

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

RPFC.No. 253 of 2014

ORDER DATED 28-02-2014 IN MC 368/2011 OF FAMILY COURT,THRISSUR

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REVISION PETITIONER(S)/RESPONDENTS:

**NEENU, AGED 40 YEARS,
S/O.KAMBAMTHODATH THILAKAN, KARUVANNUR DESOM,
PORATHUSSERY VILLAGE, THRISSUR TALUK - 680 561.**

BY ADV. SRI.M.PREMCHAND

RESPONDENT(S)/PETITIONERS:

- 1. RESHMY, AGED 30 YEARS,
D/O.NANDILATH SADANANDAN,
ENGANDIYOOR DESOM AND VILLAGE,
CHAVAKKAD TALUK - 680 616.**
- 2. MINOR NIVED, AGED 4 YEARS,
(MINOR REPRESENTED BY MOTHER AND
GUARDIAN 1ST RESPONDENT RESHMY)**

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

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON
16-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

K.HARILAL, J.

R.P.(F.C). No. 253 of 2014

Dated this the 16th day of July, 2015

ORDER

The revision petitioner is the respondent in MC No.368 of 2011 on the files of the Family Court, Thrissur, filed by the respondents herein; who are the wife and son of the petitioner claiming maintenance allowance under Sec.125(1) of the Cr.P.C. According to the 1st respondent, her marriage with the petitioner was solemnized in the year 2005. Later the relationship between them became strained as she was harassed with cruelty both mentally and physically by the petitioner herein and the petitioner demanded more dowry and money, after consuming intoxicated liquor. When his behavior became intolerable, she left the company with the only child and therefore she is residing in her parental home. She has no job or any source of income to maintain herself and the 2nd respondent. But the petitioner is conducting the business

of auto fancy items at Irinjalakkuda and deriving a monthly income of Rs.40,000/-. The petitioner resisted the claim for maintenance allowance on the ground that she left the company with the child on her own volition but he admitted the marital status of the 1st respondent and the paternity of the 2nd respondent. He denied the respondent's case that he is conducting business of auto fancy items and getting Rs.40,000/- per month. The legality of the entitlement of maintenance allowance and the correctness of the quantum of maintenance fixed by the court below is under challenge in this revision petition.

2. Going by the impugned order, it is seen that the petitioner himself deposed before the court that he is not prepared to take back his wife and child, as he is not interested to continue the marital relationship. It has also come out in evidence that he has also filed OP No.395/2012 seeking dissolution of marriage. He has no

case that he has been paying maintenance allowance to the respondents after 2011. In that context, the family court is justified in finding that he is liable to pay maintenance allowance to the respondents.

3. Going to the quantum of maintenance allowance, it is the case of the 1st respondent that he is conducting a business of auto fancy items. The 1st respondent deposed that the petitioner was working abroad for a long time and he amassed huge wealth, while he was employed abroad and he is maintaining a motor car. But no documentary evidence has been produced to substantiate the said contention. After analysing the oral evidence given by both parties, the court below arrived at a finding that even in the absence of documentary evidence, it can be safely concluded that the petitioner is a man having sufficient means to pay maintenance allowance to his family. That apart, he has no case that he is physically disabled or incapacitated to do any work,

so as to earn livelihood for his family. An able bodied man is also presumed to be having sufficient earning capacity. Even though petitioner has contended that the respondent is working in a shop, he could not prove that the petitioner is earning livelihood for herself and the 2nd respondent. The term 'maintenance' provided under Sec.125 of the Cr.P.C includes provision for food, clothes, residence etc.

4. Having regard to the steep hike in the cost of living, caused by inflation, and the evidence available on record, the court below is justified in determining the quantum of maintenance allowance at the rate of Rs.3,000/- per mensem to the 1st respondent and Rs.1,500/- per mensem to the 2nd respondent.

5. 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 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 dismissed accordingly.

Sd/-
K.HARILAL
JUDGE

rsr

/True Copy//

PA to Judge