

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

RPFC.No. 224 of 2015 ()

AGAINST THE ORDER IN MC 158/2014 of FAMILY COURT, NEDUMANGAD
DATED 08-12-2014

REVISION PETITIONER/RESPONDENT :

SALIM AGED 36 YEARS,
S/O. IBRAHIM KUNJU, DARU SALAM VEEDU, VEDAKKALA,
MANALIMUKKU, VENJARAMOODU, NELLANADU VILLAGE,
THIRUVANANTHAPURAM.

BY ADVS.SRI.BLAZE K.JOSE
SRI.A.N.SHAJI (MURAMEL)

RESPONDENT/PETITIONER :

SHAFEEKA, AGED 20 YEARS,
D/O. LATHEEFA BEEVI, SHAFEEKA MANZIL, KOCHALUMOODU,
KANICHINADU, KALLARA VILLAGE,
THIRUVANANTHAPURAM-695 116.

R1 BY ADV. SMT.M.SANTHI (K/868/2011)
R1 BY ADV. SRI.G.RANJU MOHAN
R1 BY ADV. SMT.NIVYA VALSAN

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 06-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.HARILAL, J.

R.P.(FC). No. 224 of 2015

Dated this the 6th day of July, 2015

ORDER

The legality of the entitlement of the maintenance allowance and the correctness of the quantum of maintenance allowance determined by the Family Court, Nedumangad, in MC No.158/2014 is challenged by the petitioner, who is the husband of the respondent herein. According to the respondent, she is the legally wedded wife of the revision petitioner and she is entitled to get maintenance allowance from the revision petitioner. But the revision petitioner deserted her from the year 2011 onwards and he refused to pay maintenance allowance thereafter. The revision petitioner admitted the marriage with the respondent; but he contended that she is leading an adulterous life and, therefore, she is not entitled to get maintenance allowance. It is also contended that the quantum of maintenance allowance determined by the

court below is excessive and disproportionate with his income.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent. Both counsel advanced arguments in support of their respective contentions raised by the parties in the MC.

3. The marital status of the respondent is not disputed. Though the petitioner has contended that the respondent is leading an adulterous life and thereby she is not entitled to get maintenance allowance, going by the impugned order, it could be seen that he has miserably failed to substantiate the said contention.

4. As regards the allegation of adultery, strict proof is required to exempt the husband from the statutory liability under Sec.125(4) of the Code of Criminal Procedure. But, in the instant case, he has not adduced sufficient evidence to prove that the respondent is living in adultery. Therefore, the court below justified

in finding the entitlement of maintenance allowance in favour of the respondent.

5. Coming to the quantum of maintenance allowance, going by the evidence, though the respondent contended that the petitioner is getting Rs.30,000/- per month, no such evidence has been adduced to prove the same. But the petitioner has no case that he is physically disabled or incapacitated to do work, so as to earn livelihood for his family. Admittedly, he was working in Gulf country. Therefore, it could be reasonably presumed that he might have earned from the gulf country also. In his deposition, he himself admitted that he is getting Rs.8,000/- per month. The learned counsel for the petitioner drew my attention to the amount which is being received by the respondent as monthly maintenance allowance, under the Protection of Women from Domestic Violence Act and submits that the said amount was not considered while fixing the quantum of

maintenance allowance. According to the Sec.26(1) of the Protection of Women from Domestic Violence Act, wife is entitled to proceed for maintenance allowance under Sec 125 of the Cr.P.C irrespective of the relief granted under the Protection of Women from Domestic Violence Act.

6. But, while fixing the quantum of amount to be paid, the amount which is being received under the other proceedings also can be considered. In that view of the matter, I find that the amount fixed by the court below is a little excessive. The quantum of amount will stand re-fixed at Rs.4,500/- per month from the date of this order. I do not find any other illegality or impropriety in the impugned order under challenge.

7. Having regard to the facts and circumstances of this case, the revision petitioner is given four months' time to pay the arrear, provided that the revision petitioner shall pay half of the entire arrear within a

period of two months from today and the remaining balance shall be paid within the next two months. In the event of failure to pay the first instalment, within the specified time, this instalment facility will stand cancelled automatically and the Family Court will be free to enforce realisation of the entire arrear in lump sum, in accordance with law.

**K.HARILAL
JUDGE**

RSR