

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. 70 of 2015 (E1)

MC 346/2012 of FAMILY COURT, IRINJALAKUDA

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REVISION PETITIONER(S)/RESPONDENT:

**JOSEPH @ OUSEPH,
S/O.LATE PAVU, THARAKAN HOUSE, PARANNUR DESOM,
CHOONDAL VILLAGE & P.O, THALAPPILLY TALUK-680 502.**

BY ADV. SRI.M.PREMCHAND

RESPONDENT(S)/PETITIONER:

**JESSY, D/O.PALLIPADAN THOMAS, AGED 49 YEARS,
RESIDING AT VATTAKUZHI VEETIL,
NEAR DON BOSCO SCHOOL, IRINJALAKUDA DESOM & P.O,
MANAVALASSERY VILLAGE, MUKUNDAPURAM TALUK - 680 121.**

R1 BY ADV. SRI.RENJITH THAMPAN (SR.)

R1 BY ADV. SMT.PR.REENA

R1 BY ADV. SRI.C.P.PRADEEP

**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.70 of 2015

Dated this the 22nd day of May, 2015.

O R D E R

1.The revision petitioner is the husband of the respondent. The legality of the entitlement of maintenance allowance and the correctness of the quantum determined by the Family Court, Irinjalakuda under Section 125(1) of the Code of Criminal Procedure in M.C. No.346/2012 are under challenge in this revision petition.

2. According to the respondent, their marriage was solemnised on 14/9/2003 and they cohabited together up to 2011. Thereafter, the petitioner has been neglecting her by refusing to pay maintenance allowance to her. She has no job or income. It is also averred that the petitioner was an addict of drugs. So it was impossible for the respondent to live along with the petitioner and she was forced to

leave the company of the petitioner. She claimed an amount of Rs.8,000/- per month as maintenance allowance.

3. Per contra, the revision petitioner denied the allegation that he neglected the respondent and refused to pay maintenance allowance to her. According to him, he has been working as a security staff in a residence association at Thrissur and he is getting Rs.3,750/- per month as salary. He has to look after his mother, who is residing with him. The respondent has been working as a tailor and she is getting Rs.10,000/- per month. Thus, she is able enough to maintain herself. That apart, she owns property worth Rs.20 lakhs. After considering the rival contentions and evidence on records, the court below directed the petitioner to pay maintenance allowance at the rate of Rs.3,500/-.

4. Heard both sides. The short question that arises for consideration is whether there is any illegality or impropriety in the findings of the court below whereby the revision petitioner was directed to pay maintenance allowance at the rate referred above.

5. The marital status of the respondent is not disputed. Going by the impugned order, it is seen that the revision petitioner has no case that he has been paying maintenance allowance to the respondent contrary to the allegations levelled against him. So it stands admitted that he refused to pay maintenance allowance after 2011. It follows that there is no illegality or jurisdictional error in the finding that the respondent is entitled to get maintenance allowance from the revision petitioner. What remains to be considered is the quantum of maintenance determined by the court below.

6. The petitioner himself admitted that he is working as a security staff. But, according to him, he is getting Rs.3,750/- alone as salary. To prove the said contention he has produced Ext.B1 salary certificate. As rightly found by the court below the petitioner has not examined the person who issued Ext.B1 certificate. It is pertinent to note that in the salary certificate itself it is mentioned that the petitioner is working as a part-time security staff. But, in his pleadings, the petitioner has no case that he is a part-time employee only. In view of the non examination of the person who issued Ext.B1 certificate, no reliance can be placed on Ext.B1 certificate to prove the monthly income of the petitioner.

7. Though the petitioner contended that the respondent is working as a tailor and she is getting considerable amount from tailoring work, no

evidence had been adduced in this revision petition. So it can be safely concluded that the respondent has no job or income and she is unable to maintain herself.

8. That apart, even though the petitioner has admitted that he was conducting a watch company namely, 'Tharakan Fancy Watch Company', he contended that the said watch company had been stopped in the year 2010. But Ext.B1 certificate shows that the petitioner owns the said watch company by name 'Tharakan Fancy Watch Company'. In view of Ext.A1 the burden is heavy on the petitioner to show that the said watch company had been stopped as alleged by him. But no evidence had been adduced in this respect. So it could be reasonably presumed that the petitioner is getting income from that watch company also. It follows that the revision petitioner has sufficient means to pay maintenance

allowance to the respondent.

9. According to the statutory mandate under Section 125 of the Cr.P.C., the husband is liable to provide maintenance allowance to his wife in accordance with the standard of life to which the wife is accustomed. Maintenance obviously includes provision for food, clothing, residence, medical attendance, etc. In the above view of the matter, I find that the quantum of amount determined by the court below is just and proper, warranting no interference under the revisional jurisdiction. Consequently, this revision petition is dismissed.

10. The learned counsel for the revision petitioner further submits that the petitioner is unable to pay the entire arrear in lump sum and 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 in payment of first instalment, this instalment facility will stand automatically vacated and the respondent is at liberty to realise the entire arrear in lump sum, in accordance with law.

This R.P(FC). is disposed of as above.

Sd/-
K. HARILAL, JUDGE

okb.