

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

RPFC.No. 231 of 2015 ()

MC 120/2013 of FAMILY COURT, ERNAKULAM

PETITIONER/RESPONDENT:

RAFEEQ, AGED 36 YEARS
S/O.KUNJALI, VALIYAPARAMBIL HOUSE, VEDIMARA
VANIYAKKADU, MANNOM P O, PARAVOOR

BY ADV. SRI.VIJAI MATHEWS

RESPONDENTS/PETITIONERS:

1. SUMMAYYA, AGED 30 YEARS
W/O.RAFEEQ, KALANJIKAL HOUSE, PALLIKKUTTI
EDATHALA P O, ALUVA VILLAGE, PIN-683 561

2. ABDUL RIZIQUE (MINOR)
S/O.RAFEEQ, REP. BY MOTHER SUMAYYA-DO-

BY ADV. SMT.R.REKHA (KADAVANTHRA)

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 08-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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R.P.(FC) No.231 of 2015

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Dated this the 8th day of July, 2015

ORDER

The revision petitioner is the respondent in M.C.No.120/13 on the files of the Family Court, Ernakulam, filed by the respondents herein, who are the wife and son of the petitioner, claiming maintenance allowance from the revision petitioner under Section 125 of the Code of Criminal Procedure. According to the 1st respondent, she is the legally wedded wife of the petitioner and the 2nd respondent is the son born in that wedlock. Though they are legally entitled to get maintenance allowance from the petitioner, he has neglected them and refused to pay maintenance allowance from 21.03.2012 onwards. According to the 1st respondent, she has no job

or any other sources of income; but the petitioner is doing business and earning ₹30,000/- per month.

2. The petitioner admitted the relationship between the parties as claimed by the respondents. But, he denied the liability to pay maintenance allowance to the respondents on the sole ground that he is suffering from 60% permanent disability. He has no sources of income and he is not doing business and earning ₹30,000/- per month as claimed by the respondents. It is also contended that the quantum of maintenance allowance fixed by the court below is excessive and disproportionate. After considering the evidence on record, the court below directed the petitioner to pay maintenance allowance @₹3,000/- each to the respondents. The legality of the entitlement of maintenance allowance and the correctness of the quantum are under challenge in this revision petition.

3. The marital status of the 1st respondent and paternity of the 2nd respondent are not disputed. The sole question that arises for consideration is, whether the

petitioner can be exempted from discharging his statutory liability, under Section 125 of the Code of Criminal Procedure, on the ground that he is physically disabled at 60% ?

4. Going by the impugned order, it is seen that, in the year 1992, while he was studying in 9th standard, he had suffered a physical ailment and subjected to a surgery. He was treated in a hospital and the Doctors diagnosed that he is suffering from residual quadriplegia paralysis and thereafter the petitioner is suffering from 60% permanent disability. The factum of disability is not disputed and the same is evident by the disability certificate produced by the petitioner. Indisputably, at the time of marriage, the petitioner was having the disability. The petitioner has no case that, after the marriage, the percentage of disability has increased and no document had been produced to that effect. Therefore, it could be reasonably presumed that, at the time of marriage itself, he was having 60% disability. Needless to say, knowing his disability, he married the 1st

respondent and subsequently, they were blessed with a son, the 2nd respondent. Since the disability was subsisting at the time of marriage, he was fully confident that he can maintain a family and thereafter, no change of circumstances. Though the certificate has been produced to show that he is having 60% disability, no document has been produced to show that he has fully lost his earning capacity, or he is totally incapable to do any kind of work so as to earn livelihood for his family. It is a matter of common knowledge that physically challenged persons also can do some kind of work or do certain business so as to earn livelihood for his family and they can choose the nature of business and work or employment in accordance with their nature of disability and handicap. So physically challenged husband cannot be exempted from his statutory liability to maintain his wife and children under Section 125 of the Cr.P.C, unless, it is found that subsequent to the marriage, he become totally incapable to do any kind of work or business to earn livelihood for his wife and children. No

lenient view can be taken to him, particularly, when the disability or handicap was subsisting at the time of marriage and birth of the child. On the other hand, if the percentage of physical disability or handicap occurs or increases after the marriage, the percentage of the loss of earning capacity can be proportionally considered for fixing the quantum of maintenance allowance. In this case, it is pertinent to note that the specific case put forward by the first respondent is that the revision petitioner is doing business in fancy articles and he is a member of the Kerala Pigeon Society. It could be reasonably presumed that he is earning from pigeon business also. Exts.A1 and A2 go a long way to this extent. Therefore, I do not find any perversity in the appreciation of evidence from which the court below arrived at a finding that the respondents are entitled to get maintenance allowance.

5. Coming to the correctness of the quantum, the husband is liable to pay maintenance allowance to his children in accordance with the living status, standard of

life and day-to-day requirements of his wife and children. A substantial amount is required for the welfare and maintenance of the child during the period of his infancy, because during this period, infant wants more care, protection, nutritious food, medical attendance etc. The term "Means" includes provision for food, shelter, clothing, medical attendance, educational expenses, etc. In the above view, I find that the quantum of maintenance allowance determined by the court below is just and proper and no interference is called for under revisional jurisdiction.

6. Having regard to the facts and circumstances of the case, the revision petitioner is given six months' time to pay the arrear, provided that, the revision petitioner shall pay half of the entire arrear within a period of three months from today and the remaining balance shall be paid within the next three 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 the realisation of entire arrear in lump sum.

This R.P(FC) is dismissed.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge