

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. 158 of 2015 ()

MC 173/2013 of FAMILY COURT, IRINJALAKUDA DATED 19-12-2014

REVISION PETITIONER(S)/RESPONDENT:

SUNIL, AGED 43 YEARS,
S/O.GOVINDAN, MOOLEKKATTIL HOUSE, PALAKKAL P.O.
AVINISSERY VILLAGE, THRISSUR DISTRICT.

BY ADV. SRI.V.BINOY RAM

RESPONDENT(S)/PETITIONERS:

1. SHEENA, AGED 34 YEARS,
D/O.KATTOOR VADAKKUMURY VEETIL KOCHUNNI
PONJANAM DESOM, KATTOOR VILLAGE, MUKUNDAPURAM TALUK
PIN 680 702.

2. MINOR SANA SUNIL, AGED 8 YEARS, REP. BY GUARDIAN
MOTHER SHEENA, PONJANAM DESOM, KATTOOR VILLAGE,
MUKUNDAPURAM TALUK - PIN 680 702.

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

STU

K.HARILAL, J.

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R.P.(F.C) No.158 of 2015

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Dated this the 8th day of June, 2015

ORDER

The revision petitioner is the respondent in M.C.No.173/2013 on the files of the Family Court, Irinjalakuda. The above M.C was filed by the respondents herein, who is the wife and minor daughter of the petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to the 1st respondent, the petitioner has neglected them and refused to pay maintenance allowance to them. According to the 1st respondent, from the very beginning of the marriage, she was ill-treated with mental cruelty and when it has become intolerable, she was constrained to leave the matrimonial home with the child. Thereafter, the respondent refused to pay any amount towards the maintenance of the respondents 1 and 2. The 1st respondent is working in a

textile shop run by a Co-operative Society and getting ₹3,000/- only. With that amount, she is unable to maintain herself and the 2nd respondent. The petitioner is a Carpenter by profession and he has been getting around ₹ 750/- per day as wages. The petitioner has been getting around ₹42,500/- per month as income.

2. The petitioner admitted the marital status of the 1st respondent and paternity of the 2nd respondent. But, according to him, the 1st respondent is residing separately without sufficient reasons. Therefore, she is not entitled to get maintenance allowance from him under Section 125(4) of the Code of Criminal Procedure. It is also contended that the quantum of amount determined by the court below is excessive. But, the court below has not considered the income of the 1st respondent as sales girl in a textile shop.

3. Heard the learned counsel for the petitioner. The learned counsel for the petitioner strenuously contended that the 1st respondent is not entitled to get maintenance

allowance from the petitioner as she is residing separately without sufficient reasons. In support of the said argument, the learned counsel cited decision reported in **Deb Narayan Halder v. Anushree Halder (Smt)** [2003 KHC 1768].

4. The short question that arises for consideration is, whether there is any illegality or impropriety in the findings that the 1st respondent is entitled to get maintenance allowance from the petitioner?

5. Going by the impugned order, it is seen that the 1st respondent has given oral evidence in consonance with her averments in the petition. It is her specific case that even though the petitioner has not physically manhandled her, she was ill-treated with cruelty accusing the paternity of the 2nd respondent. The 1st respondent in her oral evidence unequivocally complained that the petitioner used to harass her mentally stating that the 2nd respondent is not a child born to him. I am of the opinion that such a mental

harassment is more severe than bodily injury as far as a woman is concerned. The petitioner himself admitted that after the departure of the respondents from his company, he has not cared to enquire about them and no amount has been paid towards the maintenance of the respondents 1 and 2. It follows that there are sufficient reasons to live separately without forfeiting the right to get maintenance and the petitioner is liable to pay maintenance allowance to the respondents. There is no illegality in any of the finding by which the court below determined the entitlement of maintenance in favour of the respondents.

6. Coming to the quantum of maintenance allowance, the learned counsel contended that the 1st respondent is not entitled to get maintenance allowance as she is working as a sales girl in a textile shop. But, going by the impugned order, it is seen that the court below has also considered that income also while determining the quantum of maintenance allowance to the 1st respondent. When the

child was given ₹3,500/- per month as monthly maintenance allowance, the 1st respondent was given only ₹ 1,500/- per month towards her maintenance. Merely on the reason that the wife has engaged in some activity, after the departure from the company of the husband, for her daily livelihood, that income cannot be taken into account while considering the question whether the wife is able enough to maintain herself. In **Chaturbhuj v. Sita Bai** [2008 (1) KLT 41 SC], the Apex Court held that the phrase “unable to maintain herself” would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. The test is whether the wife is in a position to maintain herself in the way she was used to in the house of her husband. Here, the petitioner has no case that the 1st respondent was employed as sales girl and was getting ₹3,000/- when she was living along with him. Thus, in fact, the income which is being

derived by working as a sales girl is not liable to be reckoned to consider the ability of the 1st respondent to maintain herself.

7. The husband is liable to pay maintenance allowance in accordance with the standard of life and day to day requirements of his wife and children. "Maintenance" includes provision for food, clothing, shelter, medical attendance etc. This view of the matter, I find that the quantum of amount determined by the court below is just and proper and no interference is called for.

This revision petition is dismissed accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge