

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

RPFC.No. 168 of 2015 (E1)

MC 247/2012 of FAMILY COURT,KOZHIKODE

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REVISION PETITIONER(S)/RESPONDENT:

SHIJOSH @ SHIJU A.P.@ APPU,
S/O.C.N.BALARAMAN, ILLATHAZHAM, MANOLIKAVU,
MANAKKARA, PIN 670102, (PANOOR PSL).

BY ADVS.SRI.P.BABU KUMAR
SRI.P.YADHU KUMAR

RESPONDENT(S)/RESPONDENTS:

1. K.SANDHYA, AGED 29 YEARS,
D/O.VISWANADHAN, KOPPATTUPARAMBIL CHAMBAYIL HOUSE,
NADUVATTAM AMSOM DESOM, ARAKKINAR P.O.,
KOZHIKODE-673028.

2. NANDHANA SHIJOSH (MINOR), AGED 7 YEARS,
D/O.SHIJOSH @ SHIJU A.P. @ APPU, (MINOR
2ND RESPONDENT, REP.BY GUARDIAN & MOTHER
1ST RESPONDENT) (MARAD PSL).

R1&2 BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 01-06-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.168 of 2015

Dated this the 1st day of June, 2015.

O R D E R

The revision petitioner is the respondent in M.C.No.247/12 on the files of the Family Court, Kozhikode. The above petition was filed under Section 125 of the Code of Criminal Procedure by the respondents herein, who are the wife and minor child of the petitioner, claiming maintenance allowance @ Rs.5,000/- to the first respondent and Rs.3,500/- to the second respondent as monthly maintenance allowance. According to the first respondent, the petitioner has neglected to maintain them and refused to pay maintenance allowance to them. The first respondent has no job or any source of income and she is unable to maintain herself and the second respondent. The petitioner is a driver by profession having licence to drive heavy vehicles and he is

earning Rs,20,000/- per month.

2. According to the petitioner, he married again and he has a son in that wedlock. So he has to maintain both wives and children in both marriages. He is not a driver having heavy vehicle driving licence. It is also contended that the first respondent is able enough to maintain herself and the second respondent. After considering the rival pleas and evidence on record, the court below directed the petitioner to pay maintenance allowance at the rate of Rs.2,000/- to the first respondent and Rs.1,500/- to the second respondent. The legality of the entitlement of maintenance allowance and the correctness of the quantum fixed by the court below are under challenge in this revision petition.

3. Going by the impugned order, it is seen that the first respondent has contended that she is the legally wedded wife of the petitioner and the second respondent is the daughter born in that wed lock. To substantiate the legality of the marriage the first

respondent has produced Ext.A1 marriage certificate and Ext.A3 copy of Marriage Register, both issued from Sreekanteswara Temple, Kozhikode and to prove the paternity of the second respondent, she has produced Ext.A2 birth certificate issued by the City Municipal Corporation. In view of the fact that the petitioner himself has admitted the paternity of the second respondent and expressed his willingness to pay maintenance allowance to the second respondent, the legality of the marriage does not assume significance in a proceedings under Section 125 of the Cr.P.C. in view of the decision of the Apex Court in Ranjit Singh and others v. State of Madhya Pradesh [AIR 2011 SC 256]. On an analysis of the findings whereby the court below found the entitlement of maintenance allowance, I do not find any kind of illegality or impropriety in the said finding.

4. Coming to the quantum of maintenance allowance, it is the specific case of the first respondent that the petitioner is a driver by

profession having heavy vehicle driving licence and the court below has observed that the petitioner is a healthy able bodied man. "Means" includes not only movable or immovable property, but also the earning capacity of an able bodied man. The term 'maintenance' obviously includes provision for food, clothing, shelter, medical attendance and educational expenses of the children. There is no evidence to show that he is physically disabled or incapacitated to do work so as to earn livelihood for his family. Having regard to the increase in the cost of living caused by inflation and day-to-day needs, I find that the quantum of maintenance allowance fixed by the court below is just and reasonable and there is no reason to interfere with the said finding.

5. At last, the learned counsel for the revision petitioner sought for some time to pay the arrear. Having regard to the facts and circumstances of the case, the petitioner is given four months time to pay the arrear, provided that half of the entire arrear

shall be paid within two months and the remaining balance shall be paid within the next two months. In the event of failure to pay the first instalment, this instalment facility will stand automatically vacated and the first respondent is at liberty to realise the entire arrear in lump sum, in accordance with law.

This R.P(FC). is dismissed.

Sd/-
K. HARILAL, JUDGE

okb.