

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

RPFC.No. 72 of 2013 ()

MC 84/2011 of FAMILY COURT, MALAPPURAM
.....

REVISION PETITIONER/RESPONDENT:

**FAISAL,
S/O. VELLIYANGARA MUHAMMAD, VELLIYANGARA HOUSE,
SADDAM BEACH, POST PARAPPANANGADI, PIN-676303,
MALAPPURAM DISTRICT.**

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS/PETITIONERS:

- 1. THARAYIL THEKKINIYEDATH RASIYA,
D/O. SAITHALAVI, RAYIRAMANGALAM AMSOM, DESOM,
POST TANUR, MALAPPURAM DISTRICT-676302.**
- 2. JASEELA JANNATH, AGED 10 YEARS,
(MINOR), D/O. FAISAL, THARAYIL THEKKINIYEDATH HOUSE,
RAYIRAMANGALAM AMSOM, DESOM, POST TANUR,
MALAPPURAM DISTRICT-676302.**
- 3. MUHAMMED FARHAD, AGED 8 YEARS,
(MINOR), S/O. FAISAL, THARAYIL THEKKINIYEDATH HOUSE,
RAYIRAMANGALAM AMSOM, DESOM, POST TANUR,
MALAPPURAM DISTRICT-676302.
(MINOR 2ND AND 3RD RESPONDENTS ARE REPRESENTED
BY THEIR MOTHER AND GUARDIAN 1ST RESPONDENT).**

R1 TO 3 BY ADV. SRI.A.V.M.SALAHUDEEN

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON
26-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

R.P(FC). No.72 of 2013

Dated this the 26th day of March, 2015.

O R D E R

1. The petitioner is the respondent in M.C.No.84/2011 on the files of the Family Court, Malappuram and the respondents herein are the petitioners therein. The above M.C. was filed by the respondents herein claiming enhancement of maintenance allowance under Section 127 of the Cr.P.C. According to the respondents, they were granted with maintenance allowance at the rate of Rs.600/- to the 1st respondent and Rs.500/- each to the respondents 2 and 3 per month in M.C. No.403/2006. It is the case of the respondents that their day-to-day living expenses have been considerably increased and the respondents are in need of more money for their food, clothing, medicine, educational expenses, etc. The 1st respondent has no job or income and she is unable to maintain herself and the children. The 2nd respondent is studying in 5th standard and the 3rd respondent is studying in 3rd standard. A substantial amount is required to meet their educational expenses. More over, the

minor respondents are having some diseases. They claimed enhanced maintenance allowance at the rate of Rs.4,500/- to the 1st respondent, Rs.3,500/- to the 2nd respondent and Rs.2,500/- to the 3rd respondent per month. The petitioner filed objection challenging the claim for enhanced maintenance. According to him, the claim for enhanced maintenance is excessive and beyond his capacity. He is only a fisherman and not getting an income at the rate of Rs.20,000/- per month as alleged by the respondents in the M.C. It is also contended that the 1st respondent is a tailor and she is able enough to maintain herself and other respondents with the income from her job. After considering the rival pleas and evidence adduced by the 1st respondent as P.W.1 and the petitioners as R.W.1, the court below directed the petitioner to pay maintenance allowance at the rate of Rs.2,500/- to the 1st respondent and Rs.1,500/- each to the respondents 2 and 3 per month from the date of filing of the M.C. The maintainability of the claim for enhanced maintenance and the determination of the quantum of enhanced maintenance allowance are under challenge in this revision petition.

2.The learned counsel for the revision petitioner advanced arguments assailing the findings, whereby the court below granted enhanced maintenance allowance to the respondents. According to the learned counsel, no evidence has been adduced to show enhancement in the income of the petitioner. The petitioner is a fisherman having an income as that of the year when the earlier M.C. was allowed. Secondly, he pronounced Talak in the year 2003 and thereafter he married again and is having two children. So he has to pay maintenance allowance to them also. In that view of the matter, the quantum of enhanced maintenance allowance determined by the court below is disproportionate with the income of the petitioner.

3.In view of the arguments advanced at the Bar, the question to be considered is whether there is any illegality in the determination of the enhanced maintenance allowance. It is the specific case of the respondents that in the earlier M.C.No.403/2006 they were granted with enhanced maintenance allowance at the rate of Rs.600/- to the 1st respondent and Rs.500/- each to the respondents 2 and 3. According to them, the said amount is not sufficient to meet

their day-to-day living expenses. Now the day-to-day living expenses have been considerably increased and they need more money for their food, clothing, medicine, educational expenses, etc. The 2nd respondent is studying in 5th standard and the 3rd respondent is studying in 3rd standard. Inflation and corresponding increase in the living index are universal phenomena, which do not require evidence and proof. The maintenance allowance, which is being received by the respondents, was fixed in the year 2006. Indisputably, the living expenses have been increased considerably by the lapse of more than five years. The fact that the 2nd respondent is studying in 5th standard and the 3rd respondent is studying in 3rd standard is not disputed by the petitioner. Therefore, increase in the day-to-day living expenses stands proved.

4. Coming to the argument that no evidence had been adduced to show the enhancement in the income of the petitioner, I am of the opinion that, going by the statutory mandate under Section 127 of the Cr.P.C., the court can make alterations in the allowance on proof of change in the circumstances of any person receiving maintenance under Section 125 of the Cr.P.C.

A corresponding change of circumstance or enhancement of the income of the husband/father is not required to be proved under Section 127 of the Cr.P.C., if the wife/children are entitled to get maintenance allowance. It is the duty of the husband/father to provide maintenance allowance to his wife and children in accordance with their requirements or needs unless and until the court finds that he has lost his earning capacity or he is physically disabled or incapacitated to do work. A corresponding increase in the income of every person as the result of inflation is an admitted fact. In the instant case, the petitioner is a fisherman. I am of the opinion that the income of a fisherman also has been increased considerably from that of the year 2006. If that be so, he is liable to give maintenance allowance to his wife and children in accordance with the increase in their living expenses. In the above view of the matter, I am unable to countenance the argument of the learned counsel for the revision petitioner that no enhancement can be allowed in the absence of any evidence to show enhancement in the income of the husband.

5. Thirdly, the learned counsel for the revision petitioner

submitted that in the year 2003 he pronounced Talak and married another lady and now he is having two children in the second wedlock. I am of the opinion that the second marriage itself shows that he is so confident of his income to maintain two families. Even though the first wife is a divorced lady, she is entitled to get maintenance allowance as that of the wife in a subsisting marriage and divorce does not make any difference in the claim of maintenance allowance. Even though the personal law permits the petitioner to marry more than once, the said personal law insists that he has to maintain all the children equally and do justice to all. In the above view of the matter, I do not find any kind of illegality or impropriety in the impugned order under challenge, warranting interference under the revisional jurisdiction of this Court.

In the result, this R.P(FC). is dismissed.

Sd/-
(K.HARILAL, JUDGE)

okb.