

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

RPFC.No. 219 of 2015 ()

AGAINST THE ORDER IN MC 182/2013 of FAMILY COURT, PALAKKAD
DATED 25-02-2015

REVISION PETITIONER/COUNTER PETITIONER:-:

SUNILKUMAR S., AGED 36 YEARS,
S/O.LATE SIVARAMAN EZHUTHASSAN, MADAMPULLI HOUSE,
KANNADI, PALAKKAD - 678 701.

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENTS/PETITIONERS:-:

1. ARCHANA M., AGED 30 YEARS
D/O.P.PADMAVATHY AMMA, "ARCHANA NIVAS", PATHIKKAL,
KANNADI, PALAKKAD - 678 701.

2. APARNA S.
D/O.ARCHANA, AGED 8 YEARS, (MINOR)
"ARCHANA NIVAS", PATHIKKAL, KANNADI,
PALAKKAD - 678 701.(2ND RESPONDENT - MINOR IS
REPRESENTD BY 1ST RESPONDENT - MOTHER).

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 30-06-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

okb

K.HARILAL, J.

R.P(FC). No.219 of 2015

Dated this the 30th day of June, 2015.

O R D E R

Revision petitioner, who is the husband of the first respondent as well as the father of the second respondent herein, is the respondent in M.C.No.182/2013 on the files of the Family Court, Palakkad. The above M.C. was filed by the respondents herein claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. The legality of the entitlement of maintenance allowance and the correctness of the quantum fixed by the court below in the above M.C. are under challenge in this revision petition.

2. Heard the learned counsel for the revision petitioner and the respondents. Both counsel advanced arguments in support of their respective contentions in the M.C.

3. According to the respondents, the first respondent is the legally wedded wife of the revision

petitioner and the second respondent is the child born in the said wedlock. Therefore they are entitled to get maintenance allowance under Section 125 of the Cr.P.C. But the revision petitioner neglected them and refused to pay maintenance allowance to them from 30.4.2010 onwards. The first respondent is employed as a photographer in a studio and the second respondent is the minor child aged 8 years and the respondents are unable to maintain themselves; whereas the revision petitioner is a licensed electrician and plumber, who is running an electrical shop at Kannadi. He is doing agricultural work also. Thus, he is getting Rs.35,000/- per month in total.

4. The revision petitioner admitted the marital status of the first respondent and the paternity of the second respondent. But he denied the allegation that he neglected to maintain them. According to the revision petitioner, the first respondent is employed as a photographer in a studio and thereby she is able enough to maintain herself and the second respondent. He denied the allegation that he is running an

electrical shop. But according to him, he is a licensed plumber and electrician only. After considering the rival pleas and evidence let in by both parties, the court below directed the revision petitioner to pay maintenance allowance @ Rs.3,000/- to the first respondent and Rs.2,000/- to the second respondent.

5. Going by the impugned order, it is seen that the marital status of the first respondent and the paternity of the second respondent are not disputed. There is no evidence to show that after 2010 the revision petitioner has paid any amount towards maintenance allowance to the respondents. Therefore, the respondents are justified in claiming maintenance allowance from the revision petitioner under Section 125 of the Cr.P.C. So also, there is no material on record to show that the revision petitioner has made any earnest attempt to resume the company with his wife and child.

6. Coming to the correctness of the quantum of maintenance allowance, the first respondent admitted that she is working in a studio as a photographer. But,

according to her, the income from the said job is not sufficient to meet their day-to-day requirements. According to Chathurbhuj v. Sita Bai [2008 (1) KLT 41 (SC)], income from the efforts made by the wife after desertion to survive somehow, cannot be taken into account to determine the ability to maintain herself. The revision petitioner himself admitted that he is a licensed electrician and a plumber and conducting an electrical shop at Kannadi. The husband is liable to pay maintenance allowance to his wife and children in accordance with their status, standard of life and day-to-day needs. They have the right to live with the standard of life as that of the revision petitioner. The court below has determined the quantum of maintenance allowance @ Rs.3,000/- and Rs.2,000/- per month. According to the learned counsel, the court below as lost sight of the admitted income of the first respondent as a photographer. I am of the opinion that the court below has considered the income of the first respondent also; otherwise the quantum of amount would have been much higher. The second respondent

is a school going minor child, aged 8 years only. So, a substantial amount is required to meet her educational expenses.

7. In this analysis, I find that the quantum of maintenance allowance fixed by the court below is reasonable, just and proper and no interference is called for under the revisional jurisdiction.

8. 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 five months time to pay the arrear, provided that half of the entire arrear shall be paid within first two months and the remaining balance shall be paid within the next three 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.