

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

RPFC.No. 156 of 2015

AGAINST THE ORDER IN MC 399/2012 of FAMILY COURT,
THRISSUR.

REVISION PETITIONER(S)/PETITIONERS:

1. RAMLATH, AGED 28 YEARS,
D/O. PADAVINKAL MUHAMMED,
KURUMBILAVU DESOM AND VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT.

2. MINOR SHANAS, AGED 3 YEARS,
S/O. SHIHAB, REPRESENTED BY HIS MOTHER
1ST REVISION PETITIONER, RAMLATH.

BY ADVS.SRI.V.M.SYAM KUMAR
SMT.KRIPA ELIZABETH MATHEWS
SMT.C.B.SUMA DEVI
SMT.P.F.ROSY

RESPONDENT(S)/RESPONDENT:

SHIHAB, AGED 34 YEARS,
S/O. MOIDU, PAZHUPARAMBIL HOUSE, ERIYAD P.O.,
KODUNGALLUR TALUK, THRISSUR- 680 666.

BY ADV. SRI.P.M.ABDUL JALEEL (KODUNGALLUR)
ADV. SRI.K.SHAMEER MOHAMMED
ADV. SRI.T.V.SHAJI

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 08-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K.HARILAL, J.

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R.P.(F.C) No.156 of 2015

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Dated this the 8th day of June, 2015

ORDER

The revision petitioners are the petitioners in M.C. No. 399 of 2012 on the files of the Family Court, Thrissur. The above M.C. was filed by the petitioners, who are the wife and son of the respondent herein, seeking maintenance allowance from the respondent under Sec.125 of the Code of Criminal Procedure. According to the petitioners, the 1st petitioner has no job or income and she is unable to maintain herself and the 2nd petitioner; whereas the respondent is working in a super market and getting ₹ 15,000/- per month. The respondent has neglected and refused to pay maintenance allowance to the petitioners from 2010 onwards. The petitioners claimed maintenance allowance at the rate of ₹3,500/- each per mensem.

2. The respondent admitted the marital status of the

1st petitioner and the paternity of the 2nd petitioner; but he contended that the 1st petitioner is residing separately without any reason. She left the matrimonial home on her own accord. He has made several attempts to resume the married life; but the 1st petitioner was adamant in her attitude and she was always reluctant to live along with the respondent. He has narrated the sequence of events of their daily life and specifically contended that he is always ready and willing to live with the company of the 1st petitioner; but the 1st petitioner is residing separately without sufficient reason. He denied the contention that he is getting ₹15,000/- per month as salary. It is also contended that the 1st petitioner is working as a tailoring teacher and getting sufficient income for her livelihood. After considering the rival pleas and the evidence on record, the court below rejected the claim of the 1st petitioner and granted maintenance allowance to the 2nd petitioner @ ₹1,000/- per month. The legality of the entitlement of maintenance allowance and the quantum of

maintenance allowance fixed to the 2nd respondent are under challenge in this revision petition.

3. Heard the learned counsel for the petitioners. The learned counsel for the petitioners advanced arguments in extenso assailing the findings whereby the court below refused to grant maintenance allowance to the 1st petitioner. The sum and substance of the arguments advanced by the learned counsel for the petitioners is that Exts. D1 to D5 are self serving documents and the statements in those documents are not sufficient to reject the claim of the 1st petitioner.

4. The short question that arises for consideration is, whether there is any illegality in rejecting the maintenance claim of the 1st petitioner?

5. Going by the impugned order, it is seen that the court below has relied on Exts.D1 and D2 complaints, Ext.D3 Police complaint and Exts.D4 and D5 decisions of the Mahallu Committee. It is seen that the court below has meticulously evaluated the averments in those documents

and arrived at a finding that the respondent was always ready and willing to live along with the petitioners. But, the 1st petitioner was reluctant to live along with the respondent without sufficient reasons. In short, Exts.D1 to D5 reflect the desire of the respondent to resume the marital life with the 1st petitioner. I do not find any reason to arrive at a finding contrary to the opinion formed by the court below. Consequently, the rejection of 1st petitioner's claim for maintenance would stand confirmed.

6. Coming to the quantum of maintenance determined by the court below for the 2nd petitioner, it is seen that the respondent contended that he is getting ₹162/- per day as daily wages. As rightly observed by the court below, it is impossible to believe that a manual labourer is getting only ₹162/- only per day. Even though, the 1st petitioner contended that the respondent is working in a super market getting ₹15,000/- per month, no evidence has been adduced to substantiate the said contention. But, it is pertinent to note that the respondent has no case that he is physically

incapable or disabled to do work so as to earn livelihood for his family. 'Means' contemplated under Section 125 of the Code of Criminal Procedure signifies not only movable and immovable property in the shape of monthly income or salary; but also includes earning capacity of an able bodied man.

7. In this view of the matter, the quantum of maintenance allowance fixed by the court below is inadequate and insufficient to meet the requirements of the 2nd petitioner. Consequently, the quantum of maintenance allowance to the 2nd petitioner will re-fixed to ₹2,500/-. The respondent is directed to pay maintenance allowance @ ₹ 2,500/- per month to the 2nd petitioner from today.

This revision petition is allowed in part.

Sd/-

K.HARILAL, JUDGE.

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P.A to Judge