

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. 73 of 2011 ()

AGAINST THE ORDER IN MC 642/2010 of FAMILY COURT, MALAPPURAM
DATED 14-01-2011

REVISION PETITIONER/RESPONDENT:

ABDUL GAFOOR, S/O. MOOSA (LATE) ,
POOCHENGAL KUNNATH HOUSE, PANTHARANGADI P.O.
PATHINARUNGAL, PARAPPANANGADI, THIRURANGADI TALUK
MALAPPURAM DISTRICT.

BY ADVS.SRI.BABU S. NAIR
SMT.M.T.SHEEBA

RESPONDENT(S)/PETITIONERS:

1. NISHIDA, D/O. ABDURAHIMAN,
PULIKKAL HOUSE, N.K.ROAD, THIRURANGADI P.O.
THIRURANGADI TALUK, MALAPPURAM DISTRICT-PIN-676 306.

2. FATHIMA ISHANA, MINOR,
REPRESENTED BY GUARDIAN MOTHER, FIRST RESPONDENT.

R1 & 2 BY ADV. SRI.K.SHIBILI NAHA
R1 & 2 BY ADV. SMT.A.LOWSY

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

okb

K.HARILAL, J.

R.P(FC). No.73 of 2011

Dated this the 24th day of June, 2015.

O R D E R

The revision petitioner is the respondent in M.C.No.642/2010 on the files of the Family Court, Malappuram. The above petition was filed by the respondents herein, who are the wife and minor daughter of the revision petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to the first respondent, she is the legally wedded wife of the revision petitioner and the second respondent is the daughter born in that wedlock and thereby they are entitled to get maintenance from the revision petitioner. The revision petitioner refused to pay maintenance allowance to them from 2010 onwards and thereafter he totally neglected them. The first respondent has no job or any source of income and she is unable to maintain herself and the second

respondent; whereas he is a mechanic, who is conducting an automobile workshop and he is getting Rs.200/- per day.

2. The revision petitioner admitted the marital status of the first respondent and paternity of the second respondent. But he contended that on 15/3/2010 the first respondent along with the second respondent had gone to her parental house to see-off her father, who was going abroad. But, thereafter, she never returned to his house. He denied the contention that he owns an automobile workshop. According to him, he is a mechanic in the workshop run by another person. It is also contended that he is suffering from schizophrenia and Ext.B1 treatment certificate is marked in evidence. The short question that arises for consideration is, whether there is any illegality or impropriety in the entitlement of maintenance allowance found in favour of the respondents and whether the quantum fixed by the court below is justifiable?

3. The marital status of the first respondent and

the paternity of the second respondent are not disputed. It is the case of the first respondent that from the very beginning of the marriage she was treated with cruelty, both physical and mental, and thereby she was constrained to leave the company of the revision petitioner. Admittedly, criminal prosecution is pending against the petitioner for the offences punishable under Sections 294B, 323, 498A and 506(2) read with 34 of the Indian Penal Code. The spouses were separated on 15/3/2010 and ever since the revision petitioner has not cared to provide maintenance allowance to the respondents. Though the revision petitioner contended that he had sent money orders and the same was refused by the first respondent, I am of the opinion that the mere fact, that he offered some amount twice, cannot be treated as a bona fide offer to resume the company of his wife and daughter. If he had bona fide intention, he could have taken effective steps to get back the company of his wife and child. As rightly held by the court below, there was no offer from his side to take back his wife

and daughter. I do not find any reason to interfere with the findings of the court below.

4. The revision petitioner has produced Ext.B1 treatment certificate to prove that he was suffering from schizophrenia. Even if it is admitted at its face value and taken into consideration, such a treatment certificate does not exempt the revision petitioner from discharging the statutory liability under Section 125 of the Cr.P.C. unless he produces a disability certificate for the same. There is no illegality or impropriety in the finding that the respondents are entitled to get maintenance allowance.

5. Coming to the quantum of maintenance allowance, the revision petitioner himself admitted that he is a mechanically skilled labourer by profession. Even if he is working in the workshop of his friend, as claimed by him, he will get a substantial amount per month from the maintenance of his family. Except Ext.B1 he has no case that he is totally physically disabled or incapacitated to do work. The term 'maintenance' obviously includes provision for

food, clothing, shelter, medical attendance and educational expenses of the children. The husband is liable to pay maintenance allowance to his family in accordance with the family status, standard of life and day-to-day needs of his wife and children. In the above view of the matter, I find that the quantum of maintenance fixed @ Rs.2,500/- to the first respondent and Rs.1,000/- to the second respondent is just and reasonable and no interference is called for.

This R.P(FC). is dismissed.

Sd/-
K. HARILAL, JUDGE

okb.