

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

RPFC.No. 187 of 2011 ()

MC 820/2010 of FAMILY COURT, MALAPPURAM

REVISION PETITIONER(S)/RESPONDENT:

KABEER, 36 YEARS, S/O.HASSAN,
VAYAPPATTU, MEENADATHOOR, ONEMBRA
TANUR POLICE STATION, MALAPPURAM DISTRICT
REP.BY THE POWER OF ATTORNEY HOLDER ASHARAF.N.P.
S/O.KUNHIMOHAMMED, 35 YEARS, NAMBI PARAMBIL,
THAVALOOR POST, MALAPPURAM DISTRICT.

BY ADVS. SMT.T.D.RAJALAKSHMI
SRI.R.SREEHARI.

RESPONDENT(S)/PETITIONERS:

1. SEENATH, 25 YEARS,
D/O.MUHAMMED, VADAKKAYIL HOUSE, AL-AMEEN NAGAR
NANNAMBRA VILLAGE, THIRURANGADI. PIN-676 320.

2. HAFEEFA SHERIN, 5 YEARS (MINOR),
REPRESENTED BY GUARDIAN MOTHER ZEENATH
VADAKKAYIL HOUSE, AL-AMEEN NAGAR, NANNAMBRA
THIRURANGADI. 676 320.

BY ADVS. SRI.K.P.SUDHEER
SRI.SUMODH MADHAVAN NAIR

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 22-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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K.HARILAL, J.

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R.P.(F.C) No.187 of 2011

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Dated this the 22nd day of June, 2015

ORDER

The correctness of the quantum of maintenance granted to the respondents herein in M.C.No.820/2010 on the files of the Family Court, Malappuram is challenged in this revision petition. The revision petitioner is the husband of the 1st respondent as well as the father of the 2nd respondent.

2. The marital status of the 1st respondent and paternity of the 2nd respondent are not disputed. According to the 1st respondent, the petitioner is running a super market in Dubai and earning ₹75,000/- per month. But, according to the revision petitioner, he is a driver in Dubai with salary of 700 Drhs. The 1st respondent has given statement on oath and the power of attorney holder of the revision petitioner was examined for and on behalf of him.

The income is a fact exclusively within the knowledge of the person who earns it. Therefore, the burden is heavy on the revision petitioner to establish his exact income. But, no documentary evidence has been produced to show the same and his power of attorney holder was examined for and on behalf of him. Needless to say, he had refused to mount the box so as to give an opportunity to the opposite party to cross-examine him. In the absence of evidence from the part of the revision petitioner, the court below has drawn an adverse inference as regards the income of the petitioner under Section 114(g) of the Indian Evidence Act i.e., "That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it." But, now, the petitioner has produced a salary certificate said to have been issued by his employer in Dubai. I am of the opinion that the said salary certificate is a document, which requires to be tested and proved in accordance with the provisions of the Indian Evidence Act and the same

cannot be accepted in revision. The scope and enquiry in a revision is confined to examination of the legality, propriety and correctness of the judgment passed by the court below on the basis of the evidence produced before the court below. Therefore, the documents produced by the revision petitioner cannot be considered in this revision petition.

3. Having regard to the evidence available on record, I find that the court below is justified in drawing an adverse inference under Section 114(g) of the Indian Evidence Act against the revision petitioner as regards his salary. That apart, maintenance includes provision for food, shelter, cloths, medical attendance and educational expenses of the children. The husband is liable to pay maintenance allowance in accordance with the living status and day to day needs of his wife and children. That apart, even now, he is working in Dubai.

4. In the above view of the matter, I find that the direction to pay maintenance allowance @ ₹5,000/- to the 1st

respondent and ₹2,000/- to the 2nd respondent is reasonable, just and proper and there is no reason to interfere with the impugned order, under revisional jurisdiction.

The R.P.F.C is dismissed accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge