

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

RPFC.No. 84 of 2015 ()

M.C.No.200/2011 of FAMILY COURT,ERNAKULAM

PETITIONER/RESPONDENT IN M.C:

PRAMOD M.G., AGED 39 YEARS
S/O.A.K.GOPI, MARATHARA HOUSE, NJARACKAL P.O.
AARATTUVAZHI - 682 505, ERNAKULAM DISTRICT.

BY ADV. SRI.T.M.RAMAN KARTHA

RESPONDENT(S)/PETITIONERS IN M.C.:

1. GIGI V.A., , AGED 34 YEARS
D/O.DINESHAN, VARAPITHARA HOUSE, NJARACKAL P.O.
LIGHT HOUSE COLONY, PIN - 682 505.

2. VISHNUPRIYA,
AGED 6½ YEARS, D/O.PRAMOD M.G..
(MINOR REPRESENTED BY MOTHER AND NATURAL
GUARDIAN GIGI V.A.).

R1 & R2 BY ADVS. SRI.A.X.VARGHESE
SRI.A.V.JOJO

THIS REV.PETITION (FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 25-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

STU

K.HARILAL, J.

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R.P.(FC) No.84 of 2015

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Dated this the 25th day of June, 2015

ORDER

The revision petitioner is the respondent in M.C.No.200/11 on the files of the Family Court, Ernakulam, filed by the respondents herein, who are the wife and daughter of the petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to the 1st respondent, she is the legally wedded wife of the petitioner and the 2nd respondent is the child born in that wedlock and thereby, they are entitled to get maintenance allowance from the petitioner. But he has neglected to maintain them and refused to pay maintenance allowance from 15.07.2010 onwards. The petitioner has filed original petition seeking dissolution of marriage and the same is pending. The 1st respondent has no job or any other sources of income and she is unable to

maintain herself and the 2nd respondent; whereas the petitioner is working in Naval Base and earning ₹10,000/- per month. He is also running a restaurant in Njarakkal and earning ₹20,000/- from that business.

2. The petitioner admitted the marital status of the 1st respondent as well as the paternity of the 2nd respondent. But he resisted the claim for maintenance and he denied the allegation that he is getting ₹20,000/- per month. According to the petitioner, the 1st respondent is working in a Co-operative Society and she is able enough to maintain herself. Therefore, she is not entitled to get maintenance allowance from the petitioner. He has not denied the allegation that he is employed in Naval Base. But according to him, he is not getting so much amount as contended by the 1st respondent. After considering the rival pleas and evidence let in by both parties, the court below directed the petitioner to pay maintenance allowance @ ₹ 3,000/- each to the respondents from the date of petition.

The legality of the entitlement of 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 petitioner and the learned counsel for the respondents.

4. Both counsel appearing for the parties advanced arguments in support of the contentions raised in the M.C. According to the learned counsel for the petitioner, the court below went wrong by not relying on Ext.B1 Statement which would show that the 1st respondent is employed in a Co-operative Society. It is also contended that the quantum of amount determined by the court below is excessive and disproportionate with his income.

5. Per contra, the learned counsel for the respondents advanced arguments to justify the impugned order under challenge. Going by the impugned order, it is seen that the marital status of the 1st respondent and the paternity of the 2nd respondent are not challenged. It is also admitted that

the petitioner is employed in Naval Base.

6. Going by Ext.B1, it could be seen that, it is a statement recorded by the Police invoking Sections 161 of the Code of Criminal Procedure. As rightly held by the court below, the statement recorded under Sections 161 and 162 of the Cr.P.C cannot be relied on as a substantive piece of evidence and no order can be passed relying on such a statement. Therefore, the court below is justified in discarding Ext.B1. So, it can be safely concluded that the 1st respondent is unable to maintain herself and the 2nd respondent. Ext.A2 salary certificate shows that his basic pay is ₹5,200 - 20,200/- and he is working as a Lascar in Naval Base. Though the petitioner has denied the allegation that he is getting ₹20,000/- per month as monthly income, he has not produced his salary certificate to prove his exact income. The quantum of salary is a fact which is exclusively within the knowledge of an employee and he could have produced the salary certificate to prove his exact

income. In the absence of such a salary certificate, an adverse inference can be drawn against the petitioner under Section 114(g) of the Indian Evidence Act. In this analysis, it can be safely concluded that the petitioner has sufficient means to pay maintenance allowance to the respondents. "Maintenance" includes provision for food, clothing, shelter, medical attendance, educational expenses etc. The husband is liable to pay maintenance allowance in accordance with the standard of life, living cost and day to day needs of his wife and children. In the above view, I find that the quantum of monthly maintenance allowance determined by the court below @ ₹3,000/- each is just and reasonable and no interference is called for.

7. Having regard to the facts and circumstances of the case, the revision petitioner is given four months' time to pay the arrear, provided that, the revision petitioner shall pay half of the entire arrear within a period of two months from today and the remaining balance shall be paid within

the next two months. In the event of failure to pay the first instalment within the specified time, this facility will stand cancelled automatically and the Family Court will be free to enforce the realisation of entire arrear in lump sum.

This revision petition is dismissed.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge