

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

RPFC.No. 272 of 2015

IN MC 366/2012 OF FAMILY COURT,KOZHIKODE DATED 25-08-2014
.....

REVISION PETITIONER(S)/RESPONDENT:

**MUHAMMED ASHARAF MOULAVI, AGED 45 YEARS,
S/O.ABDULLAKUTTY, ASARIKANDY HOUSE, PAZHOOOR P.O.,
MAVOOR, KOZHIKODE DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SRI.R.RANJITH (K/489/2011)**

RESPONDENT(S)/PETITIONERS:

- 1. MUBTHASEEM, AGED 15 YEARS,
MINOR, REPRESENTED BY MOTHER, RAMLA P.M.,
PUTHIYAMADATHIL HOUSE, KUTTIKATTOOR P.O., KOZHIKKODE.**
- 2. MUNTHASEER, AGED 10 YEARS,
MINOR, REPRESENTED BY MOTHER, RAMLA P.M.,
PUTHIYAMADATHIL HOUSE, KUTTIKATTOOR P.O.,
KOZHIKKODE, PIN - 673 008**

**BY ADVS. SRI.A.JAYASANKAR
SRI.C.V.MANUVILSAN
SRI.MANU GOVIND
SRI.ASHWIN SETHUMADHAVAN**

**THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON
17-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

RPFC.No. 272 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE A: TRUE COPY FO THE CERTIFICATE ISSUED BY THE SUPERINTENDENT
CENTRAL PRISON, KANNUR.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msv/

K.HARILAL, J.

=====

R.P.(F.C) No.272 of 2015

=====

Dated this the 17th day of August, 2015

ORDER

The revision petitioner is the respondent in M.C.No.366/12 on the files of the Family Court, Kozhikode, filed by the respondents herein, who are the children of the petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to the respondents, the petitioner has neglected to maintain them and refused to pay maintenance allowance. The 1st respondent is studying in 5th standard in GHS Kuttikkattoor and the 2nd respondent is studying in 1st standard of AMLP School, Kuttikkattoor. That apart, the 1st respondent is a Asthma patient and an amount of ₹750/- per month is required for his treatment. Thus, the 1st respondent requires minimum of ₹3,000/- and the 2nd respondent requires ₹2,500/- per month. According to the

respondents, petitioner is an able bodied healthy man and he has sufficient earning capacity to pay maintenance allowance. In addition to that, he is a businessman doing sale of Ayurvedic medicines and also has book stall, hotel and bakery and thereby he is getting a gross income of ₹50,000/- per month.

2. Going by the impugned order, it is seen that the petitioner was undergoing imprisonment in execution of the order passed under Section 3(4) of the Muslim Women (Protection of Right on Divorce) Act, 1986. He was produced before the court from central prison in this case. At that time, he made an offer that he is ready to pay maintenance allowance @ ₹500/- to each respondents and he made an endorsement to that effect on the back of the petition also. On the basis of the assurance made by him before the court below in writing, the court below directed the petitioner to pay maintenance allowance @ ₹500/- each to the respondents. This order is under challenge in this

revision petition.

3. The main thrust of the arguments advanced by the learned counsel for the petitioner is that he was undergoing imprisonment in execution of the order passed under Section 3(4) of the Muslim Women (Protection of Right on Divorce) Act, 1986 from 24.11.2013 to 19.9.2014. At that time he had no income. So he is not liable to pay maintenance allowance to the respondents during that period.

4. Per contra, the learned counsel for the respondents submits that this revision itself is not maintainable as the impugned order under challenge was passed on a common consensus made before the court and he made a written endorsement to that effect. Therefore, he cannot be allowed to resile from the assurance made before the court below. The learned counsel further contended that the contention that he is not liable to pay maintenance allowance to his children on the reason that he had been

undergoing imprisonment in execution of the sentence is unsustainable in view of the decision in **Ajithkumar v. Shaima** [2009 (3) KHC 448].

5. The short question that preliminary arises for consideration is, whether this revision petition is maintainable?

6. Going by the impugned order itself, it is seen that when he was produced before the court below, he himself made an assurance that he is ready to pay ₹500/- per month and he made an endorsement for the same. Therefore, I find that no revision will lie against the order passed on common consensus between the parties arrived at before the court below. Secondly, the contention that he is not liable to pay maintenance allowance during the period in which he was undergoing imprisonment is also not sustainable in view of the decision in **Ajithkumar's** case wherein this Court held that imprisonment is not a ground to refuse payment of maintenance due for the period in

which he was in prison. At the instant case, when he was produced before the court below from the central prison he was fully aware of the fact that he was not employed in the prison, if it was true and if that be so, he could not have made such an assurance before the court below. On the other hand, he made an assurance that he is ready to pay maintenance allowance to his children @ ₹500/- per month. Therefore, he cannot be heard to say that he is not liable to pay maintenance allowance during the period in which he was undergoing imprisonment.

This revision petition is dismissed accordingly.

Sd/-
K.HARILAL, JUDGE.

stu

//True copy//

P.A to Judge