

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

RPFC.No. 204 of 2011 ()

AGAINST THE ORDER IN MC 12/2010 of FAMILY COURT, PALAKKAD
DATED 14-07-2011

REVISION PETITIONER(S)/COUNTER PETITIONER:

ABBAS,
S/O ABDHU, ARIPPAN VEEDU, EDATHANATTUKARA AMSOM DESOM
EDATHANATTUKARA P.O, PALAKKAD DISTRICT, PIN-678 601.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENT(S)/PETITIONERS:

1. SHAHINA,
D/O AYAMU, PUTHANKOTTU P.O
EDATHANATTUKARA AMSOM DESOM, EDATHANATTUKARA P.O
MANNARKKAD, PALAKKAD DISTRICT. PIN-678 601.

2. SAFNA (MINOR)
AGED 3 YEARS,
D/O SHAHINA, D/O AYAMU PUTHANKOTTU P.O
EDATHANATTUKARA P.O, MANNARKKAD
PALAKKAD DISTRICT. PIN-678 601, REP. BY HER
MOTHER 1ST RESPONDENT SHAHINA.

R1,2 BY ADV. SRI.K.M.FIROZ

R1,2 BY ADV. SMT.M.SHAJNA

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON
27-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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R.P.(FC). No.204 OF 2011

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Dated this the 27th day of January, 2015

ORDER

This revision petition is directed against order dated 14.7.2011 in M.C.No.12 of 2010 passed by the Family Court, Palakkad. The revisionist is the husband of the first respondent and the second respondent is the daughter born in their wedlock. Respondents herein filed M.C.12 of 2010 before the Family Court, Palakkad seeking maintenance from the revision petitioner under section 125 of the Code of Criminal Procedure. The first respondent herein contended in the petition that the monthly income of the revision petitioner herein is ₹10000/- though she deposed before the court at the time of examination that his income is actually ₹20000 and still he has been neglecting to maintain them. Per contra, the revision petitioner herein contended that he is engaged in rubber slaughtering and he is not having any permanent job or income. It is mainly contended that the

first respondent is a divorced woman and that there is no legal marriage between them and in the circumstances, she could claim maintenance only from the husband who divorced her. In other words, his contention is that he would not fall within the definition of husband as there was no legal marriage between himself and the first respondent and in the same breath, he would admit before the Court that they lived together and the second respondent is the daughter born in the their relation. To substantiate the contention that there was legal marriage and that the revision petitioner is her husband, the first respondent got herself examined as PW1 and got examined one Kunhimoosa, the Secretary of the Mahal Committee to which she belongs, as PW2. Ext.P1 is the birth certificate issued by the Special Grade Secretary who is the Registrar of Birth and Death of Mannarkad Grama Panchayat in respect of the birth of the second respondent. Evidently, in the said certificate, the revision petitioner and the first respondent are shown as the parents of the second respondent. The revision petitioner mounted the box and gave

evidence as CPW1. Ext.P1 is the copy of extract of marriage register of Pookadamchery Juma-Masjid Committee, Edathanattukara marked through PW2. It is produced to show that the marriage between the revision petitioner and the first respondent was duly registered with the said committee. Though the revision petitioner disputed the liability to maintain the respondents on the ground that there was no marriage in the eye of law between himself and the first respondent in the light of the exposition of law by the Apex Court and also by this Court in the matter of legal status of persons living together and living-in-relation the learned counsel for the first respondent submitted that when once it is admitted that they lived together for long and that a child is born in the relation, the revision petitioner could not escape the liability to maintain them raising such contentions. The Family Court has considered all relevant aspects in the light of the relevant provisions to decide the question whether the revision petitioner is liable to maintain the respondents. No legal infirmity was brought to my attention by the revision petitioner to

invite an interference with the findings on the said question. In fact, the learned counsel for the petitioner fairly submitted that the only question which invites consideration is whether the Family Court had considered the ability and capacity of the revision petitioner for fixing the rate of maintenance after finding him liable to maintain them. It is contended that the fact that the revision petitioner is engaged in rubber slaughtering and that it is only a seasonal job and therefore, he is not having any permanent income, was not properly appreciated by the Family Court. The learned counsel for the respondents relied on a decision of this Court in **Sajeev Kumar v. P.Dhanya and another [2008 (2) KHC 118]** to contend that the contention of the revision petitioner that he is not employed or did not have sufficient means to pay maintenance could not be upheld as there is a presumption that an able bodied person is obliged to work and could earn his livelihood and therefore he is having sufficient means. There cannot be any doubt with respect to the position that being unemployed person is no sustainable reason to wriggle out of the liability to pay maintenance

under section 125, Cr.P.C. The petitioner was aged 39 years at the time of filing of the revision petition and now he is aged about 44 years. In such circumstances, in the light of the said position and especially in the absence of any case for the revision petitioner that having any permanent disability it can only be taken that he is capable of doing any work and in such circumstances, he cannot wriggle out the liability to pay maintenance to the respondents. Therefore, the question is whether the amount fixed by the Family Court as maintenance is exorbitant inviting interference by invoking the revisional jurisdiction. As noticed hereinbefore, altogether an amount of ₹3000 was directed to be given as maintenance to the respondents. In fact, the direction is to pay ₹2000 to the first respondent and ₹1000 to the second respondent. The contention of the revision petitioner is that he is having another wife and three children and therefore, it may not be possible for him to give such an amount towards monthly maintenance. It is to be noted that the revision petitioner was fully aware of existence of such a family when he started marital

relationship with the first respondent and after having lived together as man and wife for a quite long time and begotten the second respondent through the first respondent, the revision petitioner cannot escape the liability to maintain the respondents. Considering the fact that the amount fixed by the Family court towards maintenance is only ₹3000 I do not find any reason to interfere with the same. The outcome of the above discussions is that there is no merit in the revision petition and it is liable to fail. Accordingly it is dismissed.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

