

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

RPFC.No. 245 of 2015

AGAINST THE ORDER IN MC 388/2011 of FAMILY COURT,
ERNAKULAM DATED 28/4/2015.

REVISION PETITIONER(S)/PETITIONER:

KAJENDRAN, AGED 48 YEARS,
S/O. MURUGESAN, DOOR NO. 2189, PARAKIRAMPANDI,
SREEVAIKUNDAM, THOOTHUKUDI, TAMILNADU - 628 619.

BY ADV. SMT.M.BINDUDAS

RESPONDENT(S)/RESPONDENT:

MINIMOL, AGED 45 YEARS,
D/O. R.GOPINADH, KUZHIVILAKATH, MATHIRAPILLY ROAD
EDAYAKUNNAM, S. CHITTOOR P.O., CHERANELLOR,
ERNAKULAM - 682 027.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 23-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P. (FC) No.245 of 2015

Dated this the 23rd day of July, 2015

ORDER

The revision petitioner is the respondent in M.C. No.388 of 2011 on the files of the Family Court, Ernakulam. The above M.C. was fled by the respondent herein, who is the wife of the petitioner, claiming maintenance allowance under Sec.125 of the Code of Criminal Procedure. Their marriage was solemnized on 30/12/1984 and they lived together for considerably a long period and thereafter they lived separately due to marital discordancy. Two children were also born to them in their wed-lock and both of them have now attained majority. According to the respondent, the petitioner was very cruel towards her from the beginning of their marital life and when it became unbearable, she was

constrained to leave the company of the petitioner. It is alleged that he used to manhandle her, disposed of her money and gold ornaments, without her consent and after that he started to bring prostitutes at home and got engaged with them in the presence of the respondent, ignoring the protest raised by the respondent. Several times he manhandled her brutally. According to her, she has no job or any source of income and she is unable to maintain herself. The children also did not care to look after her and she is sick because of the manhandling of the petitioner. Now, even though she is working as a housemaid at Ernakulam, the earnings from that casual work is not sufficient to meet her day-to-day requirements; whereas the petitioner is working as Senior Section Engineer in the Southern Railway at Nagercoil and he is earning more than ₹25,000/- per month.

2. The petitioner resisted the claim of the respondent; but he admitted the marital status of the respondent. According to him, the respondent abandoned the company of the petitioner and the children and now she is leading an

immoral life. According to him, she had illicit relationship with several persons for a long time. She lived along with one John and thereafter with one Nelson. Therefore, she is not entitled to get maintenance allowance from him. He is working as Helper in the Southern Railway and his salary as alleged by the respondent is not correct. After considering the evidence on record, consisting of the oral evidence of the petitioner and the respondent and Ext.B1, the court below directed the petitioner to pay maintenance allowance at the rate of ₹5,000/- per month to the respondent. The legality of the entitlement of the maintenance allowance and the correctness of the quantum determined by the court below are under challenge in this revision petition.

3. Heard the learned counsel for the revision petitioner.

4. The learned counsel for the revision petitioner advanced arguments assailing the findings of the court below; whereby the court below found that the respondent is entitled to get maintenance allowance. The sum and substance of the arguments advanced by the learned counsel for the revision petitioner is that the court below has

miserably failed to appreciate the evidence on record in its correct perspective and the order has been rendered without considering the oral evidence of the petitioner. It is also contended that the quantum of maintenance allowance determined by the court below is disproportionate with the income of the petitioner, as he is working as a Helper only in the Southern Railway.

5. Going by the impugned order, it is seen that the petitioner has made very serious allegations touching the chastity of the respondent. He specifically named the persons with whom the respondent has illicit relationship, according to the petitioner. Though he had made certain allegations of illicit relationship with several persons, he has not made out any specific contention that she is living in adultery. As regards the illicit relationship, the only evidence available on record is his oral assertions. Going by the averments of the respondent also, she made an allegation that he used to bring prostitutes at home and got engaged with them in her presence, ignoring the protest raised by her. Therefore, it can be seen that the

allegations of illicit relationship made by both parties against each other are confined to oath against oath only. Both parties miserably failed to prove that other spouse is living in adultery or with another women as the case may be. In the above view of the matter, I find that the court below is justified in rejecting the allegations affecting chastity and morale made against each other.

6. The petitioner has no case that he has been paying maintenance allowance to the respondent now under Section 125 of the Cr.P.C. The husband is liable to pay maintenance allowance to his wife unless he succeeds in proving any of the grounds contemplated under Section 125 (4) to get exempted from the statutory liability. But the petitioner has failed to bring out a case under Section 125 (4) of the Cr.P.C. Therefore, the court below is justified in finding that the respondent is entitled to get maintenance allowance.

7. What remains to be considered is the correctness of quantum of maintenance allowance. It is the case of the respondent that even though she is working as a house

maid at Ernakulam, the income from that casual work is not sufficient to meet her requirements. The petitioner has no case that the respondent is permanently employed or having enough sources of income. Therefore, it can be safely concluded that the respondent is unable to maintain herself. But, Ext.B1 salary certificate produced by the petitioner himself shows that he is getting ₹32,130/- per month as salary. The husband is liable to pay maintenance allowance in accordance with the living status, standard of life and day to day needs of the wife. The term "Maintenance" includes provision for food, clothing, shelter, medical attendance etc.

8. In the above analysis, I find that even if Ext.B1 is taken at its face value and admitted as such, the maintenance allowance determined @ ₹5,000/- per month is not excessive and there is no reason to interfere with the said findings. There is no illegality or impropriety in any of the findings in the impugned order. I do not find any kind of perversity in the appreciation of evidence.

9. The learned counsel for the petitioner sought for

some time to pay the arrear. Having regard to the facts and circumstances of the case, the revision petitioner is given five 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 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 the realisation of entire arrear in lump sum.

This revision petition is devoid of merits and dismissed accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge