

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

RPFC.No. 19 of 2015 ()

AGAINST THE ORDER IN MC 393/2012 of FAMILY COURT, NEDUMANGAD
DATED 19-06-2014

REVISION PETITIONER/RESPONDENT:

SHINU.S., AGED 37 YEARS,
S/O.G.SASIKUMARAN NAIR, KULAKKIYIL HOUSE,
ANAD P.O., NEDUMANGAD, THIRUVANANTHAPURAM.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR
SRI.ARJUN RAGHAVAN

RESPONDENT(S)/PETITIONERS:

1. MRIDHULA.M.R., AGED 29 YEARS
W/O.SHINU, MATHA BHAVAN, THUMBICHANI,
VENKODE P.O., VATTAPPARA VILLAGE, NEDUMANGAD,
THIRUVANANTHAPURAM - 695 544.

2. ADITHYAN M.S (MINOR), AGED 4 YEARS,
S/O.SHINU, MATHA BHAVAN, THUMBICHANI,
VENKODE P.O., VATTAPPARA VILLAGE, NEDUMANGAD,
THIRUVANANTHAPURAM-695 544. (REPRESENTED BY HIS MOTHER
MRIDHULA, THE IST RESPONDENT).

R1,R2 BY ADV. SRI.T.A.UNNIKRISHNAN
R1,R2 BY ADV. SRI.K.SATHEESH KUMAR

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 12-06-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.19 of 2015

Dated this the 12th day of June, 2015.

O R D E R

The revision petitioner is the respondent in M.C.No.393/12 on the files of the Family Court, Nedumangad. The above petition was filed under Section 125 of the Code of Criminal Procedure by the respondents herein, who are the wife and son of the petitioner, claiming maintenance allowance. According to the first respondent, she is the legally wedded wife of the petitioner and the second respondent is the son born in that wedlock. The petitioner has neglected to maintain them and refused to pay maintenance allowance to them from 27.6.2010 onwards. The first respondent has no job or any source of income and she is unable to maintain herself and the second respondent; whereas the petitioner is a Government servant drawing a monthly salary of Rs.40,000/-.

2. The revision petitioner admitted the marital status of the first respondent and paternity of the second respondent. It is also admitted that he is working in Civil Supplies Corporation. But he contended that the first respondent is leading an adulterous life and hence she is not entitled to get any amount by way of maintenance allowance. According to him, he is not getting Rs.40,000/- as monthly salary. He is getting Rs.13,210/- only as net salary. According to the petitioner, the first respondent deserted him and thereafter she is leading an adulterous life. It is also contended that he is suffering from cardiac disease. After considering the rival pleas and evidence on record, the court below directed the petitioner to pay maintenance allowance @ Rs.5,000/- to the first respondent and Rs.2,500/- to the second respondent. The legality of the entitlement of maintenance allowance and the correctness of the quantum fixed by the court below are under challenge in this revision petition.

3. Heard the learned counsel for the revision

petitioner, who advanced arguments assailing the findings whereby the court below directed the revision petitioner to pay maintenance allowance as referred above. The sum and substance of the arguments is that the court below has not considered the income of the revision petitioner and the entitlement of maintenance allowance in its correct perspective.

4. The marital status of the first respondent and the paternity of the second respondent are not disputed. Admittedly, the petitioner is working in Civil Supplies Corporation, whereas there is no evidence to show that the first respondent is having any source of income. Though the petitioner contended that the first respondent is leading an adulterous life and thereby she is not entitled to get maintenance allowance under Section 125(4) of the Cr.P.C., no evidence had been adduced to substantiate the said contention.

5. As rightly observed by the court below, strict proof of adultery is necessary and the court is bound to enquire into the allegations made by husband

against wife. The onus is upon the husband to prove the allegations of adultery against the wife. In the present case, the revision petitioner failed to prove the allegations of adultery levelled against the first respondent wife. Therefore, I find that the entitlement of maintenance allowance determined in favour of the respondents is justifiable and no interference is called for.

6. Coming to the quantum of maintenance allowance, admittedly the petitioner is getting Rs.13,210/- as monthly salary. The husband is liable to pay maintenance allowance to his wife and children in accordance with their standard of life, living status and day-to-day requirements. 'Maintenance' under Section 125 of the Cr.P.C. obviously includes provision for food, clothing, shelter, medical attendance and educational expenses of the children, etc. In the above view of the matter, I find that the quantum of maintenance allowance determined by the court below is just and reasonable and there is no reason to interfere with the said finding under revisional

jurisdiction.

7. At last, 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 revision 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 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 R.P(FC) is dismissed.

Sd/-
K. HARILAL, JUDGE

okb.