance allowance @ ₹1,500/- each to the respondents. The legality

of the entitlement of maintenance allowance and the correctness of the quantum fixed by the court below are under challenge in this revision petition.

2. Going by the impugned order, it is seen that the marital status of the 1st respondent and the paternity of the respondents 2 and 3 are not disputed. Though he denied the allegation that he refused to pay maintenance allowance to the respondents from 2006 onwards, no evidence has been adduced to show that he is providing maintenance allowance to the respondents after 2006. So also, there is no material on record to show that he made an earnest attempt to resume the company of the respondents after 2006. Therefore, the court below can be justified in finding that the respondents are entitled to get maintenance allowance.

3. Coming to the correctness of the quantum of maintenance allowance, though the petitioner has contended that the 1st respondent is conducting business by

name "We for Garments" at Vyttila junction, no evidence has been adduced to prove the said allegation. In the absence of such evidence, it can be safely concluded that the 1st respondent has no job or any sources of income and she is unable to maintain herself and the respondents 2 and 3. The petitioner has no case that he is physically disabled or incapacitated to do work so as to earn livelihood for his family. Means contemplated under Section 125 of the Code of Criminal Procedure signify not only movable or immovable property but also the earning capacity of an able bodied man. In this view of the matter, the petitioner is liable to pay maintenance allowance in accordance with the living status, standard of living and day to day needs of the respondents. Respondents 2 and 3 are school going children studying in a private school. A substantial amount is required to meet their educational expenses. "Maintenance" includes provision for food, clothing, shelter, medical attendance, educational expenses etc. In this

analysis, I find that the quantum of maintenance allowance determined by the court below is just and reasonable and no interference is called for under revisional jurisdiction.

The revision petition is dismissed accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge