

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

RPFC.No. 140 of 2015

AGAINST THE ORDER IN MC 374/2011 of FAMILY COURT,
PALAKKAD.

REVISION PETITIONER(S)/RESPONDENT IN M.C NO 374/2011:

SWAMINATHAN, AGED 40 YEARS,
S/O. GURUSWAMY, VADAKKECHALLA, GOVINDAPURAM P.O.,
MUTHALAMADA VILLAGE, CHITTUR TALUK,
PALAKKAD DISTRICT-678 507.

BY ADVS.SRI.SANJAY THAMPI
SRI.G.SABASTIAN

RESPONDENT(S)/PETITIONERS IN MC NO 374/2011:

1. PRIYA, AGED 35 YEARS,
W/O.SWAMINATHAN, RESIDING AT PATTIKKULAM,
NANNIYODE P.O, PATTACHERY VILLAGE, CHITTUR TALUK,
PALAKKAD-678 534.

2. ATHULYA(MINOR), AGED 14 YEARS.
D/O.PRIYA, RESIDING AT PATTIKKULAM,
NANNIYODE P.O., PATTANCHERY VILLAGE,
CHITTUR TALUK, PALAKKAD-678 534.

3. ASWANATH(MINOR), AGED 9 YEARS.
RESIDING AT PATTIKKULAM, NANNIYODE P.O.,
PATTANCHERY VILLAGE, CHITTUR TALUK,
PALAKKAD-678 534.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 21-05-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No.140 of 2015

Dated this the 21st day of May, 2015

ORDER

The revision petitioner is the husband of the 1st respondent as well as father of the 2nd and 3rd respondents. The legality of entitlement of maintenance allowance and quantum of maintenance allowance determined by the court below in M.C.No.374 of 2011 are under challenge in this revision petition. According to the 1st respondent, her marriage with the petitioner was solemnized on 7/5/2000 and they lived together and the respondents 2 and 3 are the children born out of the said wed-lock. But the petitioner had neglected to maintain them by refusing to pay maintenance allowance to the respondents. According to the respondents, the

petitioner was having suspicious mind and he suspected her chastity and on that account, he harassed her mentally and physically. So also, he demanded dowry. When the harassment became intolerable, she was constrained to file a complaint before the police which culminated in a prosecution against the petitioner before the Judicial First Class Magistrate's Court, Chittur. The petitioner is a toddy tapper at Govindapuram and earning ₹500/- per day. He is also also having agricultural land of 1.20 Acres and is getting ₹35,000/- per year; whereas the 1st respondent has no job or income and she is unable to maintain herself and the respondents 2 and 3. The respondents claimed ₹3,000/- per month to the 1st respondent and ₹2,500/- each per month to the 2nd and 3rd respondents.

2. Per contra, the petitioner denied the allegation that he neglected the respondents and refused to pay maintenance allowance to them. He further denied that he is getting ₹500/- per day from tapping and

getting ₹35,000/- per year from the agricultural property. It is also contended that the 1st respondent is getting ₹15,000/- per month as her share from the hotel owned by her father. She is also getting ₹8,000/- per month from tailoring. The petitioner is getting ₹150/- per day as a toddy tapper and the said work is a seasonal work for four months only. After considering the rival pleas, the court below directed the petitioner to pay maintenance allowance at the rate of ₹2,500/- per month to the 1st respondent, ₹2,000/- to the 2nd respondent and ₹1,500/- to the 3rd respondent.

3. The learned counsel for the petitioner advanced arguments challenging the finding by which the court below directed the revision petitioner to pay maintenance allowance as referred above. The learned counsel for the petitioner pointed out that the court below failed to consider the admission of the 1st respondent that she has income as a sharer of the hotel business of his father. In view of the admission

made by the 1st respondent, she is not entitled to get maintenance allowance from the petitioner. It is also contended that though the petitioner is a toddy tapper, the toddy tapping is a seasonal employment for four months only. In that view of the matter, the quantum of maintenance allowance determined by the court below is excessive and disproportionate with his income.

4. Going by the impugned judgment, it is the specific case of the respondents that the revision petitioner has neglected the respondents and refused to pay maintenance allowance to them. The revision petitioner has no case that he has been maintaining his wife and children in accordance with their day-to-day requirements. No evidence had been adduced to controvert the allegation that he refused to pay maintenance allowance to them. In that view of the matter, there is no reason to interfere with the finding of the court below that the respondents are entitled to get maintenance allowance from the revision

petitioner.

5. It is the case of the revision petitioner that since the 1st respondent herself admitted that she is having share in the hotel business, she is not entitled to get any amount as maintenance allowance from the revision petitioner. I am unable to accept the argument advanced by the learned counsel for the revision petitioner in view of the proposition contemplated under Sec.125 of the Cr.P.C. The question to be considered under Sec.125 of the Cr.P.C. is not whether the wife has income or not. The question to be considered is whether the wife is able enough to maintain herself? As rightly noted by the court below, the above admission does not mean that she is regularly getting sufficient income from the hotel business in order to meet the respondents' entire day-to-day expenses. Even though she is getting any income from the hotel business, though the said claim is not proved by adducing evidence, the same can be considered only in the determination of

the quantum of maintenance only and maintenance cannot be denied on the basis of that admission, unless it is proved by the petitioner that income from the hotel is sufficient enough to maintain herself and the children. But, here there is no such evidence. In *Chaturbhuj v. Sita Bai* [2008 (1) KLT 41 (SC)], the Apex Court held that the words 'unable to maintain herself' mean that means available to the deserted wife while she was living with the husband and would not take within itself the efforts made by the wife after desertion to survive somehow. The revision petitioner has no case that the 1st respondent was getting income from the hotel business while she was living along with the petitioner. Therefore, income which is said to have been derived from the hotel business of his father cannot be taken into account so as to deny the claim of maintenance. In the above view of the matter, the contention raised by the learned counsel for the revision petitioner will stand rejected.

6. Coming to the quantum of maintenance

allowance. The husband is liable to give maintenance in accordance with the standard of life to which his wife and children are accustomed. The respondents 2 and 3 are school going students and the word 'maintenance' does not signify only the provision for food; but also the provision for clothing, residence, education, medical attendance etc. In that view of the matter, I find that the quantum of maintenance allowance determined by the court below is just and proper and warranting no interference under the revisional jurisdiction.

Accordingly, this revision petition will stand dismissed.

Sd/-

(K. HARILAL, JUDGE)

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P.A. to Judge