

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. 170 of 2015 ()

(MC 302/2013 of FAMILY COURT, TIRUR)

REVISION PETITIONER(S)/PETITIONERS:

1. SANEERA, AGED 40 YEARS,
D/O.ABDUL KHADAR, KOORIPARAMBIL THEKKUMBATT,
KATTIPARUTHY AMSOM, VALANCHERY DESOM, P.O. VALANCHERY,
TIRUR TALUK-676 552.

2. SHABEERA , AGED 17 YEARS (MINOR) ,
D/O.SANEERA @ SUNEERA,

3. SHAHEERA, AGED 14 YEARS (MINOR) ,
D/O.SANEERA @ SUNEERA.

(MINOR PETITIONERS ARE REPRESENTED BY GUARDIAN MOTHER
1st PETITIONER)

BY ADVS.SRI.T.K.SAIDALIKUTTY
SRI.M.I.JOHNSON
SRI.T.K.MOIDEEN KUTTY

RESPONDENT(S)/RESPONDENT & STATE:

1. ABDURAHIMAN, AGED 48 YEARS,
S/O.BAVUNNI HAJI, KARUTHEDATHU PARAMBIL HOUSE,
KALADY AMSOM, KADANCHERI DESOM,
P.O. KADANCHERI, BEHIND G.H.S. SCHOOL, KADANCHERI,
PONNANI TALUK-679 582.

2. THE STATE REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

R1 BY ADV. SRI.T.PRASAD
R2 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 01-06-2015, ALONG WITH RPFC. 173/2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

“C.R.”

K.HARILAL, J.

R.P(FC). Nos.170 & 173 of 2015

Dated this the 1st day of June, 2015.

COMMON ORDER

Since these revision petitions are filed challenging the very same order passed in M.C.No.302/2013 on the files of the Family Court, Tirur, by the petitioners and respondent respectively therein, both these revision petitions are heard together and disposed of accordingly, by a common order.

2. The revision petitioners in R.P(FC).No.170/2015 are the wife and daughters of the revision petitioner in R.P(FC).No.173/2015. They filed the above M.C. under Section 125 of the Cr.P.C. claiming maintenance allowance from the revision petitioner in R.P(FC). No.173/2015. The Family Court allowed the M.C.

directing the petitioner in R.P(FC).No.173/2015 to pay monthly maintenance allowance at the rate of Rs.3,000/- to the first respondent and Rs.2,000/- each to the second and third respondents therein. R.P(FC). No.170/2015 is filed challenging the inadequacy of the quantum of maintenance allowance granted under the impugned order and R.P(FC).No.173/2015 is filed challenging the legality of the entitlement of maintenance allowance and the correctness of the quantum fixed by the court below. The parties are referred to as in the M.C.

3. The petitioners, who are the wife and daughters of the respondent, filed the above M.C. claiming maintenance allowance under Section 125 of the Cr.P.C. According to the first petitioner, she is the legally wedded wife of the respondent and the petitioners 2 and 3 are the children born in the said wedlock. So, the respondent is liable to maintain them; but he neglected to maintain them and refused to pay maintenance

allowance. The first petitioner has no job or any source of income and she is unable to maintain herself and the respondents 2 and 3; whereas, the respondent is working abroad at Sharjah as a heavy vehicle driver and earning Rs.1 lakh per month. He is also having landed property and business. So, they claimed maintenance allowance at the rate of Rs.5,000/- each per month.

4. The respondent contended that the petitioners are not entitled to get maintenance allowance on the reason that earlier M.C.No.579/2007, claiming maintenance under Section 125(1) of the Cr.P.C., filed by the petitioners was dismissed by the same court. The said dismissal of the claim will be a bar to file a fresh M.C. seeking the very same relief. It is also contended that he is not a heavy vehicle driver as alleged by the petitioners and he is not getting so much amount as claimed by them. So, the quantum of maintenance allowance claimed by the petitioners are exorbitant

and disproportionate with his actual income. After considering the rival pleas and evidence let in by both parties, the court below found that the petitioners are entitled to get maintenance allowance notwithstanding the dismissal of the earlier M.C.No.579/2007 claiming similar reliefs. The respondent was directed to pay maintenance allowance as referred above.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondent. The learned counsel for the petitioners contended that the quantum of maintenance determined by the court below is inadequate to meet their living costs and disproportionate with the income of the respondent. But the learned counsel for the respondent contended that the M.C. itself was not maintainable as the same was barred by the dismissal of the earlier M.C.No.579/2007. So also, the quantum of maintenance allowance fixed by the court below is excessive and disproportionate with the income of the respondent.

6. Going by the impugned order, it is seen that the marital status of the first petitioner and the paternity of the children are not disputed. It is the case of the petitioners that he has neglected to maintain them and refused to pay maintenance allowance from 2007 onwards. Though the respondent contended that he has been maintaining the petitioners, the available evidence on record for this is Ext.D3 only. It is not disputed that in the year 2007 the petitioners had filed M.C.No.579/2007 claiming maintenance allowance from the respondent under Section 125 of the Cr.P.C. and that the claim was rejected on the reason that it has come out in evidence that in the year 2007 he had sent a substantial amount to the petitioners as maintenance allowance. The finding in the order dismissing M.C.No.579/2007 was that in view of the payment of maintenance allowance proved by the respondent, the petitioners are not entitled to get further maintenance allowance.

However, the said order passed in M.C.No.579/2007 is still under challenge in revision.

7. In view of the above submissions, the short question that arises for consideration is, whether the dismissal of the earlier claim for maintenance allowance under Section 125 of the Cr.P.C. would bar a subsequent claim for maintenance allowance under the same provision. Indisputably, the right to claim maintenance allowance under Section 125 of the Cr.P.C. is a recurring statutory claim. In the case of recurring claims, the principles of res judicata or estoppel has no application at all on a fresh cause of action or changed circumstances. In this analysis, I hold that the dismissal of the earlier M.C. on the evidence of payment of maintenance allowance at that time could not bar a subsequent claim on change of circumstances which would give rise to a fresh cause of action. The living standard/status of the wife and children which spell out their ability to maintain themselves and the

means of the husband are the factors, which would determine the entitlement of maintenance allowance and the quantum of amount under Section 125 of the Cr.P.C. and these factors are always fluctuating in accordance with the change of circumstances. Needless to say, change of circumstances will give rise to a fresh cause of action. More over, being a claim under social welfare legislation, the right to claim maintenance under Section 125 of the Cr.P.C. has to be construed in view of the object of the said provision, i.e., prevention of vagrancy and destitution. Besides, the above view further gets assurance from Section 127 of the Cr.P.C., which recognises alteration of the quantum of allowances on proof of change in circumstances.

8. Coming to the correctness of the quantum of amount, it is the case of the petitioners that the respondent is getting Rs.1 lakh as a driver by profession. But, no evidence had been adduced to

substantiate the said claim. On the other hand, the respondent himself admitted that he is a driver by profession. But he has not produced any evidence to show that he is not getting so much amount as contended by the petitioners. Income is a fact which lies exclusively within the knowledge of the person who gets it. So, the failure to adduce sufficient evidence to prove his exact income by the respondent invites an adverse inference under Section 114(g) of the Indian Evidence Act against him, i.e., the evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. The respondent has no case that he is unhealthy or physically disabled or incapacitated to do work so as to earn livelihood for his family. A husband is liable to pay maintenance allowance to his wife and children in accordance with their family status, standard of life and day-to-day needs, and they have the right to live with the standard of life on a par with that of

husband/father. It is seen that the petitioners 2 and 3 are school going children and a considerable amount is required for their educational expenses also. Having regard to the said facts, I find that the quantum of maintenance allowance determined by the court below is just and reasonable, warranting no interference under the revisional jurisdiction.

In the result, both the revision petitions are dismissed.

Sd/-
K. HARILAL, JUDGE

okb.

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P.A. to Judge