

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.301 of 2013 ()

**AGAINST THE JUDGMENT IN MC 159/2011 of FAMILY COURT, VATAKARA
DATED 11-10-2013**

REVISION PETITIONER/RESPONDENT :

**RAMSHEED, AGED 23 YEARS
S/O.MOIDU, VATTAKANDIYIL HOUSE
VILLYAPILLY AMSOM DESOM, VATAKARA TALUK
REP BY FAIZAL, AGED 29 YEARS, PUTHENPURAYIL HOUSE
S/O.KUNJUABDULLA, VILLYAPPILLY P O
VILLYAPILLY AMSOM DESOM VATAKARA TLAUK
(POWER OF ATTORNEY HOLDER APPOINTED AS PER ORDER
NO CMP NO 101/2012 DTD 17/7/2012**

**BY ADVS.SRI.P.M.HABEEB
SMT.FRINDA PAILY**

RESPONDENT(S)/RESPONDENTS:

- 1. MOIDU.M.P, AGED 62 YEARS
S/O.MOOSA HAJI, MEETHALEPUTHOOR HOUSE
VILLYAPILLY AMSOM DESOM, VATAKARA TALUK**
- 2. STATE OF KERALA
REP BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM**

**R1 BY ADV. SRI.R.BINDU (SASTHAMANGALAM)
R2 BY PUBLIC PROSECUTOR SRI.JOBY JOSEPH**

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

VS

K.HARILAL, J

R.P.(FC).No.301 of 2013

Dated this the 26th day of March, 2015

ORDER

The petitioner is the respondent in M.C.No.159/2011 on the files of Family Court, Vatakara, filed by the first respondent claiming maintenance allowance under Section 125(1)(d) of the Code of Criminal Procedure, from the petitioner herein. The first respondent is the father of the petitioner. According to the averments in the petition, for the last 25 years the first respondent had been working abroad and he has brought up the petitioner and arranged a job abroad and presently he is earning a monthly income of Rs.35,000/- from that employment. The first respondent is aged 62 years at the time of filing the petition. He is unable to do any work due to old age. He is in need of an amount of Rs.8000/- per month for his food, shelter, cloth etc. It is also contended that the mother of the petitioner has also filed a maintenance case against the first respondent and she has obtained an order directing the first respondent to pay

maintenance allowance at the rate of Rs.750/- per month for the maintenance of her minor child.

2. The petitioner herein resisted the claim for maintenance through a Power of Attorney Holder, by filing a counter statement, denying the claim for maintenance. It is pointed out that, though he had been working in gulf country, he had to return to his native place, due to the cancellation of Visa and the said fact is known to the respondent also. He denied the claim of the first respondent that he brought up the petitioner and other siblings. According to him, the first respondent had been in gulf country for about 25 years and he had earned a lot and all the earnings are with the first respondent himself. Now the first respondent is working in a tea-shop and he is getting Rs.500/- per day. Thus the first respondent is able enough to maintain himself. After considering the rival pleas and evidence adduced by both parties, the court below directed the petitioner to pay maintenance allowance at the rate of Rs.3,000/- per month to the first respondent. The legality of the entitlement of maintenance allowance and the correctness of the

quantum of maintenance allowance determined by the court below are under challenge in this revision petition.

3. The learned counsel for the petitioner adduced arguments assailing the findings, whereby the court below found that the first respondent is entitled to get maintenance allowance from the petitioner. The learned counsel further contends that the evidence available on record would show that the first respondent had been working in a gulf country for more than 25 years and he has earned a lot in money as well as in property. He is having 22 cents of property and also getting income from that property. In addition to that, he is a healthy man and now employed as worker in a tea-shop and getting Rs.500/- per day. All his earnings are with the first respondent himself. The sum and substance of his argument is that, the first respondent has sources of income and he is able enough to maintain himself. Further, the learned counsel drew my attention to subsequent events that the first respondent has married again and he has availed a loan from the bank by way of mortgaging a property, which stands in his name. So he is

in possession of liquid cash also. If he is able enough to maintain himself, from his own sources of income, he is not entitled to get maintenance allowance from the petitioner.

4. Per contra, the learned counsel for the respondent adduced arguments justifying the findings whereby, the court below found the entitlement of maintenance allowance in his favour. According to him, the quantum of maintenance allowance determined by the court below is just and proper and proportionate with the income of the petitioner. It is also contended that subsequent events after the disposal of the maintenance case took place cannot be looked into, while considering the legality and propriety of the findings in the impugned judgment. Moreover, the learned counsel denied the allegation that the first respondent has married again and he has availed a loan from the bank.

5. In view of the rival contentions at the bar, the question to be considered is, whether there is any illegality in the findings that the first respondent is entitled to get maintenance allowance from the petitioner.

The paternity of the petitioner is not disputed. But, it is the case of the petitioner that his father had been working abroad for more than 25 years and he had earned a lot of money and property. He has 22 cents of landed property and getting income from that property. In addition to that, he has working in a tea-shop and he is getting Rs.500/- per day. But, going by the evidence on record, it is seen that the mother of the petitioner has filed an another M.C., claiming maintenance allowance against the first respondent and in that case, the mother has deposed that she is in possession and enjoyment of the above 22 cents of property. Moreover, no evidence had been adduced in the instant case to show that the first respondent is getting income from the said property. Similarly, though the petitioner had contended that the first respondent had been working in gulf country for more than 25 years, no evidence has been adduced to show that he was in possession of liquid cash or property other than the above 22 cents of property. In this context, it is pertinent to note that, it is the case of the first respondent that he had been working abroad and by spending money earned from the

gulf country, brought up the petitioner and other children. It is also not in dispute that the petitioner is aged 62 years at the time of filing the petition. While examining in evidence, he mentioned that, he is not in a position to earn anything for his day-to-day life. The court below subsequently observed that, though he was subjected to cross examination regarding his income, nothing had been brought out to show that the first respondent is having his own income and it has come out in evidence that, presently the first respondent is residing along with his brother in his tharawad house. It is his case that he was driven out from the house, by his wife and the petitioner. As rightly observed by the court below, it is pertinent to note that the evidence adduced by the first respondent has not been controverted by the petitioner by stepping into the witness box. On an overall appreciation of the findings, I am of the opinion that there is no illegality or impropriety in the findings that the first respondent is entitled to get maintenance allowance from the petitioner.

6. What remains to be considered is, whether there is any illegality in the determination of the quantum

of maintenance allowance. Admittedly, the petitioner had been working in a gulf country. Though the first respondent contended that, the petitioner is getting Rs.35,000/- per month. No evidence had been adduced to show the receipt of the said amount. But income is a fact which remains in the special knowledge of the person who receives it only. In the absence of any positive evidence to show the exact income, which is being received by him, an adverse interference can be drawn against the petitioner, to the extent that he has sufficient earning capacity. It is also pertinent to note that the petitioner has no case that he is unhealthy or physically disabled or incapacitate to do any work to earn his livelihood. If that be so, he is presumed to be an able bodied man with sufficient earning capacity. In this analysis, the court below can be justified in directing him to pay maintenance allowance at the rate of Rs.3,000/- per month. The quantum of maintenance allowance determined by the court below is just and proper warranting no interference under revisional jurisdiction.

7. Coming to the subsequent events highlighted

by the learned counsel for the petitioner, I am of the view that the subsequent events after the disposal of the M.C. cannot be taken into consideration while determining the legality and correctness of the findings in the impugned judgment under challenge. But, at the same time, needless to say that, if the subsequent events show that the first respondent has sufficient income or he is able enough to maintain himself by his own income, it is for the first respondent to seek proper remedies provided under Section 127 of the Cr.P.C. alleging change of circumstances. But those aspects cannot be considered in this revision petition.

In the result, this revision petition is dismissed accordingly.

Sd/-
K.HARILAL
JUDGE

VS

/TRUE COPY/

PA TO JUDGE