

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

RPFC.No. 4 of 2015 (E1)

AGAINST THE ORDER IN MC 122/2012 of FAMILY COURT, MUVATTUPUZHA
DATED 14-10-2014

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REVISION PETITIONER(S)/PETITIONERS:

1. SINDHU P.A, AGED 34 YEARS,
D/O THANKAPPAN, PUTHIYEDATH HOUSE, EDAYAR P.O.,
KOOHATTUKULAM, ERNAKULAM DISTRICT.

2. VYSAKH (MINOR), AGED 9 YEARS,
S/O SINDHU, PUTHIYEDATH HOUSE, EDAYAR P.O.,
KOOHATTUKULAM, ERNAKULAM DISTRICT,
REPRESENTED BY HIS MOTHER SINDHU P.A.

BY ADVS.SRI.K.S.ARUN KUMAR
SMT.M.N.MAYA

RESPONDENT(S)/RESPONDENT:

VIJI P.K (VIJIDHARAN),
S/O KRISHNAKUMAR KUTTY, PARATHAZHATHU HOUSE,
VILANGANNOOR, CHENNAYAPARA P.O.,
PEECHI, THRISSUR DISTRICT 680653.

BY ADV. SRI.M.PREMCHAND

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 22-05-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

C.R.

K.HARILAL, J.

R.P(FC). No.4 of 2015

Dated this the 22nd day of May, 2015.

O R D E R

The revision petitioners are the wife and son of the respondent. They filed this revision petition challenging the enhanced quantum of maintenance allowance determined by the Family Court, Muvattupuzha, under Section 127 of the Code of Criminal Procedure, in M.C.No.122/2012. Earlier, in M.C.No.161/2004, the respondent was directed to pay maintenance allowance @ Rs.750/- per month to the second revision petitioner and in R.P(FC).No.696/2007, he was further directed to pay maintenance allowance @ Rs.1,250/- per month to the first revision petitioner. According to the revision petitioners, by the passage of time the circumstances had changed the cost of living, which have gone up and

they are finding it difficult to make both ends meet. The first revision petitioner needs Rs.6,000/- per month to meet her basic needs such as food, shelter, clothing, medicine, etc. The second revision petitioner needs an amount of Rs.4,000/- per month to meet his basic needs including his educational expenses. On the other hand, according to them, there is a substantial increase in the income of the respondent after 2004. Therefore, they are entitled to get enhanced maintenance allowance in accordance with the increase in the income of the respondent. The respondent is earning Rs.20,000/- per month from various sources.

2. Per contra, the respondent contended that the first revision petitioner is employed as a Nurse and she is able enough to maintain herself and the second revision petitioner. In the year 2009, she left for Kuwait as she was employed there and she was getting a salary of Rs.75,000/- per month. It is also contended

that he is not having an income of Rs.20,000/- as alleged by the petitioners. He is a coolie worker getting Rs.450/- per day. Therefore, the claim for enhancement is liable to be dismissed.

3. After considering the rival contentions, the court below directed the respondent to pay maintenance allowance at the rate of Rs.2,500/- per month each to the revision petitioners from the date of the order. The revision petitioners contend that the quantum of enhanced maintenance allowance determined by the court below is inadequate and insufficient to make both ends meet.

4. Heard both sides.

5. The learned counsel for the revision petitioners submits that the enhancement made by the court below is insufficient and disproportionate with the increase in the income of the respondent, after 2004. The court below has miserably failed to consider the steep hike in the living costs consequent

on inflation, after 2004. But the learned counsel for the respondent opposed the said arguments advanced by the learned counsel for the revision petitioners and contended that the revision petitioners have miserably failed to prove the increase in the cost of living and corresponding increase in the income of the respondent. So, the Family Court ought not have enhanced the quantum of maintenance allowance.

6. The short question that arises for consideration is, whether the enhancement of the quantum of maintenance allowance under Section 127 of the Cr.P.C. is proper and justifiable in the absence of any specific or strict evidence to prove increase in the living cost of the wife and children and corresponding increase in the income of the husband. Put it differently, whether strict proof of increase in the living costs of the wife and children and corresponding increase in the income of the husband are required to enhance the quantum of maintenance

allowance on an application under Section 127 of the Cr.P.C.

7. Steep hike in the living index consequent on inflation is a universal phenomenon, which does not require specific and strict proof. Obviously, it is a change of circumstance contemplated under Section 127 of the Cr.P.C. and the same is judicially noticeable also. Needless to say, there is a corresponding increase in the income of every earning person, particularly, in the case of employees and pensioners, in accordance with the increase in living index. If that be so, the husband, who had already been found liable to pay maintenance allowance under Section 125(1) of the Cr.P.C. to his wife and children, is invariably liable to pay enhanced maintenance allowance to them under Section 127 of the Cr.P.C., considering the passage of time alone after the earlier order, unless it is proved that the husband's earning capacity has been reduced considerably or

lost, after passing the first order granting maintenance allowance. So, strict proof of increase in living costs or corresponding increase in the income of the husband is not required to establish the right to get enhancement in maintenance allowance. Efflux of time after earlier order is the decisive factor, which determines the quantum of enhancement. According to Section 14 of the Family Court Act, 1984, the court can receive as evidence information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872. The clinching evidence of increased expenditure and income may make the claim well founded and undeniable, but the court may not insist the same invariably in all cases.

8. Since the right to maintenance allowance under Section 125 of the Cr.P.C. is a continuing claim, which requires to be recurringly satisfied by the

husband/father in accordance with the needs of the wife and children, the claim for enhancement of quantum of amount under Section 127 of the Cr.P.C. also is to be construed liberally as well as objectively enabling to meet the increased cost of living and educational expenses, which go beyond control day by day. At this juncture, it is pertinent to note that the income that could be earned by the wife, after desertion by doing some job to survive somehow, cannot be taken into account to consider ability to maintain herself. It is to be remembered that the wife, who left her matrimonial home with children for sufficient cause, is entitled to lead a life with the standard of life as that of the husband/father in the similar manner as she would have lived in the house of her husband/father.

9. The respondent himself admitted that he is a coolie worker and getting only Rs.450/- per day. But, as rightly observed by the court below, I am unable to

accept the said contention. It is a matter of common knowledge that in Kerala, an ordinary manual labourer is getting wages at the rate of Rs.600/- to 700/- per day and if he has mind to work, such works are in abundance also. The respondent has no case that his earning capacity has been reduced after 2004. The word "means" does not signify only movable or immovable property or salary. It means and includes earning capacity of a healthy able bodied man also. In the absence of reduction in earning capacity, the respondent is liable to pay maintenance allowance in accordance with the increase in the quantum of his income. The term "maintenance" provided under Section 125 of the Cr.P.C. means and includes provision for food, clothing, residence, education, medical attendance, etc. The wife and children have rights to get increased maintenance allowance so as to meet their daily requirements. In that view of the matter, I find that the quantum of enhanced

maintenance determined by the court below is inadequate to meet the requirements of the revision petitioners. Consequently, the quantum of maintenance allowance will stand re-fixed and the respondent is directed to pay maintenance allowance to the revision petitioners at the rate of Rs.3,000/- each per month.

This R.P(FC). is allowed.

Sd/-
K. HARILAL, JUDGE

okb.

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P.A. to Judge