

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

RPFC.No. 347 of 2014 ()

AGAINST THE ORDER/JUDGMENT IN MC 11/2011 of FAMILY COURT, PALAKKAD
DATED 05-02-2014

REVISION PETITIONER/RESPONDENT :

N.S SAHAJAN, AGED 42,
S/O. LATE SEKHARAN, NEDUVELI HOUSE, 3/72
THURAVUR POST, ANKAMALI TALUK
ERNAKULAM DISTRICT-683 586.

BY ADV. SMT.TISSY ROSE K CHERIYAN

RESPONDENT/PETITIONERS AND STATE :

P.PRASANNA, AGED 29 YEARS
W/O. SAHAJAN, N.V.CHALLA, EDUPPUKULAM P.O.
MENONPARA VIA, PALAKKAD DISTRICT-678 556.

BY ADV. SRI.A.R.GANGADAS

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON
30-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

RPFC.No. 347 of 2014

APPENDIX

PETITIONER'S EXHIBITS:

PETITIONER'S EXHIBITS:

ANNEXURE-A1: COPY OF THE PETITION IN O.P.NO.1554/2010.

ANNEXURE-A2: COPY OF THE DEPOSITION OF PW1 IN C.C.NO.520/2010 OF JFCM
I, PALAKKAD.

// TRUE COPY //

TKS

P.S. TO JUDGE

C.T.RAVIKUMAR, J.

R.P.(F.C)No.347 of 2014

Dated 30th March, 2015

ORDER

This revision petition is directed against the order dated 5.2.2014 of the Family Court, Palakkad in M.C.No.11 of 2011. The revision petitioner herein was the counter petitioner and the respondent herein was the petitioner, therein. It was a petition moved for maintenance from the revision petitioner under Section 125 of the Code of Criminal Procedure. The respondent herein took up the contention that the revision petitioner married her on 31.1.2010 and their marriage was solemnised at Sree Krishna Temple, Guruvayur and since then they had been living together in the residence of the revision petitioner as man and wife. Attributing acute disharmony in their matrimonial life the respondent started living separately. It is thereafter that the respondent filed the said petition alleging that the revision petitioner who is capable of maintaining her, is neglecting to maintain her. The revision petitioner herein/the counter petitioner therein entered appearance and resisted the claim of the respondent herein/petitioner therein. To support their rival contentions the revision petitioner as also the respondent have tendered evidence.

The respondent herein/the petitioner therein got herself examined as PW1 and the revision petitioner herein/counter petitioner therein got himself examined as RW1. Exts.D1 to D4 were marked on his side. After careful evaluation of the evidence on record and considering the rival arguments advanced the Family Court found that the revision petitioner is bound to maintain the respondent and consequently directed the revision petitioner to pay monthly maintenance at the rate of ₹ 3,000/- to the respondent from the date of petition that is, 24.1.2011 onwards. This revision petition has been filed in the said circumstances.

2. In this revision petition the revision petitioner took up the contention that there was no legal marriage between the revision petitioner and the respondent owing to the ground that the respondent was having a living spouse as on 31.1.2010. The said contention is founded on Annexure A2 which is the deposition of the respondent in C.C.No.520 of 2010 on the files of of the Court of Judicial First Class Magistrate-I, Palakkad. Various other grounds are also raised in this revision petition to mount challenge against the order of the Family Court dated 5.2.2014 in M.C.No.11 of 2011.

3. I have heard the learned counsel for the revision petitioner

and also the learned counsel appearing for the respondent.

4. I have already taken note of the fact that the revision petitioner now takes up a contention that there was no legal marriage between himself and the respondent. In this context, it is to be noted that, such a contention was not taken up in his counter affidavit filed before the Family Court in M.C.No.11 of 2011 by the revision petitioner. Evidently, before the Family Court he admitted that solemnization of the marriage between himself and the respondent was conducted on 31.1.2010 at Sree Krishna Temple, Guruvayur. The revision petitioner had not taken up any ground to challenge the validity of the marriage with the respondent on the ground that the respondent was having a living spouse at the time of marriage. In other words, it is a fresh contention taken up for the first time before this Court. Evidently, the said contention was taken up in the light of Annexure-A2. Annexure-A2 sought to be marked as such in this proceedings is the deposition given by the respondent herein in C.C.No.520 of 2010 before the Court of the Judicial First Class Magistrate, Palakkad on 20.4.2011, as PW1. After appreciating the evidence on record the Family Court arrived at the conclusion that the respondent was living separately for a sufficient reason and the revision petitioner who is capable of maintaining the

respondent is bound to maintain her. Based on the said finding the revision petitioner was directed to pay an amount of ₹ 3,000/- as monthly maintenance to the respondent from the date of petition that is, 24.1.2011. As noticed hereinbefore, in the counter affidavit filed before the Family Court the revision petitioner admitted the factum of his marriage with the respondent and that it was solemnized on 31.1.2010 at Sree Krishna Swami Temple, Guruvayur. When once the factum of marriage was admitted by the parties to a claim for maintenance essentially, the Family Court is bound to consider whether the claimant wife is capable of maintaining herself and whether she had incurred any disqualification for claiming maintenance in the light of the provisions under Section 125(4), Cr.P.C. Virtually, the Family Court has considered all such issues. Firstly, the Family Court considered whether the respondent is refusing to live with the revision petitioner for any sufficient reason or not. After taking into account the evidence on record it was ultimately held that the respondent was living separately for sufficient reason. The fact that she had filed a complaint under Section 498A of the Indian Penal Code against the revision petitioner and his mother, as is obvious from Ext.D2, was also taken into consideration by the Family Court. Taking into account such other circumstances as well the Family Court arrived at the finding that the refusal from the part of

the respondent to live with the revision petitioner could not be said to be without any sufficient ground or in other words, she is living separately from the revision petitioner for sufficient reason. In such circumstances, the Family Court could have declined maintenance to the respondent only if the revision petitioner successfully established the fact that the respondent is capable of maintaining herself or that she had incurred any disqualification in the light of the provisions under Section 125(4) Cr.P.C. A careful scanning of the impugned order would reveal that the revision petitioner had not succeeded in establishing that the respondent wife is capable of maintaining herself or that she had incurred any disqualification to claim maintenance in terms of the provisions under Section 125(4), Cr.P.C. It was consideration of all such aspects that constrained the Family Court to arrive at the conclusion that the respondent is entitled to claim maintenance and the revision petitioner is liable to give maintenance to the respondent. Needless to say that based on the said conclusion arrived at, in the light of the evidence on record, the Family Court proceeded to consider further on the question of quantum of maintenance to be awarded in favour of the respondent and taking into account the capacity of the revision petitioner maintenance at the rate of ₹ 3,000/- per month was granted. As noticed hereinbefore, in this case, the revision petitioner who had failed to adduce any evidence

before the Family Court to establish that the respondent had any disqualification to claim maintenance from him has raised the contention based on Annexure-A2 in this revision petition. As stated earlier, the contention that the respondent was having a living spouse at the time of her marriage with the revision petitioner was not at all taken up before the Family Court. It is a factual contention taken up before the court for the first time. In such circumstances, I do not think that this Court will be justified to consider those aspects as no evidence whatsoever was let in by the party on the said aspect in accordance with law. That apart, in the light of the Division Bench decision of this Court in **Surendran v. Najima Bindu (2012 (1) KLT 769)** I am of the view that the revision petitioner cannot succeed in his attempt to make this Court to overturn the findings of the Family Court. In the decision in **Surendran's** case (supra) the liability to maintain the wife was disputed by the husband taking into account the contention of concealment of the existence of a marriage at the time of the marriage between the parties. In other words, the husband disputed the liability taking up the contentions that the alleged marriage of the wife was concealed and being a lady who was having a living spouse at the time of marriage, her claim for maintenance was not valid and in such circumstances the husband was not liable to maintain the wife. Evidently, after considering various aspects as also

the relevant principles this Court found that if at all any concealment is there that will be a ground for the husband to take in a petition for dissolution of marriage in terms of the provisions under the Hindu Marriage Act, 1955 and at any rate, it cannot take away the right of the wife to claim maintenance under Section 125,Cr.P.C. if she has specified the conditions to earn eligibility to claim the same. A perusal of the judgment in question as also the revision petition would reveal that before the Family Court the revision petitioner herein had not raised any dispute regarding the marriage between himself and the respondent. In the said circumstances, the Family Court proceeded to consider the issues taking that the marriage was admitted by the respondent therein/revision petitioner herein. Annexure.A2 was not at all produced before the Family Court and naturally, the respondent was not confronted with the same. There is nothing on record to show that the respondent had incurred any disqualification to claim maintenance. The evidence would reveal that virtually, the revision petitioner had not taken any contention that the respondent is a lady who is able to maintain herself or that she had incurred any disqualification to claim maintenance under Section 125 Cr.P.C. At any rate, it is evident that before the Family court he could not adduce any evidence to establish that the respondent wife could not legally claim maintenance from him.

Evidently, before the Family Court the revision petitioner had not raised any such contention and it is for the first time that he is taking such a contention and as already found even if such a contention is available, in the light of the decision in **Surendran's** case (supra) this Court could not interfere with the impugned order. I shall not be understood to have made any observation on the aforesaid issue as no evidence whatsoever was produced in that behalf before the Family Court and the Family Court was not given any opportunity to consider those aspects. Without taking evidence on the said issues this Court also will not be justified in acting upon Annexure A2. At any rate, I do not find any reason to hold that the finding of the Family Court, with the evidence on record, to the effect that the revision petitioner is liable to maintain the respondent suffers from any illegality warranting interference in exercise of the revisional jurisdiction. In the said circumstances, the finding of the Family Court that the revision petitioner is bound to maintain the respondent is liable to be maintained. With respect to the quantum of maintenance fixed by the Family Court it is to be noted that it is only ₹ 3,000/- per month. The revision petitioner is an Ayurvedic therapist. True that there is dispute with respect to his income. The respondent contended that the revision petitioner is getting an income of ₹ 25,000/- per month. The revision petitioner has virtually, disputed the same.

True that, the respondent has not adduced any evidence to show the income of the revision petitioner. But, at the same time, it cannot be disputed that in the light of the various decisions of this Court the revision petitioner who is an able bodied person could not be permitted to wriggle out of the liability to maintain the respondent wife in a claim for maintenance. The revision petitioner did not have a case that he is suffering from any disability to make him incapable of maintaining the respondent-wife. Taking into account the fact that the revision petitioner was directed to pay only an amount of ₹ 3,000/- per month and in the light of the present day cost of living the said amount cannot be held as excessive warranting interference. In the result, this revision petition is liable to fail and accordingly, it is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

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