

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

RPFC.No. 149 of 2014

AGAINST THE ORDER IN MC 129/2012 of FAMILY COURT,THRISSUR
DATED 15-02-2014.

REVISION PETITIONER(S)/RESPONDENT:

SUNIL K.R. ,
S/O.RAGHAVAN K.K. , PATTTERIPALLATH,
ALANGAD P.O. , THIRUVALOOR, ALUVA.

BY ADVS.SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH

RESPONDENT(S)/PETITIONERS:

1. MANJU,D/O.MANI ,
MAMBRATHOTTIPARAMBIL HOUSE ,
VALLACHIRA DESOM & VILLAGE ,
THRISSUR PIN-680 562.

2. MINOR SANJAY DEV ,
REP. BY MOTHER & GUARDIAN 1ST PETITIONER MANJU.

BY ADV. SRI.P.K.SAJEEV

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 29-05-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No.149 of 2014

Dated this the 29th day of May, 2015

ORDER

The revision petitioner is the respondent in M.C. No.129 of 2012 on the files of the Family Court, Thrissur. The above M.C. was filed by the respondents herein, who are the wife and son of the petitioner, claiming maintenance allowance under Sec.125 of the Code of Criminal Procedure. According to the 1st respondent, the revision petitioner has neglected them and refused to pay maintenance allowance to them from 12/10/2011. The 1st respondent has no job or income and she is unable to maintain herself and the 2nd respondent; whereas the petitioner is a diesel mechanic and deriving a monthly income of ₹50,000/-.

That apart, he is getting ₹10,000/- as income from his landed property. Thus, the total monthly income of the petitioner is ₹60,000/-.

2. Per contra, the revision petitioner resisted the said claim admitting the marital status of the 1st respondent and the paternity of the 2nd respondent. He denied the allegation that he neglected the respondents. According to him, he is ready and willing to look after the respondents. He emphatically denied the allegation of cruelty and harassment allegedly meted out to her by the petitioner. So also, he denied the allegation that he has a monthly income of ₹60,000/-. After considering the rival contentions, the court below directed the revision petitioner to pay maintenance allowance at the rate of 3,000/- each to the respondents 1 and 2. The legality of the entitlement of maintenance allowance and the correctness of the quantum fixed by the court below are under challenge in this revision petition.

3. The learned counsel for the petitioner submits that there are no sufficient pleadings in the petition so as to make out a case that there are sufficient reasons to live separately without forfeiting the right to claim maintenance allowance. Though there is an allegation in the oral evidence of the 1st respondent that the petitioner had made an attempt to do away with the 1st respondent after pouring kerosene on her and lighting fire and no evidence had been adduced to substantiate the said contention. In short, the sum and substance of the argument is that there are no sufficient reasons to live separately without forfeiting the right to claim maintenance allowance. So also, it is contended that the quantum of maintenance allowance determined by the court below is disproportionate with his income and the same is not just and proper.

4. Per contra, the learned counsel for the respondents advanced arguments to justify the

findings of the court below, whereby the petitioner is directed to pay maintenance allowance to the respondents. According to the learned counsel, the court below has meticulously evaluated the pleadings and the evidence let in by the petitioner to prove the same and arrived at a proper finding that there are sufficient reasons to live separately, after leaving the company of the petitioner.

5. Going by the impugned order, it is seen that the court below was meticulously considered the evidence adduced by the petitioner and the 1st respondent. It is the case of the 1st respondent, in evidence, that from the beginning of the marriage, she was being harassed by the petitioner demanding more money and gold ornaments. It is also contended that the petitioner persistently insisted the 1st respondent to sell the property and a house thereon, which was purchased by her mother in her name. Further, she emphatically stated that the petitioner is a born

criminal. The petitioner has no case that he has been paying maintenance allowance to the respondents, after 2011 and no evidence had been adduced to prove payment of maintenance allowance, after 2011. The absence of such evidence are sufficient to arrive at a finding that, as alleged by the 1st respondent, he neglected and refused to pay maintenance allowance to the respondents warranting interference under Sec.125(1) of the Cr.P.C.

6. In the above view of the matter, the court below is fully justified in finding that there are sufficient reasons to live separately without forfeiting the right to claim maintenance allowance. As regards the allegation that he made an attempt to do away with the 1st respondent after pouring kerosene on her and lighting fire, I am of the opinion that it is only one of the several incidents which she had narrated in evidence. When there is a specific pleading in the complaint that he is a born criminal, all his

misbehaviour and misdeeds exposing criminality is implied in the said expression.

7. Coming to the quantum of maintenance allowance, the petitioner himself admitted that he is a diesel mechanic and he worked in the K.S.R.T.C. till 2000. It is also admitted that he was abroad and drawing a monthly salary of ₹30,000/-. He denied the suggestion that a diesel mechanic will get ₹5,000/- per day. But it could be safely concluded that a diesel mechanic will get at least ₹800/- per day. Even if that be so, he will get sufficient income to look after his wife and son. It is also pertinent to note that the petitioner has no case that he is physically disabled or incapacitated to do work so as to maintain his wife and son. The legal position is that 'means' signify not only movable or immovable property; but also the physical capacity of an able bodied man to earn for the livelihood of his family. The husband is liable to provide maintenance allowance in accordance with

the status of the family, the cost of living and day-to-day requirement of his wife and children. The 2nd respondent is a school going student and a substantial amount is required for his educational expenses.

8. Having regard to the above facts, I find that the quantum of maintenance allowance determined by the court below is reasonable, just and proper and warranting no interference under the revisional jurisdiction. The learned counsel for the petitioner seeks some time to pay the arrear.

9. Having regard to the facts and circumstances of this case, the petitioner is given four months time to pay the entire arrear, provided that half of the entire arrear shall be remitted within two months and the remaining half shall be remitted within the next two months. In the event of failure to pay the first instalment within time, this instalment facility will stand automatically revoked and the respondents are at liberty to realise the entire arrear in lump sum in

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accordance with law.

This revision petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge