

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

RPFC.No. 126 of 2011 ( )  
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MC 197/2010 of FAMILY COURT, MALAPPURAM

REVISION PETITIONER/RESPONDENT.:  
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MUJEEB RAHMAN K.K., AGED 38 YEARS,  
S/O.KUNHIBAVA, KATTUPARAMBIL HOUSE, MATHILAKAM P.O.  
KODUNGALLOOR.

BY ADVS.SRI.BABU KARUKAPADATH  
SMT.M.A.VAHEEDA BABU  
SRI.JAGAN ABRAHAM M. GEORGE  
SRI.K.A.NOUSHAD  
SRI.P.G.PRAMOD

RESPONDENTS/PETITIONERS 1 & 2.:  
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1. NOORJAHAN, 28 YEARS, D/O.KUNJIMUHAMMED  
ARAKKAL HOUSE, EDARIKKODE, P.O. PARAPPOOR  
KALPAKANCHERY POLICE STATION - 676 501.

2. AHAMMED AL SABATH, 4 YEARS (MINOR),  
MINOR RESPONDENT IS REPRESENTED BY GUARDIAN  
1ST RESPONDENT NOORJAHAN, 28 YEARS, D/O.KUNJIMUHAMMED  
ARAKKAL HOUSE, EDARIKKODE, P.O. PARAPPOOR - 676 501.

R1 BY ADV. SRI.K.K.MOHAMMED RAVUF

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY  
HEARD ON 13-07-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

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**K.HARILAL, J.**

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**R.P.(FC) No.126 of 2011**

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Dated this the 13<sup>th</sup> day of July, 2015

**ORDER**

The revision petitioner is the respondent in M.C.No.197/10 on the files of the Family Court, Malappuram, filed by the respondents herein, who are the wife and son of the petitioner, claiming maintenance allowance from the petitioner under Section 125 of the Code of Criminal Procedure. According to the 1<sup>st</sup> respondent, she is the legally wedded wife of the petitioner and the 2<sup>nd</sup> respondent is the son born in that wedlock. But he has neglected to maintain them and refused to pay maintenance allowance from 2009 onwards. The 1<sup>st</sup> respondent has no job or any other sources of income and she is unable to maintain herself and the 2<sup>nd</sup> respondent; whereas the petitioner is running a company by name M/s Green Indus Group company and he owns goods vehicles

and getting agricultural income and his total income would come to ₹20,000/- per month. Hence, they claimed maintenance allowance @ ₹4,000/- and ₹3,000/- respectively.

2. The petitioner admitted the relationship between the parties as claimed by the respondents. But, he denied the allegation that he has neglected them and refused to pay maintenance allowance. According to him, he is the district salesman of food items, working in M/s Green Indus Private Limited company and the company has provided him free food and a house having six rooms. Though he contended that the 1<sup>st</sup> respondent is also employed, Ext.B2 series receipts shows that the 1<sup>st</sup> respondent had attended some courses in tailoring and computer. After considering the evidence on record, the court below directed the petitioner to pay maintenance allowance @ ₹2,500/- to the 1<sup>st</sup> respondent and ₹2,000/- to the 2<sup>nd</sup> respondent per month. The correctness of the quantum of maintenance allowance

determined by the court below is under challenge in this revision petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. Both counsel advanced arguments in support of the contentions raised by the respective parties in the M.C. The learned counsel for the petitioner, vehemently, contended that the court below absolutely went wrong in considering the evidence available on record in its correct perspective. Though the petitioner has specifically given evidence to the effect that he is provided only with accommodation by the company, the court below has arrived at a finding that he is employed well and sufficient amenities are provided to him by the company. It is also contended that the quantum of amount determined by the court below is also disproportionate with the income of the petitioner and it is highly excessive.

5. Going by the impugned order, it is seen that the

marital status of the 1<sup>st</sup> respondent and the paternity of the 2<sup>nd</sup> respondent are not disputed and the petitioner himself admitted that the 1<sup>st</sup> respondent is the second wife of the petitioner. He admitted that he is working as a salesman of food items in a company by name 'Green Indus Pvt. Ltd. Company'; but no evidence has been adduced to prove the exact salary, which is being received by him from the said company. The salary is a fact which is within the exclusive knowledge of the person who receives the same alone. In that context, it is incumbent upon the petitioner to adduce evidence to show his exact salary. In the absence of evidence, an adverse inference can be drawn against the petitioner as regards the salary which is being received by him from the company. At the same time, it is pertinent to note that he himself admitted that the company has provided accommodation and free food for him. The petitioner has no case that he has been looking after the respondents after 2009 and no evidence has been adduced

to prove that he has paid any amount towards the maintenance of the respondents after 2009. In the absence of such evidence, the court below is justified in finding that the respondents are entitled to get maintenance allowance from the petitioner.

6. Coming to the quantum of maintenance allowance, as has been held above, it could be presumed that the petitioner is drawing a reasonable salary so as to maintain his family. It is pertinent to note that he himself admitted that the company has provided free food and accommodation for him and the same would show the status of his employment. It has also come out in evidence that the 2<sup>nd</sup> respondent is having heart problem and has undergone a heart operation. As rightly observed by the court below, necessarily, that child is in need of better care, very nutritious food and proper medical attendance during the period of infancy. It has come out in evidence that the petitioner is maintaining two wives at a time and the same

would show that he was confident of his income to maintain two families at a time. "Maintenance" includes provision for food, clothing, shelter, medical attendance, educational expenses etc. The husband is liable to pay maintenance allowance in accordance with the living status of the wife and children, standard of life and their day to day needs. The steep hike in the living cost caused by inflation is a universal phenomena which does not require any specific proof or evidence. Needless to say, there is a corresponding increase in the income of every earning person especially salaried employees. If that be so, the husband is liable to pay maintenance allowance in accordance with the increased living costs of his wife and children. In this view of the matter, I find that the quantum of maintenance allowance determined by the court below is reasonable, just and proper and no interference is called for under revisional jurisdiction.

7. Having regard to the facts and circumstances of

the case, the revision petitioner is given four months' time to pay the arrear, provided that, the revision petitioner shall pay half of the entire arrear within a period of 'two' months from today and the remaining balance shall be paid within the next two months. In the event of failure to pay the first instalment within the specified time, this instalment facility will stand cancelled automatically and the Family Court will be free to enforce the realisation of entire arrear in lump sum.

The revision petition is dismissed accordingly.

Sd/-  
**K.HARILAL, JUDGE.**

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P.A to Judge