

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

RPFC.No. 372 of 2014 ()

AGAINST THE JUDGMENT IN MC 49/2013 of FAMILY COURT, THALASSERY
DATED 26-06-2014

REVISION PETITIONER(S) /RESPONDENT:

M.P.FAISAL ABDUL RAHIMAN, AGED 35 YEARS
S/O ABDUL REHIMAN, ZEENATH MANZIL, VARAPRA
POST CHEENDAYAD, PUTHOOR AMSOM, KANNUR DISTRICT

BY ADVS.SRI.C.P.PEETHAMBARAN
SMT.MINI.V.A.

RESPONDENT(S) /PETITIONERS:

1. M.SAJINA, AGED 26 YEARS
D/O ABDUL KHADER, SAJINA MANZIL, POST URUVACHAL
PAZHASHI AMSOM, KANNUR DISTRICT-670702.
2. FATHIMATH FIDA, AGED 10 YEARS
D/O FAISAL, SAJINA MANZIL, POST URUVACHAL
PAZHASHI AMSOM
KANNUR DISTRICT(REPRESENTED BY THEIR MOTHER IST RESPONDENT) .
3. HIBA FATHIMA, AGED 8 YEARS
D/O FAISAL, SAJINA MANZIL, POST URUVACHAL
PAZHASHI AMSOM
KANNUR DISTRICT (REPRESENTED BY THEIR
MOTHER IST RESPONDENT) .

R1-R3 BY ADV. SRI.P.K.MOHAMED JAMEEL

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON
09-03-2015,A/W MAT.APPEAL Nos.883 and 884 of 2014, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

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V.K.MOHANAN & P.D.RAJAN, JJ.

**R.P.(F.C.) No.372/14,
Mat.Appeal.Nos.883 & 884 of 2014**

Dated this the 9th day of March, 2015.

J U D G M E N T

P.D.RAJAN, J.

Mat.Appeals 883/14 and 884/14 are preferred against the orders in O.P.No.54/13 and O.P.No.168/13 of the above Family Court, Thalassery, and R.P.(F.C.) No.372/14 is preferred against an order in M.C.No.49/13 of the above Family court. M.C.No.49/13 was filed under section 125(1) of Cr.P.C. seeking present and future maintenance and O.P.No.54/13 was filed u/s.7(1)(F) of Family court Act seeking past maintenance and O.P.No.168/13 was filed u/s.2(ii) 2(iv) (viii) of Dissolution of Muslim Marriage Act, 1939, for divorce.

2. In Mat.appeal 884/14, the appellant herein is the husband and 1st respondent is the wife and their marriage was solemnised on 6.3.2003 as per Muslim Personal law and in the said wedlock, two girl children were born to them. While residing so, the husband ill-treated the wife

both mentally and physically, and misappropriated her gold ornaments and money. For that, a criminal complaint was filed by the wife against the husband, which was settled by them. Subsequently, the husband went abroad and then again he started the ill-treatment and finally he deserted the wife and the children. In the circumstance, she filed O.P.No.168/13 for divorce and the husband filed a detailed counter denying all the allegations in the petition.

3. The wife also filed O.P.No.54/13 before the Family court, Thalassery, seeking past maintenance, which was decreed, against which, the revision petitioner filed R.P. (F.C.)No.372 of 2014. The wife also filed M.C.No.49/13 seeking maintenance @ Rs.10,000/- per month to her and Rs.5,000/- each to the children, which was allowed by the Family court, Thalassery. Against that, the husband preferred Mat.Appeal 883/14. In Mat.Appeal No.883/14 and in R.P.(F.C.) No.372/14, the wife contended that she is in need of money for giving better education to her children

and also for their day-to-day expenses. She also averred that, the husband is working in Dubai and doing business there and he is financially sound to pay the amount.

4. The husband admitted the marriage and the paternity of the children, in the Family court. He contended that there was no cruelty or misappropriation of gold ornaments and he also denied the transfer of property in the name of his cousin. He contended that, he is getting only Rs.14,000/- per month as salary and unable to pay the huge amount as maintenance.

5. In the original petitions 168/13 and 54/13 as well as in the M.C., the wife was examined as PW1 and Exts.A1 to A3 documents were marked from her side. O.P.168/13 for divorce was allowed and the marriage between the petitioner and respondent was dissolved. O.P.No.54/13 was decreed with cost and the husband was directed to pay Rs.2,10,000/- towards past maintenance to the petitioners and in M.C.No.49/13, he was directed to pay Rs.5,000/- to

each of the petitioners towards the monthly maintenance from the date of the petition. Aggrieved by that, the appellant/husband preferred Mat.Appeal No.883/14 against O.P.No.54/13 and Mat.Appeal No.884/14 against O.P.No.168/13 and R.P.(F.C.)No.372/14 against M.C.No.49/13.

6. The appellant contended that his counsel was absent in the court below on the date of taking evidence of PW1 and he could not cross examine her. He noted down the date of posting as 26.9.2014, but actually the evidence was recorded on 26.6.2014 in his absence. He seeks permission to cross examine PW1 and ready to adduce evidence to prove his innocence in the Family court.

7. The learned counsel for the respondents have no objection with regard to the above submission, provided, the amount awarded by the Family court has to be paid by the appellant/husband.

8. From the rival submissions put forward by the

learned counsel, it is found that the appellant is working abroad and getting salary. The marriage between the appellant and the 1st respondent is admitted by both the parties. The court below recorded the evidence of PW1 on 26.6.2014 and decreed the suits. The appellant submitted that he is entitled to prove his innocence against the allegations in the petitions. It is true that he is working abroad and the counsel was absent on the date of examination of PW1. In the circumstance, he is entitled to cross examine PW1 with regard to the allegations in the original petition. Therefore, we are of the view that, if appellant deposits a major portion of the amount in the trial court, he will be permitted to cross examine PW1. In O.P.No.54/13, the past maintenance was awarded for 14 months @ Rs.15,000/- per month and the total amount will come to Rs.2,10,000/-. We set aside that order, provided, the appellant pays a cost of Rs.10,000/- to the respondents and also deposits half of the total amount of past

maintenance in the trial court which will come to Rs.1,05,000/-. In M.C.No.49/13, the Family court awarded future maintenance @ Rs.5,000/- to each of the petitioners and total sum will come to Rs.15,000/- towards the monthly maintenance allowance and its arrears will come to Rs.3,60,000/-. We set aside that order also, on payment of cost of Rs.30,000/- to the respondents by the husband, ie., Rs.10,000/- each to the respondents and depositing half of the total amount of future maintenance ordered by the trial court, which will come to Rs.1,80,000/-.

9. Thus the orders in O.P.No.54/13 and M.C.No.49/13 are set aside on payment of cost of Rs.40,000/- (Rs.10,000+Rs.30,000) and on deposit of half of the past maintenance of Rs.1,05,000/- and half of the future maintenance, ie., Rs.1,80,000/- (Total Rs.3,25,000/-).

10. Divorce was granted in O.P.No.168/13 under Section 2(ii) 2(iv) (viii) of Dissolution of Muslim Marriage Act and we set aside that order on payment of cost of

Rs.10,000/- by the husband to the respondents.

11. Hence we dispose of Mat.Appeal Nos.883/14 and 884/14 and R.P.(F.C.)No.372/14 as stated above. The appellant is directed to pay cost within 2 months from today. On such deposit, the wife is entitled to withdraw the cost and past maintenance amount awarded in this case. If the amount is not paid as directed above, the order passed by the Family court will become effective. Both the parties are directed to appear before the court below on **25.5.2015**.

Accordingly, the above Mat.Appeals and the revision petition are disposed of.

Sd/-
V.K.MOHANAN, Judge

Sd/-
P.D.RAJAN, Judge

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P.A. to Judge