

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

RPFC.No. 5 of 2015

AGAINST THE ORDER IN MC 40/2012 of FAMILY COURT,
NEDUMANGAD DATED 9/10/2014.

REVISION PETITIONER(S)/RESPONDENT :

RAJESH @ NIRAM, AGED 35 YEARS,
S/O. RAJENDRAN, RATHEESH BHAVAN, CHARUVALLYKONAM,
VANDA, KARIPPOOR P.O., NEDUMANGAD,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.M.DINESH

RESPONDENT(S)/PETITIONERS :

1. SREEJA, AGED 27 YEARS,
D/O. VIJAYAMMA, VIJAYA BHAVAN, MULAMUKKU,
CHEKKAKONAM P.O., KARAKULAM VILLAGE,
THIRUVANANTHAPURAM DISTRICT-695 564.

2. DEVIKA (MINOR), AGED 6 YEARS,
D/O. SREEJA, REPRESENTED BY HER MOTHER SREEJA
1ST RESPONDENT, VIJAYA BHAVAN, MULAMUKKU,
CHEKKAKONAM P.O., KARAKULAM VILLAGE,
THIRUVANANTHAPURAM DISTRICT-695 564.

BY ADV. SRI.G.SUDHEER

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 23-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No.5 of 2015

Dated this the 23rd day of June, 2015

ORDER

The revision petitioner is the respondent in M.C. No.40 of 2012 on the files of the Family Court, Nedumangad, filed by the respondents herein, who are the wife and daughter of the revision petitioner, claiming maintenance allowance under Sec.125 of the Code of Criminal Procedure. According to the 1st respondent, she is the legally wedded wife of the revision petitioner and the 2nd respondent is the child born in that wed-lock. According to the 1st respondent, the revision petitioner wilfully neglected to maintain them and refused to provide maintenance allowance to them from 13/1/2012 onwards. The 1st

respondent has no job or income and she is unable to maintain herself and the 2nd respondent; whereas the revision petitioner is a Contractor by profession and getting a monthly income of ₹60,000/-.

2. The revision petitioner admitted the marital status of the 1st respondent as well as the paternity of the 2nd respondent; but he contended that the 1st respondent deserted him and he denied the allegation that he wilfully refused to pay maintenance allowance to the respondents. According to him, he is undergoing treatment for the disease in vertebral column. To fortify the disability alleged by him, he has produced Ext.R1 medical receipt. After considering the rival pleas supported by the respective evidence adduced by both parties, the court below directed the revision petitioner to pay maintenance allowance at the rate of ₹4,000/- per month to the 1st respondent and ₹1,000/- to the 2nd respondent. The legality of the entitlement of the maintenance allowance and the correctness of the

quantum of maintenance allowance are under challenge in this revision petition.

3. The learned counsel for the revision petitioner advanced arguments assailing the findings in the impugned order; whereby the court below directed the revision petitioner to pay maintenance allowance at the rate as referred above. The main thrust of the argument is that the petitioner is physically disabled and incapacitated to do any work due to his disease in the vertebral column. Therefore, he is not liable to pay maintenance allowance to the respondents.

4. Going by the impugned order, it is seen that the revision petitioner has produced Ext.R1 medical receipt to establish his physical disability. After considering Ext.R1, the court below found that from Ext.R1, it cannot be said that the revision petitioner is permanently disabled to do his work. Ext.R1 goes to the extent that he is unable to do continuous work or drive a long time. As rightly held by the court below, Ext.R1 is not sufficient to exonerate the revision

petitioner from discharging his statutory liability under Sec.125 of the Cr.P.C. The revision petitioner has no case that he has been maintaining the respondents from 2012 onwards and no evidence has been adduced to substantiate any kind of payment made after 2012. Therefore, I find that the court below is justified in finding the entitlement of maintenance allowance in favour of the respondents.

5. Coming to the quantum of maintenance allowance, as has been held above, the petitioner has miserably failed to prove that he is physically incapacitated to do work. Admittedly, the 2nd respondent is a minor school going student. The 1st respondent has no job or income and she is totally unable to maintain herself and no evidence has been brought about to the contrary. The husband is liable to pay maintenance allowance to the wife and children in accordance with their standard of living, living status and the day-to-day needs. In that view of the matter, I find that the quantum of maintenance

allowance determined by the court below is reasonable, just and proper and no interference is called for under Sec.125 of the Cr.P.C.

6. The learned counsel for the revision petitioner sought for some time to pay the arrear. Having regard to the facts and circumstances of this case, the revision petitioner is given four months time to pay the arrear, provided that half of the entire arrear shall be paid within two months from today and the remaining balance shall be paid within the next two months. In the event of failure to pay the 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 RP(FC) is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

Nan/

//true copy//

P.S. to Judge