

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

RPFC.No. 49 of 2015

AGAINST THE ORDER IN OP 58/2013 AND M.C.NO.736/13 of
FAMILY COURT, TIRUR.

REVISION PETITIONER(S)/RESPONDENT:

SHAHUL HAMEED, AGED 38 YEARS,
S/O.MUHAMMED KOYA, PORAKKAT HOUSE, THENHIPALAM,
CHENAKKALANGADI P.O., TIRURANGADI TALUK,
PIN-673 636.

BY ADV. SRI.E.NARAYANAN

RESPONDENT(S)/PETITIONERS & STATE:

1. JAMSHEERA,
D/O.BEERANKUTTY, ORIKKAL HOUSE, ATHRUSSERI,
KAVAPPURA.P.O., TIRUR. 676 001.

2. SHIBILA, AGED 9 YEARS,
D/O.SHAHUL HAMEED, -DO- -DO-

3. SIMLA, AGED 7 YEARS,
D/O.SHAHUL HAMEED, -DO- -DO-

4. MUHAMMED, AGED 4 YEARS
S/O.SHAHUL HAMEED, -DO-

5. AHAMMED,
AGED 1 1/2 YEARS, S/O.SHAHUL HAMEED
-DO- -DO-

[RESPONDENTS 2 TO 5 ARE MINORS AND ARE
REPRESENTED BY THEIR MOTHER AND GUARDIAN
JAMSHEERA 1ST RESPONDENT HEREIN]

R1-R5 BY ADV. SRI.T.PRASAD

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 17-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P. (FC) No. 49 of 2015

Dated this the 17th day of August, 2015

ORDER

The revision petitioner is the respondent in M.C.No.736 of 2013 on the files of the Family Court, Tirur. The above M.C. was filed by the respondents 1 to 5, who are the wife and minor children of the revision petitioner, claiming maintenance allowance under Sec.125 of the Code of Criminal Procedure. According to the 1st respondent, the petitioner neglected them and refused to pay maintenance allowance from July, 2010 onwards. At the very beginning of the marriage, the petitioner ill-treated her both mentally and physically on demand of more dowry and gold ornaments. It is also contended that

her father had given 50 sovereigns of gold ornaments and Rs.2,50,000/- on different occasions on demand of more dowry from the part of the revision petitioner. But, he misappropriated the gold ornaments and money given by the father of the 1st respondent and when his behaviour was intolerable, she had constrained to leave the matrimonial home and thereafter, the petitioner has not paid any amount towards the maintenance of the respondents. The 1st respondent has no job or any source of income to maintain herself and the respondents 2 to 5, who are the minor children; whereas the petitioner is a taxi driver by profession. That apart, he was working abroad for a period of 10 months.

2. The revision petitioner admitted the marital status of the 1st respondent and the paternity of all the four children aged 9, 7, 4 years and 1 ½ years respectively. According to him, even though he is a taxi driver, he is getting only ₹200/- per day and out of

that amount, he has to look after his aged mother and his second wife also. It is also contended that the 1st respondent is residing separately, without sufficient reasons. After considering the rival pleas and evidence consists of oral evidence of P.Ws.1 to 4 and R.W.1 and documentary evidence of Exts.A1 and A2 and Exts.R1 to R4, the Family Court directed the petitioner to pay maintenance allowance at the rate of ₹3,000/- to the 1st respondent and ₹1,000/- each to the respondents 2 to 5. The legality of the entitlement of the maintenance allowance and the correctness of the quantum determined by the court below are under challenge in this revision petition.

3. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents. The learned counsel for the revision petitioner advanced arguments assailing the findings of the court below; whereby the court below determined the quantum of maintenance allowance.

According to him, the quantum of amount determined by the court below is excessive and disproportionate with the income of the revision petitioner. Per contra, the learned counsel for the respondents advanced arguments to justify the impugned order. According to him, the quantum of amount fixed by the Family Court is not excessive or unreasonable and there is no scope for interference under the revisional jurisdiction.

4. The main thrust of the argument advanced by the learned counsel for the revision petitioner in this revision petition is based on CrI.M.A.No.4364 of 2015. It is contended that the petitioner has received reliable information that the 1st respondent has admitted his two children, Shibila and Shimla in 'Darussalam Banath Yatheem Khana, Darussalam English Medium Senior Secondary School Campus, Changaram Kulam, Kokkoor P.O., Malappuram District. It is submitted that the said children were admitted during the trial of the above case in the court below.

But the petitioner did not get the exact name of the institution wherein the children were got admitted. Now the petitioner has obtained the name of the institution and such details. So, the first respondent has been contesting the above case under the wrong pretext that the children are still under her care and custody. But the fact is otherwise. In the above circumstances, it is prayed in the above application that records pertaining to the admission of the children in the above Yatheem Khana may be called for to prove that the children are staying and studying in the above Yatheem Khana.

5. The marital status of the 1st respondent and the paternity of the respondents 2 to 5 are not disputed. He has no case that he has been paying maintenance allowance or he had paid any amount towards maintenance to the respondents after 2010. At the time of trial, before the Family Court, he has no case that he was physically disabled or incapacitated

to do work so as to earn livelihood for his wife and children. Annexures A1 to A5 produced along with Crl.M.A.No.1879/2015 have no relevancy at all as the same relate to subsequent events after passing the impugned order. More over, these documents do not show that he is permanently disabled or incapacitated to do work for ever. He admitted that he was working as a taxi driver and was getting only Rs.200/- per day; but according to him, that income is not sufficient to meet the requirements, including the expenses to maintain his parents. After analysing the sequence of events from the beginning of the marriage and the oral evidence adduced by P.Ws.1 to 4, the court below found that the respondents are entitled to get maintenance allowance from the revision petitioner, as they are living separately with sufficient cause. I do not find any perversity in the appreciation of evidence arrived at by the court below. So long as the marital status of the 1st respondent and paternity

of the respondents 2 to 5 are not disputed, the husband as well as the father is liable to pay maintenance allowance to them. Admittedly, the petitioner had married again, and now living along with the second wife. Therefore, the 1st respondent is justified in residing separately with her four children and claiming maintenance allowance from the petitioner.

6. Coming to the quantum of maintenance allowance, the main thrust of the argument is that two children by name Shibila and Shimla are staying and studying in Yatheem Khana and the above CrI. M.A. was filed to call for the records from Yatheem Khana. The scope and extent of the revisional jurisdiction is very limited and confined to the examination of the legality, propriety and correctness of the findings whereby the court below arrived at. There is no scope for re-appreciation of evidence, unless it is found that appreciation of evidence is vitiated by perversity.

Therefore, the question is, whether the court below has arrived at a correct finding on the basis of the records available at the time of trial. The petitioner himself admitted that he could not produce the materials to show the details of his daughters staying and studying in Yatheem Khana. Even if the said fact is admitted, I am of the opinion that no mother would send her children to Yatheem Khana or orphanage, unless she is unable to maintain her children. That itself shows the penury of a mother who was compelled to harbour her children in the Yatheem Khana. It has also come out in evidence that the petitioner had married again and now living along with his second wife. Even though his Personal Law permits him to marry more than once, up to four, he is liable to maintain all the wives equally and to do justice to all the wives.

7. The petitioner has no case that he has been paying maintenance allowance to his children and no

evidence has been produced to show that he had paid any amount to the children towards their maintenance. The children are four in number and they are school going children. The 1st respondent has no job or income. In such circumstance, she is justified in sending the children to Yatheem Khana. She was compelled to do so because of the failure from the part of the petitioner, to maintain his children. So the documents sought to be produced in Crl.M.A. No.4364/2015 have no relevancy at all and thereby the same would stand dismissed. If the mother harbours the children in Yatheem Khana after receiving their maintenance allowance from him, certainly he can raise his objection before the trial court. But now he has no right to question such act of the 1st respondent even if it is true. Needless to say, Crl.M.A.No.4364/15 will stand dismissed.

8. Coming to the quantum of maintenance allowance, according to him, he has to maintain his

second wife and his parents. As regards the parents, he has not adduced any evidence to show that he is the only son who is liable to look after his parents. In the absence of such evidence, the same cannot be taken as a ground to deny the maintenance allowance to his wife and children. The father has the liability to maintain his wife and children in accordance with their living status, standard of life and day-to-day requirements. So also, 'maintenance' includes provision for food, shelter, clothes, medical attendance and educational expenses etc.

9. It is pertinent to note that all the four children are below the age of 10 years. A substantial amount is required for their educational expenses. He himself admitted that he married again and he has to look after his second wife. It could be reasonably presumed that when he married again as he was fully confident of his income to look after two wives and children born in both the wedlocks. The first wife and the children

born in that wed-lock have the right to live with the standard of life on a par as that of the second wife and children born to him in the second wed-lock. In that view of the matter, I find that the quantum of monthly maintenance allowance determined by the court below at the rate of Rs.3,000/- to the 1st respondent and Rs.1,000/- each to the respondents 2 to 5 are not excessive and there is no reason to interfere with the findings of the court below.

Hence this revision petition is dismissed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge

