

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

RPFC.No. 71 of 2015 ()

**AGAINST THE ORDER IN MC 46/2012 of FAMILY COURT, NEDUMANGAD
DATED 05-08-2014**
.....

REVISION PETITIONER/RESPONDENT :

**M.PREM BHASHA, AGED 47 YEARS,
S/O. MEERSA, MERHABA, THANCHANKODU,
KUTTICAL P.O., MANNOORKARA.**

BY ADV. SRI.LIJU. M.P

RESPONDENTS/RESPONDENTS :

- 1. RAMLA BEEVI, AGED 47 YEARS
D/O. MAITHEEN KANNU, RAMLA MANZIL, PONNARA LANE,
KATTAKADA P.O., THIRUVANANTHAPURAM.**
- 2. P.MUHAMMED BILAL (MINOR), AGED 8 YEARS,
S/O. RAMLA BEEVI, REP. BY HIS MOTHER/GUARDIAN
RAMLA BEEVI, D/O. MAITHEEN KANNU, AGED 47
RAMLA MANZIL, PONNARA LANE, KATTAKADA P.O.
THIRUVANANTHAPURAM.**

R1 BY ADV. SRI.G.SUDHEER

**THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 28-05-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

AMV

K.HARILAL, J.

.....
R.P.F.C.No. 71 of 2015

.....
Dated this the 28th day of May, 2015

ORDER

The revision petitioner is the respondent in M.C.No.46 of 2002 on the files of Family Court, Nedumangad. The above M.C., was filed by the respondents herein, who are the wife and son of the petitioner under Section 125 of the Code of Criminal Procedure claiming maintenance allowance from the petitioner. According to the 1st respondent, though, formal and a legal marriage had not been solemnized between the petitioner and the 1st respondent and they lived together for a considerable period and the 2nd respondent was the son born out of the said alliance.

2.The grievance of the respondents was that the petitioner neglected to maintain them and refused to pay maintenance allowance. The 1st respondent has no job or any sources of income and she is unable to maintain herself and 2nd respondent; whereas the

petitioner is working as Assistant Sub Inspector of Police and earning monthly salary at Rs.20,000/- per month. So he has sufficient means to pay maintenance allowance to the respondents.

3.The petitioner resisted the claim of the respondents contending that the 1st respondent is not the legally wedded wife and he is not the biological father of the 2nd respondent so he is not liable to pay any amount as maintenance allowance to the respondents.

4.After considering the evidence on record the learned Judge found that, though, there is no legally valid marriage, the petitioner and the 1st respondent lived together as husband and wife and the 2nd respondent was the son born out of the said relationship. The petitioner was directed to pay maintenance allowance @ Rs.2,000/- to 1st respondent and Rs.1,500/- to the 2nd respondent. The legality of the entitlement of the maintenance allowance and the correctness of the

quantum are challenged in this revision petition.

5.The learned counsel for the petitioner advanced arguments assailing the finding that the 1st respondent is the wife as contemplated under Section 125 of Cr.P.C., and the 2nd respondent is the son born out of the said relationship. According to him, the court below miserably failed to scrutinise the evidence on record in view of the legal position that a legally wedded wife alone is entitled to get maintenance allowance under Section 125 of Cr.P.C. So also it is contended that the DNA test also cannot be taken as a conclusive proof to prove the fatherhood of the 2nd respondent. Per contra the learned counsels for the respondents advanced arguments justifying the findings of the court below.

6.Going by the findings of the court below, it could be seen that, the 1st respondent had given evidence in consonance with the averments in the petition and her specific case is that, though, there was no legally valid

marriage, she lived along with the petitioner intermittently and the 2nd respondent is the child born out of the sexual intercourse with the petitioner. It is seen that she was cross examined at length and into minute details; but nothing brought out to discredit her evidence and the court below has reposed confidence on the evidence of the 1st respondent as a trustworthy. The Supreme Court has considered the question whether legally wedded wife alone is entitled to get maintenance allowance under Section 125 of Cr.P.C. in **Pyla Mutyalamma alias Satyavathi v. Pyla Suri Demudu and another** [2011 (3) KLT 815] .

7.The preposition that can be culled out from the above decision is that the legality of the marriage is not required to be considered while determining the right of maintenance under Section 125(1) of Cr.P.C., if the parties have lived together and children were born out of the said union. The wife is entitled to get maintenance allowance under Section 125 of Cr.P.C., if

they lived together as husband and wife in the eye of society. The legality of the marriage is a matter to be decided by the Civil Court only.

8.Coming to the instant case, it stands proved by DNA test that the petitioner is the biological father of the 2nd respondent. In Banarsi Dass v. Teeku Dutta [2005 (2) KLT 729 (SC)] the Apex Court held that “the result of a genuine DNA test is said to be scientifically accurate”. As referred above, the oral evidence of the 1st respondent was that, she lived along with the petitioner for a long period, though intermittently and the said assertion was not sufficiently challenged in cross examination.

9.In view of the above evidence available on record, I find that there is no illegality or impropriety in the findings that the 1st respondent is entitled to get maintenance allowance from the revision petitioner under Section 125 of Cr.P.C.

10. What remains to be considered is the correctness of the quantum of maintenance allowance. Admittedly the petitioner is working as Assistant Sub Inspector of Police and according to the 1st respondent he is getting Rs.20,000/- per month. But no evidence had been adduced by the petitioner to the contrary. In the absence of evidence to the contrary, which is easily available to him, an adverse inference can be drawn against the petitioner with respect to his salary under Section 114(g) of the Indian Evidence Act. If that be so, having regard to the standard of life, cost of living and daily requirements of the respondents, I find that the quantum of maintenance determined by the court below is reasonable, just and proper and warranting no interference under the revisional jurisdiction. Hence, this revision petition will stand dismissed.

Sd/-
K.HARILAL,
JUDGE.

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P.A.TO JUDGE