

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

RPFC.No. 453 of 2014 ()

AGAINST THE ORDER IN MC 387/2013 of FAMILY COURT, NEDUMANGAD
DATED 22-08-2014

PETITIONER(S)/RESPONDENT:

PHENIX, AGED 28 YEARS
S/O.DARMADAS, KARMAL BHAVAN, THOLOOR
THANNIMOODU, KULAPPADA.P.O, UZHAMALACKAL.

BY ADV. SRI.A.RAJASIMHAN

RESPONDENT(S)/PETITIONERS AND THE STATE:

1. FEBINA.S.KUMAR,, AGED 21 YEARS
D/O.SUJA, FEBINA NIVAS, CHERUKULAM
CHANGA.P.O, ARYANADU, VELLANADU VILLAGE.

2. ASHIN PHENIX (MINOR),
AGED 1½ YEARS, --DO--

BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 04-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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R.P. (F.C)No.453 OF 2014

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Dated this the 4th day of March, 2015

ORDER

This revision petition is directed against the order dated 22.8.2014 in M.C.No.387 of 2013 of the Family Court, Nedumangad. The respondents herein are respectively the wife and child of the revision petitioner and they moved the M.C seeking maintenance from the revision petitioner. At the outset, it is to be noted that the impugned order as also the pleadings in this revision petition would reveal that the petitioner has not disputed his marriage with the first respondent and also the paternity of the second respondent. The said M.C was filed contending that the revision petitioner deserted her and she is unemployed and she is having no income to maintain herself and also the second respondent. It is the further contention that the revision petitioner is an able bodied person and he is having sufficient

income to maintain the respondents and has been wilfully neglecting to maintain them. The revision petitioner appeared before the Family Court and resisted the claim of the respondents. The learned counsel for the revision petitioner fairly submitted that the revision petitioner has not disputed his liability to maintain the second respondent and the quantum of maintenance awarded in favour of the second respondent. Thus, it is obvious that the grievance of the revision petitioner is with respect to the fixation of the liability to maintain the first respondent and also the quantum of maintenance awarded in her favour. A scanning of the impugned order would reveal that the revision petitioner resisted the claim of the first respondent contending that she incurred disqualification by virtue of the provisions under section 125 (4) Cr.P.C as she is living in adultery. Admittedly, apart from the assertion from the part of the revision petitioner while being examined as CPW1, absolutely no evidence whatsoever to support the said contention was raised by him. The revision petitioner is alleging that the first respondent is living in

adultery with one Jayadas. In the cross examination, the first respondent would say:-

"ജയദാസിനെ അറിയാം. എന്റെ വീട്ടി
നടുത്തല്ല. എന്നെ കല്യാണം
ആലോചിച്ചു. ഇപ്പോൾ പരിചയത്തിലല്ല."

2. Cross examination of the first respondent would further prove that the only question put to her was that whether she is chatting with Jayadas. Apart from that, there is absolutely no evidence to prove that the first respondent is living in adultery. It is in the said circumstances that the Family Court considered the objection raised by the revision petitioner on the aforesaid ground in the light of the decisions in **Chandrakant Vs.Sulochana (1997 CrL.L.J 520 Bom.)**, **Kasthuri Vs. Ramasamy (1979 CrL.L.J 741)**, **Mehbubabi Vs. Nasir Farid (1977 CrL.L.J 391 Bom.)** and **Manickam Vs. Arputha (1980 CrL.L.J 354)**. There cannot be any doubt with respect to the fact that in order to wriggle out of the liability to pay maintenance in a petition under section 125 Cr.PC, the husband who is otherwise liable to maintain the wife has to show that she has incurred any of the

disqualifications in view of the provisions under section 125(4) Cr.P.C. He could also wriggle out of the liability by establishing that the respondent wife is able to maintain herself. As noticed hereinbefore, there is no case for the revision petitioner that the respondent wife is able to maintain herself and though a contention is taken that she is living in adultery, the revision petitioner did not succeed in establishing the same. In such circumstances, in the light of the indisputable position that the revision petitioner married the first respondent and they are living separately and that the first respondent is not able to maintain herself, the revision petitioner who failed to establish the aforesaid aspects could not wriggle out of his liability to maintain her. In such circumstances, I do not find any illegality in the finding of the Family Court that the revision petitioner is liable to maintain the first respondent. What survives for consideration is whether there is any scope for interfering with the quantum of maintenance fixed by the Family Court in favour of the first respondent. The revision petitioner is working in Bajaj Alliance. The

specific contention of the first respondent is that the revision petitioner is getting sufficient income as salary, to maintain the respondents. In this context, it is to be noted that while admitting his employment, the revision petitioner contends that he is drawing only an amount of ₹3500/- as salary. However, no salary certificate was produced by him. In such circumstances, an adverse inference could be drawn with respect to his income. The revision petitioner is aged only 28 years and he is employed. In such circumstances, the Family Court fixed the maintenance at ₹5000/- to the first respondent taking into account his ability and capacity. I do not find any reason to interfere with the fixation of maintenance taking into account the present cost of living. In such circumstances, this revision petition is liable to fail and accordingly, it is dismissed.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010