

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. 36 OF 2015 (E1)

MC 431/2013 OF FAMILY COURT, TIRUR
...

REVISION PETITIONER(S)/RESPONDENT:

**PADATHUPEEDIYAKKAL JAMALUDHEEN,
S/O. MUHAMMED, TIRUR TALUK, ATHAVANAD AMSOM,
ATHAVANAD DESOM, P.O. ATHAVANAD PARA - 676 31,
PARITHI, MALAPPURAM DISTRICT.**

BY ADV. SRI.P.M.RAFIQ

RESPONDENT(S)/PETITIONERS:

- 1. PUTHENPEEDIYAKKAL MYMOONA,
D/O. KUNHIMUHAMMED, POTHANUR AMSOM, NARIPPARAMBU DESOM,
PONNANI TALUK, MALAPPURAM DISTRICT-676121.**
- 2. SHAHANAS,
AGED 15 YEARS, (MINOR),
REPRESENTED BY 1ST RESPONDENT MOTHER,
PUTHENPEEDIYAKKAL MYMOONA, D/O. KUNHIMUHAMMED,
POTHANUR AMSOM, NARIPPARAMBU DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT-676121.**
- 3. SHAHAJAS, AGED 11 YEARS, (MINOR)
REPRESENTED BY 1ST RESPONDENT MOTHER,
PUTHENPEEDIYAKKAL MYMOONA, D/O. KUNHIMUHAMMED,
POTHANUR AMSOM, NARIPPARAMBU DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT-676121.**
- 4. SHAHABAS, AGED 16 YEARS, MINOR,
REPRESENTED BY 1ST RESPONDENT MOTHER,
PUTHENPEEDIYAKKAL MYMOONA, D/O. KUNHIMUHAMMED,
POTHANUR AMSOM, NARIPPARAMBU DESOM, PONNANI TALUK,
MALAPPURAM DISTRICT -676121.**

R1-4 BY ADV. SRI.C.A.CHACKO

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

OKB

K.HARILAL, J.

R.P(FC).No.36 of 2015

Dated this the 22nd day of May, 2015.

O R D E R

1.The revision petitioner is the husband of the first respondent as well as the father of the respondents 2 to 4. The respondents filed the above M.C. under Sections 125 and 127 of the Code of Criminal Procedure claiming enhanced maintenance allowance for the respondents 1 to 3 and maintenance allowance for the fourth respondent. They claimed enhanced maintenance allowance at the rate of Rs.5,000/- to the first respondent and Rs.3,000/- each to the respondents 2 to 4.

2.According to the respondents, the maintenance allowance granted by the court in M.C. No.1130/2009 is not sufficient to meet the increased day-to-day living expenses. On the other hand, the petitioner is getting Rs.30,000/- per month as salary. Therefore,

he is liable to pay enhanced maintenance allowance at the rates referred above to the respondents 1 to 3 in accordance with the present living index. It is also claimed that the fourth respondent, for whom no claim for maintenance was raised in the earlier M.C., is also entitled to get maintenance allowance afresh in accordance with his standard of living.

3.Per contra, the revision petitioner contended that the first respondent is not entitled to get maintenance allowance as she is a divorced wife only. It is also contended that the first respondent is working as a tailor and earning Rs.4,000/- per month. The petitioner is a cardiac patient, who had undergone angioplasty at E.M.S. Hospital, Perinthalmanna. Thereafter he is not in a position to do any job for providing maintenance to his wife and children. Consequently, the respondents are not entitled to get maintenance allowance from him.

4. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents. The short question that arises for consideration is whether the respondents 1 to 3 are entitled to get enhanced maintenance allowance and whether the fourth respondent is entitled to get maintenance allowance.

5. Going by the impugned order, it is seen that in the earlier M.C.1130/2009 the petitioner was directed to pay maintenance allowance at the rate of Rs.907/- to the second respondent and Rs.700/- to the third respondent as monthly maintenance allowance. It is also seen that in the earlier M.C.No.328/2005, the petitioner was directed to pay maintenance allowance at the rate of Rs.500/- to the first respondent and Rs.400/- each to the respondents 2 and 3. The learned counsel for the revision petitioner contended that the petition was not

maintainable due to the incorporation of Sections 125 and 127 of the Cr.P.C. in a single petition. But I am unable to countenance the said argument on the reason that the matter in issue involved in the M.C. is one and the same and no prejudice will be caused to the petitioner by a joint trial of the claim for enhanced maintenance with the claim for a fresh maintenance allowance.

6. Steep hike in the living index consequent on the inflation is a universal phenomenon which does not require proof. So also there is a corresponding increase in the income of every earning person in accordance with the said inflation. The revision petitioner has contended that he had undergone angioplasty surgery and thereafter he is unable to do any work so as to provide maintenance to his family. Though he had raised such a plea, no medical evidence or certificate from a competent authority

had been produced to establish that there is a reduction in the earning capacity of the petitioner. Merely on the reason that the petitioner had undergone an angioplasty surgery it cannot be presumed that there is a reduction in the earning capacity of the petitioner unless the same is established by documentary evidence. In the instant case, no document or medical evidence had been adduced to establish reduction in earning capacity.

7. Admittedly, the petitioner is a driver by profession.

The first respondent has contended that the petitioner is getting Rs.30,000/- per month. When P.W.1 was cross-examined by the respondent, this aspect was not challenged. As rightly held by the court below, even if he is working as a bus driver for 20 days in a month, he may get Rs.20,000/- per day. The wife and children have the right to get

maintenance allowance in accordance with their standard of life, living status and day-to-day requirements. Maintenance includes provision for food, clothing, residence, education, medical attendance, etc. In that view of the matter, I find that there is no illegality or impropriety or procedural error in the finding that the first respondent is entitled to get Rs.2,000/- and the respondents 2 to 4 are entitled to get Rs.1,500/-. There is no illegality or impropriety in the findings whereby the court below granted enhanced maintenance allowance. Consequently, this R.P(FC). is dismissed.

8.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 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 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.

Sd/-
K. HARILAL, JUDGE

okb.