

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

RPFC.No. 279 of 2015

AGAINST THE ORDER IN MC 452/2013 of FAMILY COURT, KANNUR
DATED

REVISION PETITIONER/COUNER PETITIONER/RESPONDENT:

C. ABDULLA, AGED 45 YEARS,
S/O.MUHAMMED, CHEMBENTAKATH HOUSE,
SAJITHA QUARTERS,
KARYAMBALAM, TALIPARAMBA P O, TALIPARAMBA AMSOM,
TALIPARAMBA TALUK, KANNUR DISTRICT-670141

BY ADVS.SRI.V.A.SATHEESH
SRI.V.T.MADHAVANUNNI
SRI.J.ABHILASH

RESPONDENTS/PETITIONERS:

1. T. SAFIYA, AGED 35 YEARS,
D/O.USMAN, THALAPRATH HOUSE, PUNNAKKAPPARA,
P.O. AZHIKODE SOUTH, KANNUR DISTRICT-670009.

2. ABID T, AGED 16 YEARS,
S/O.C ABDUALLA, THALAPRATH HOUSE, PUNNAKKAPPARA,
P O AZHIKODE SOUTH, KANNUR DISTRICT-670009.

3. AFSAL T , AGED 14 YEARS,
S/O.C ABDUALLA, THALAPRATH HOUSE, PUNNAKKAPPARA,
P O AZHIKODE SOUTH, KANNUR DISTRICT-670009.

4. SAFEER T, AGED 12 YEARS,
S/O.ABDUALLA, THALAPRATH HOUSE, PUNNAKKAPPARA
P O AZHIKODE SOUTH, KANNUR DISTRICT-670009.

MINORS ARE REPRESENTED BY THEIR MOTHER AND
GUARDIAN T. SAFIYA, D/O. USMAN, AGED 35 YEARS,
THALAPRATH HOUSE, PUNNAKKAPPARA,
P.O. AZHIKODE SOUTH, KANNUR DISTRICT-670 009.

R1-R4 BY ADV. SRI.P.BHARATHAN
ADV. SRI.ZUBAIR PULIKKOOL

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

K. HARILAL, J.

R.P. (FC) No.279 of 2015

Dated this the 7th day of August, 2015

ORDER

The petitioner is the respondent/husband in M.C. No.452 of 2013 on the files of the Family Court, Kannur, filed by the respondents herein, who are the wife and children of the petitioner, claiming maintenance allowance from him. The petitioner admitted the marital status of the 1st respondent as well as the paternity of the respondents 2 to 4; but he resisted the claim of the respondents under Sec.125 of the Code of Criminal Procedure mainly on the ground that the 1st respondent is leading an adulterous life with one 'Sujith' and the revision petitioner is a heart

patient, who have lost his earning capacity and thereby he has no means to pay maintenance allowance to the respondents. After considering the rival pleas and the evidence let in by both parties, consist of evidence of the complainant, respondents and Ext.A1 and Exts.R1 to R7(c), the court below directed the petitioner to pay maintenance allowance at the rate of ₹2,000/- each to the respondents 1 to 3 and ₹1,500/- to the 4th respondent from the date of petition. 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.

2. Heard the learned counsel for the revision petitioner.

3. The learned counsel for the revision petitioner advanced arguments assailing the findings whereby the court below rejected the contention that the petitioner is a man, who has lost his entire earning capacity due to cardiac problem which is evidenced by Exts.R1 to R7. The case of the 1st respondent is that

the petitioner refused to pay maintenance allowance from 1/1/2010 onwards and the 1st respondent has no job or any source of income and she is unable to maintain herself and the respondents 2 to 4; whereas the petitioner has been working as a heavy driver in sand transporting lorries and deriving a monthly income of not less than ₹30,000/-. The main contention raised by the petitioner is that the 1st respondent is living in adultery with another person by name 'Sujith'. According to the decisions in *Mehbubai v. Nasir Farid* [1977 Cri. L.J. 391] and *S.S. Manickam v. Arputha Bhavani Rajam* [1980 Cri. L.J. 354], when the husband raises a contention of adultery under Sec.125(4) of the Cr.P.C., the burden is heavy upon the husband to prove the said contention and strict proof is required for the same. Needless to say, raising a false allegation suspecting chastity of the wife, without cogent and convincing evidence, would amount to cruelty. In the instant case, the petitioner has miserably failed to substantiate the said contention, by adducing proper evidence. If that be

so, such conduct of the petitioner itself would amount to cruelty, as rightly noted by the court below.

4. Coming to the disability and loss of earning power alleged under Exts.R1 to R7, it is seen that the Family Court Judge has made a threadbare analysis of Exts.R1 to R7. None of the documents shows that he is unfit to continue as a driver or he is advised not to drive the vehicle. It is pertinent to note that the surgical correction was effected in the year 2002 by transplanting a mechanical valve to the heart. It shows that earlier he was suffering from cardiac problems caused by defective valve and by the surgery, the said defect was cured and thereafter more than 12 years have been elapsed. Therefore, unless the disability or incapacity is proved by the current medical evidence, it cannot be held that he is suffering from any kind of disability caused by the transplantation of the heart valve. In this analysis, the court below is justified in rejecting the contentions raised in support of Exts.R1 to R7.

5. To sum up, there is no illegality or impropriety

in the finding that the respondents are entitled to get maintenance allowance from the petitioner.

6. Coming to the correctness of the quantum of maintenance allowance, the admitted case of the petitioner is that he is a driver by profession. In the absence of any kind of evidence to show his alleged disability, it could be reasonably presumed that he is earning for the livelihood as a driver by profession. If that be so, as rightly held by the court below, it is a matter of common knowledge that in the year 2013 a driver would get an average of ₹500/- per day. A husband is liable to pay maintenance allowance to his wife and children in accordance with their family status, standard of life and day-to-day needs. "Maintenance" includes provision for food, residence, clothes, medical attendance and the educational expenses of the children. The respondents 2 to 4 are school going minor children and a substantial amount is required to meet their educational expenses. 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.

7. The learned counsel for the revision petitioner sought for some time to pay the arrear. Having regard to the facts and circumstances of the case, the petitioner is given six months time to pay the arrear, provided that half of the entire arrear shall be paid within the first three months and the remaining balance shall be paid within the next three months. In the event of failure to pay the first instalment, this instalment facility will stand automatically vacated and the first respondent is at liberty to realise the entire arrear in lump sum, in accordance with law.

This RP (FC) is dismissed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge