

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

RPFC.No. 20 of 2015 ()

AGAINST THE ORDER IN MC 253/2013 of FAMILY COURT, TIRUR DATED
05-11-2014

REVISION PETITIONER/RESPONDENT:

JAFAR NALAKATH, AGED 34 YEARS
S/O. MUHAMMED, NALAKATH HOUSE, ARAKKAPARAMBU ROAD
KARINKALLATHANI, PERINTHALMANNA P.O., MALAPPURAM
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER BAVA
S/O. MOHAMMED, AGED 43 YEARS, THACHANATTUKARA
MANNARKKAD TALUK, PALAKKAD.

BY ADVS.SRI.C.M.KAMMAPPU
SRI.MANSOOR.B.H.

RESPONDENT/PETITIONER:

JUBAIRIYA, AGED 31 YEARS
D/O. MOHAMMED, CHERAKATHODI HOUSE, MARAVATTAM
KADAMPUZHA P.O., KOTTAKKAL, MALAPPURAM-679325.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 27-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

R.P.(F.C)No.20 of 2015

Dated 27th January, 2015

ORDER

This revision petition is filed against the order dated 5.11.2014 in M.C.No.253 of 2013 of Family Court, Tirur filed under Section 125 of the Code of Criminal Procedure for maintenance by the respondent herein. It was filed mainly with the following averments:-

The marriage of the revision petitioner with the respondent herein was conducted on 7.3.2010 and thereafter she was living with him at her residence. However, from 11.4.2011 onwards the revision petitioner stopped visiting her and also neglected to maintain her. The revision petitioner is conducting a barber shop and he is earning ₹ 50,000/- per month and the respondent is unemployed and unable to maintain herself. Hence, she claimed monthly maintenance at the rate of ₹ 5,000/-. The revision petitioner herein entered appearance and contested the matter through his power of attorney holder. In the counter affidavit it is stated that the marriage was conducted without the consent of the revision petitioner and the revision petitioner had never lived with the respondent. The contention that the revision

petitioner is conducting barber shop was denied and it is stated therein that the revision petitioner is a driver in Soudi Arabia and he is getting only ₹ 10,000/- per month. That apart, it is stated that the respondent is working as a Nursing Assistant and she is getting income and therefore, she is able to maintain herself. It is also stated therein that the respondent got two children in her previous marriage and that the revision petitioner has got wife and three children. At the same time and in the same breath the revision petitioner stated that earlier the respondent herein told him that she required a marriage certificate and sought his help and believing her words a *Nikah* was conducted under duress and threat. It is also stated therein that he had not informed this incident to anyone to avoid a shameful situation. At the same time, he would admit that he pronounced Talaq of the respondent and given a letter to the Mahal Committee on 16.8.2010 and thereafter he went abroad and returned only on 26.11.2012. The respondent herein/the petitioner therein was examined as PW1 and the power of attorney holder of the revision petitioner herein was examined as RW1. Ext.B1 is the copy of the passport of the revision petitioner. After analysing the evidence of both parties the Family Court found that the revision petitioner herein is liable to maintain the respondent and fixed an amount of ₹ 3,000/- as the monthly maintenance. It is challenging the

said order that the captioned revision petition has been filed.

2. I have heard the learned counsel for the petitioner.

3. Virtually, the petitioner reiterated the contentions raised before the Family Court. At the very outset, it is to be noted that the revision petitioner has not mounted the box in this case and the evidence on his side was tendered only by his power of attorney holder. I have already taken note of the rival contentions. Evidently, the revision petitioner has taken up a contention in the counter affidavit filed before the Family Court that he had pronounced Talaq of the respondent and given a letter to that effect before the Mahal Committee on 16.8.2010 and thereafter gone abroad on 17.1.2011. Even while disputing the marriage the revision petitioner took a paradoxical stand that he conducted the marriage at the request of the respondent herein. Thus, it is evident that virtually, the revision petitioner admitted the fact that marriage was conducted and if there was no marriage I am at a loss to understand under what circumstances the revision petitioner pronounced Talaq. The evidence on the side of the revision petitioner would go to show the fact that he pronounced Talaq and given a letter to that effect to the Mahal Committee on 16.8.2010. If there was no marriage there was no necessity for pronouncing Talaq. In the said circumstances, I do

not find any legal infirmity in the finding arrived at by the Family Court from the evidence on record that the revision petitioner is liable to maintain the respondent herein. Now, the question to be considered is whether the amount of monthly maintenance fixed by the Family Court at ₹ 3,000/- requires an interference by invoking the revisional jurisdiction. The impugned order would reveal that even the evidence adduced on behalf of the revision petitioner would reveal his employment abroad. He is working there as driver. The learned counsel for the revision petitioner submitted that the revision petitioner has subsequently returned home. Whatever that be, there is no dispute to the fact that the revision petitioner is an able bodied man and taking into account the cost of living it cannot be said that the amount of ₹ 3,000/- per month fixed by the Family Court is exorbitant warranting an interference by the revisional court. In view of the discussion as above, I do not find any merit in the challenge against the order dated 5.11.2014 in M.C.No.253 of 2013.

In the result, this revision petition has to fail and accordingly, it is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS