

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

RPFC.No. 241 of 2015 ()

AGAINST THE ORDER IN MC 260/2013 of FAMILY COURT,
IRINJALAKUDA DATED 28-03-2015

REVISION PETITIONER:

BIJU THOMAS AGED 40 YEARS
S/O.JOSEPH, CHEMMARIKKAL VEEDU
NEAR JANASEVANA SISUBHAVAN, U.C.COLLEGE, ALUVA
ERNAKULAM DISTRICT.

BY ADVS.SRI.B.R.MURALEEDHARAN
SRI.K.K.VINOD
SRI.K.V.SURESH

RESPONDENTS:

1. MARY NIRMAL, AGED 34 YEARS,D/O.JACOB M.A,
MADATHIPARAMBIL VEEDU, PULLUR VILLAGE
NEAR CO-OPERATIVE BANK
OPP. CROWN SANITARIES AND ELECTRICALS, PULLUR.P.O.
PIN-680 683.
2. JOSE C.B,AGED 7½ (MINOR) ,S/O BIJU THOMAS,-DO-
3. ANNAMARIYA C.B,AGED 5 YEARS (MINOR) ,
D/O BIJU THOMAS,-DO-
4. STATE OF KERALA
REPRESENTED BY PUBVLC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031.

R BY PUBLIC PROSECUTOR

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 13-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

skr

'CR'

K.HARILAL, J.

R.P.F.C. No. 241 of 2015

Dated this the 13th day of July, 2015

ORDER

The revision petitioner is the respondent in M.C No.260/2013 on the files of the Family court, Irinjalakuda, filed by the respondents 1 to 3 herein; who are the wife and minor children of the petitioner, claiming maintenance allowance under Sec.125(1) of the Code of Criminal Procedure. According to the 1st respondent, she is the legally wedded wife of the petitioner and the respondents 2 and 3 are the children born in the said wed-lock. So, the petitioner is liable to maintain them, without interruption. But, from 2010 onwards, the petitioner neglected to maintain them and refused to pay maintenance allowance. The 1st respondent has no job or any source of income and thereby, she is unable to maintain herself and the

respondents 2 and 3; whereas the petitioner is a business man earning Rs.30,000/- per month. They claimed maintenance allowance at the rate of Rs. 5,000/- per month to the 1st respondent and Rs.3,000/- each per month to the respondents 2 and 3. The petitioner admitted the relationship between the parties, as claimed by the respondents; but, he denied the allegations raised against him. According to him, the 1st respondent had deserted him and left his company with the children. Therefore, the respondents 1 to 3 are not entitled to get maintenance allowance from the petitioner.

2. The main allegation levelled against the 1st respondent is that she switched over her faith and belief to the Emperor Immanuel Church, a different fraction of Christian religion. The said church does not come under the auspicious of Diocese and the believers do not recognise the encyclicals of Pope. But at the time of solemnizing the marriage, she was following the encyclicals of Pope. She

changed her belief by the month of June, 2010.

3. It is also contended that the quantum of maintenance allowance awarded to the respondents 1 to 3 is exorbitant and disproportionate with his income. According to him, he is an autorickshaw driver only and getting Rs.100-150/- per day only and he is liable to look after his aged parents, who are suffering from various old age diseases, which are evidenced by Exts.B8 and B9. After considering the rival pleas and evidence adduced by both parties, consists of the oral evidence of both petitioner and the 1st respondent and Exts.A1 to A4 and Exts.B1 to B11, the court below directed the petitioner to pay maintenance allowance at the rate of Rs.2,500/- per month to the 1st respondent and Rs.2,000/- each per month to the respondents 2 and 3.

4. Heard the learned counsel for the petitioner. The learned counsel for petitioner advanced arguments in extenso assailing the findings; whereby the court below

found that the respondents 1 to 3 are entitled to get maintenance allowance from the petitioner. According to the learned counsel, the court below ought to have found that the 1st respondent deserted the petitioner and she voluntarily left the matrimonial home in accordance with her own accord and thereby, she is not entitled to get maintenance allowance from the petitioner. It is also contended that the court below failed to appreciate the specific case of the petitioner that the 1st respondent renounced the allegiance to Pope and embraced a different community church by name 'Emperor Immanuel Church'. According to the learned counsel, the renouncement of the allegiance to Pope and joining with the other Church also can be taken as a sufficient evidence to show that the 1st respondent herself left the matrimonial home. The quantum of maintenance determined by the court below is also disproportionate with the income of the petitioner, as an autorikshaw driver by profession.

5. I have meticulously examined the impugned order under challenge in view of the oral evidence adduced by the 1st respondent. The marital status of the 1st respondent and the paternity of the children are not disputed and it is also not disputed that the respondents are residing separately with 1st respondent's parents from 2010 onwards and thereafter, the petitioner had not paid any amount towards maintenance allowance to them. Going by the impugned order, and the oral evidence of the 1st respondent, it could be seen that the marital discordancy mainly centers around the alleged renouncement of allegiance to Pope and embracing of another Church by name 'Emperor Immanuel Church'. During the cross examination of the petitioner, the petitioner himself suggested that if she is ready to renounce the present Immanuel Church and rejoin old church, he is ready to pay maintenance allowance to the respondents.

6. The right to get maintenance allowance is neither a conditional one nor a concession of the husband and it is a

statutory liability that continues uninterruptedly, unless and until the wife attains ability to maintain herself or her claim falls under any of the grounds specified in sub-section (4) of Section 125 of the Cr.P.C. Moreover, in my view, even if the wife renounces her religion itself, it is not a ground to deny her right to maintenance under Section 125 of the Cr.P.C as the same does not find a place under sub-section (4) of Section 125 of the Cr.P.C; though finds a place under Section 10 of the Divorce Act, for dissolution of marriage. Even if, the grievance of the petitioner is admitted at its entirety, it is only a change from one fraction to another fraction of Christianity, and it cannot be treated as a grave or irreconcilable marital discordancy enabling him to be exempted from discharging his statutory liability under Section 125 of the Cr.P.C. More importantly, he himself admitted that after 2010, he has not paid any amount towards the maintenance of the respondents particularly, when the respondents 2 and 3 are school going children

studying in various classes. In this analysis, I find that there is no illegality in the finding that the respondents are entitled to get maintenance allowance from the petitioner.

7. Coming to the quantum of maintenance allowance, the petitioner has no case that he is physically disabled or incapacitated to do work so as to earn livelihood for his family. According to him, he is an autorikshaw driver by profession and he is getting ₹100-150/- per day. He failed to adduce any evidence to show that the 1st respondent has any job or income. Therefore, it can be safely held that the 1st respondent is unable to maintain herself and the 2nd and 3rd respondents. The respondents 2 and 3 are minor school going children studying in various classes. Therefore, a substantial amount is required to meet their educational expenses. The petitioner contended that he has to look after his aged parents, who are suffering from heart disease. But no evidence has been adduced to show that he is the only son of his parents and the entire liability to look

after the parents is shouldered on him and the parents are in a impecunious living condition. In the absence of sufficient evidence to show that the parents are totally depending upon the petitioner alone and they have no other sources of income, the liability to pay maintenance allowance to parents pales to insignificance while considering the claim for maintenance of the wife and children. So also, I am unable to accept the contention that he is getting ₹100-150/- per day only as an autorikshaw driver. A physically able bodied man is presumed to be having sufficient earning capacity to maintain his family. No evidence has been adduced to show that he has lost his earning capacity. "Maintenance" includes provision for food, clothing, shelter, medical attendance, educational expenses etc. In this analysis, I find that the quantum of maintenance allowance determined by the court below is reasonable, just and proper and no interference is called for under the revisional jurisdiction.

8. 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 the entire arrear in lump sum.

This revision petition is dismissed.

Sd/-
K.HARILAL, JUDGE.

Rsr/stu

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P.A to Judge