

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

RPFC.NO. 292 OF 2013 ()

AGAINST THE ORDER IN MC 333/2011 OF FAMILY COURT, THALASSERY DATED 30-07-2013

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REVISION PETITIONER/COUNTER PETITIONER:

**MR.VIPIN BABU P, AGED 37 YEARS,
S/O.K.PURUSHOTHAMAN, RESIDING AT GEETHA BHAVAN,
CHAVASSERY AMSOM DESOM, MATTANNUR,
KANNUR DISTRICT, REP.THROUGH P.A HOLDER K.PURUSHOTHAMAN,
S/O.NARAYANAN, AGED 71 YEARS, RESIDING AT GEETHA BHAVAN,
CHAVASSERY P.O, THALASSERY, KANNUR DISTRICT.**

BY ADV. SRI.CIBI THOMAS

RESPONDENTS/PETITIONERS:

- 1. JISHA S., AGED 30 YEARS,
D/O.U.SUKUMARAN, RESIDING AT MELEKANDY HOUSE,
KEEZHALLUR AMSOM, KOTHERI DESOM, MATTANNUR P.O.,
THALASSERY TALUK, KANNUR DISTRICT 670 702.**
- 2. SHIGHA, AGED 2 YEARS (MINOR) REP: BY MOTHER AND GUARDIAN JISHA S. ,
THE 1ST RESPONDENT.**

R1,R2 BY ADV.SRI.C.P.PEETHAMBARAN

**THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON
21-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

R.P(FC). No.292 of 2013

Dated this the 21st day of May, 2015.

ORDER

- 1.The revision petitioner is the husband of the first respondent and the father of the second respondent. The legality of the entitlement and the correctness of the quantum of the maintenance allowance determined by the Family Court, Thalassery under Section 125(1) of the Code of Criminal Procedure in M.C. No.333/2011 are under challenge in this revision petition.
2. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents.
3. The scope of consideration in this revision is confined to the question whether there is any illegality or impropriety in the findings whereby

the court below directed the revision petitioner to pay maintenance allowance at the rate of Rs.4,000/- each per month to the respondents herein.

4. The marital status of the first respondent and the paternity of the second respondent are not disputed. According to the first respondent, the revision petitioner has neglected them by refusing to pay maintenance allowance, though he has sufficient means to pay maintenance to them. It is also contended that the revision petitioner was always suspicious about the chastity of the first respondent and he had neglected her and the child, and refused to pay maintenance allowance to them from 14/10/2009 onwards. The petitioner can very well maintain them as he is earning more than Rs.50,000/- per month as salary; whereas the first respondent has no job or income and she is unable to maintain herself and the second respondent.

Therefore, the respondents claimed Rs.5,000/- each as their monthly maintenance allowance.

5. Per contra, the revision petitioner contended that the first respondent is a woman, who left the company of the petitioner voluntarily and she is living separately on her own accord. So she is not entitled to get any maintenance from the petitioner, especially when she is leading an adulterous life. It is specifically contended that the first respondent has been leading an adulterous life with one Sunil C. Nair and she voluntarily left her matrimonial home on 12/10/2009 with the said person. The revision petitioner denied the allegation that he is earning Rs.50,000/- per month.

6. The learned counsel for the revision petitioner advanced arguments challenging the findings in the impugned order whereby the court below found that

the first respondent is entitled to get maintenance allowance. The main point canvassed by the learned counsel is that the evidence on record is sufficient to prove that the first respondent was leading an adulterous life with one Sunil C. Nair. It is also contended that the quantum of maintenance allowance determined by the court below is disproportionate with the income of the petitioner and it is excessive.

7. Going by the impugned order, it could be seen that the first respondent has maintained a specific case that the petitioner has not maintained the respondents since 14/10/2009. The petitioner has no case that he had been maintaining the respondents contrary to the averments in the petition. It is his specific case that the first respondent eloped with one Sunil C.Nair and she has maintained illegal relationship with him. According to the first

respondent, she has no illegal relationship with the said Sunil C. Nair. Though she resided with him for three days, it was due to the friendship with the wife of Sunil C.Nair and herself and there was no such unholy relationship as alleged by the petitioner. After analysing the evidence of P.W.1 and C.P.W.1 the court below found that, though the petitioner had raised a contention that the first respondent is leading an adulterous life with Sunil C. Nair, the petitioner failed to prove the said allegation so as to disentitle her maintenance allowance as provided under Section 125(4) of the Cr.P.C. It is also observed that the case that she had voluntarily left the house for maintaining unholy relationship with Sunil C. Nair is not proved by the petitioner. In the absence of any material contrary to the said finding, this Court is not inclined to unsettle the said finding under the revisional jurisdiction. Therefore, I do not find

any legal infirmity or impropriety in the finding that the first respondent is entitled to get maintenance allowance from the revision petitioner.

8. Coming to the quantum of maintenance allowance, the question to be considered is whether the quantum of allowance determined by the court below is just and proper. It is the case of the first respondent that the petitioner is getting Rs.50,000/- per month as he is working abroad. Though the petitioner contended that the first respondent is able enough to maintain herself and the second respondent, no evidence is seen adduced to substantiate the said contention. The petitioner has no case that he is physically disabled or incapacitated to do work so as to earn livelihood for his family. He admitted that he is employed abroad. But his denial is that he is getting

Rs.50,000/- as alleged by the first respondent. No reliable evidence had been produced to prove his actual income. Since the quantum of income is a matter known to the person who gets the same only, the burden is on him to prove his exact income. The second respondent is studying in LKG. According to the decision reported in Ajithkumar v. Shaima [2009 (3) KLT 452], maintenance obviously includes provision for food, clothing, education, medical attendance, etc. The husband is liable to pay maintenance allowance in accordance with the status of his wife and children and their day-to-day requirements. In the above view of the matter, I am of the opinion that the quantum of maintenance allowance determined at Rs.4,000/- each per month is just and proper warranting no interference under revisional jurisdiction.

9. The learned counsel for the revision petitioner

sought for some time to pay the arrear. Having regard to the facts and circumstances of the case, the petitioner is given four months time to pay the arrear, provided that half of the entire arrear shall be paid within two months and the remaining balance shall be paid within the next two months. In the event of failure in payment of first instalment, this instalment facility will stand automatically vacated and the first respondent is at liberty to realise the entire arrear in lump sum, in accordance with law.

This R.P(FC). is dismissed.

Sd/-
K. HARILAL, JUDGE

okb.