

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

RPFC.No. 271 of 2014 ()

AGAINST THE ORDER IN MC 614/2012 of FAMILY COURT, NEDUMANGAD DATED 28-05-2014

REVISION PETITIONER(S)/RESPONDENT:

**MOHAMMED SHIBU,
S/O.ABOOBAKKER, A.S.MANZIL, MELEMUKKU,
POTHENCODE P.O, NOW RESIDING AT RAMLA BUILDING,
VAVARAYAMBALAM, POTHENCODE P.O**

**BY ADVS.SRI.N.SUKUMARAN (SR.)
SRI.S.SHYAM
SRI.N.K.KARNIS
SRI.V.K.BALACHANDRAN**

RESPONDENT(S)/PETITIONERS:

- 1. NAIJA BEEVI,
W/O.MOHAMMED SHIBU, A.S.MANZIL, MELEMUKKU,
POTHENCODE, VEMBAYAM VILLAGE - 695 584.**
- 2. AZIYA, D/O.MOHAMMED SHIBU, DO. DO. DO. (MINOR)**
- 3. ALIHASSAN, S/O.MOHAMMED SHIBU, DO. DO. DO.
(MINOR RESPONDENTS 2 & 3 REPRESENTED BY GUARDIAN MOTHER IST
RESPONDENT).**

R1-R3 BY ADV. SRI.SAJU.S.A

**THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON
26-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

R.P(FC).No.271 of 2014

Dated this the 26th day of May, 2015.

O R D E R

The revision petitioner is the respondent in M.C.No.614 of 2012 on the files of the Family Court, Nedumangad. The above M.C. was filed by the respondents herein, who are the wife and children of the revision petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to them, the revision petitioner has wilfully neglected them and refused to provide maintenance allowance from July, 2011 onwards. The 1st respondent has no job or any sources of income and she is unable to maintain herself and respondent Nos.2 and 3; whereas the revision petitioner is a businessman having an income of Rs.30,000/- per month. The 1st respondent claimed Rs.4,000/- and respondent Nos.2 and 3 claimed Rs.5,000/- each by way of maintenance.

2. The petitioner admitted the marital status of

the 1st respondent as legally wedded wife and the paternity of the respondent Nos.2 and 3 are children born out of the said wedlock. But his specific contention is that, the 1st respondent is able enough to maintain herself and the respondent Nos.2 and 3 by the income from 2 acres and 65 cents of land and a building therein, which is rented out for a monthly rent of Rs.3,000/-. Thus, the 1st respondent is having a monthly income of Rs.35,000/- per month. According to him, he is working as an employee in a soda factory and he is getting Rs.8,000/- only as monthly allowance. After considering the evidence on record, the court below directed the revision petitioner to pay maintenance allowance at the rate of Rs.4,000/- to the 1st respondent and Rs.2,000/- each to the respondents 2 and 3 per month. The legality of the entitlement of maintenance allowance as well as the quantum fixed by the court below is under challenge in this revision petition.

3. The learned senior counsel appearing for the revision petitioner advanced arguments in extenso

assailing the findings of the court below that the first respondent has no sources of income. According to the learned counsel, the first respondent herself admitted in her oral evidence that she owns 2.65 acres of landed property. in view of the said admission, the court below ought not have granted maintenance allowance to the 1st respondent. Similarly, the court below has fixed Rs.8,000/- as monthly income of the revision petitioner. If that be so, the direction to pay more than half of the said total income to the respondents as monthly maintenance allowance is disproportionate and excessive.

4. Per contra, the learned counsel for the respondents advanced arguments to justify the findings that the 1st respondent has no sources of income and thereby she is unable to maintain herself. It is also contended that the court below has not accepted Rs.8,000/- as monthly income of the revision petitioner on the basis of his deposition. According to him, the court below has relied on the said admission to the extent that he is an earning man having earning

capacity to maintain his family.

5. In view of the above submissions, the question that arises for consideration is whether there is any illegality or impropriety in the finding that the 1st respondent has no sources of income and she is unable to maintain herself. Going by the oral evidence given by the 1st respondent it is true that she herself admitted that she owns 2.65 acres of landed property. Again, the learned counsel for the revision petitioner put a question suggesting positively that the said property contains rubber plantation; but the 1st respondent had negatively answered. Thereafter no evidence had been adduced to show that what is stated by the 1st respondent is not correct and the landed property contains rubber plantation as suggested by the learned counsel for the revision petitioner. In the absence of any positive evidence to show that the revision petitioner is having rubber plantation in 2.65 acres of land, it cannot be held that the 1st respondent is having income from the said property so as to meet her living expenses.

6. Coming to the second point, going by the impugned order, it is seen that the revision petitioner himself has admitted that he is an employee working in a soda factory and getting Rs.8000/- per month. There is no finding in the order to show that the court below has accepted the said income as his exact monthly income. But, as rightly submitted by the learned counsel for the revision petitioner, the court below has relied on the said admission to the extent that his own admission would show that he is an employee having earnings. In this context, it is to be remembered that if the said amount was his actual income as salary, certainly he could have produced documentary evidence indicating his exact salary. It is to be remembered that exact salary is a matter that remains exclusively within the knowledge of the person who gets it, and he could have produced the salary certificate to prove the same correctly. In the absence of such positive evidence, an adverse inference can be drawn against the petitioner to the extent that he has sufficient earning capacity. The legal position

well settled by the Apex Court in the decision in Ajithkumar v. Shaima [2009 (3) KLT 452] is that the husband is liable to give maintenance in accordance with the standard of life to which his wife and children are accustomed and 'means' contemplated under Section 125 Cr.P.C. signifies not only movable or immovable properties or salary; but also includes the earning capacity of an able bodied man. In that view of the matter, the revision petitioner is liable to pay maintenance allowance in accordance with the requirements of his wife and children so long as he is healthy, able bodied and having sufficient earning capacity. I find no illegality or impropriety in the finding that the 1st respondent has no source of income and she is unable to maintain herself. Similarly, the quantum of maintenance allowance determined by the court below is just and proper and no interference is called for.

This R.P(FC). is dismissed accordingly.

Sd/-

K. HARILAL, JUDGE

okb.