

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

RPFC.No. 463 of 2014

AGAINST THE ORDER IN MC NO.162/2013 of FAMILY COURT,
NEDUMANGAD DATED 21-05-2014.

REVISION PETITIONER(S)/RESPONDENT:

SUKUMARAN NAIR,
S/O.KUNJAN PILLAI, MANNARUKUNNU VEEDU, NANDIYODU,
PACHA P.O., PALODE VILLAGE, NEDUMANGADU TALUK,
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.K.SATHEESH KUMAR
SRI.K.S.PRAVEEN

RESPONDENT(S)/PETITIONER:

PUSHPAVALLY, AGED 52 YEARS,
ATHIRA BHAVAN, CHERAMANCHAL, KOKKOTTELA P.O.,
ARYANAD, ARYANADU VILLAGE, NEDUMANGADU TALUK,
THIRUVANANTHAPURAM, PIN - 695 542.

BY ADV. SRI.A.RAJASIMHAN

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 22-05-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No.463 of 2014

Dated this the 22nd day of May, 2015

ORDER

The revision petitioner is the husband of the respondent. M.C.No.162 of 2013 on the files of the Family Court, Nedumangad, was filed by the respondent herein under Sec.125 of the Code of Criminal Procedure claiming maintenance allowance from the petitioner. According to the respondent, their marriage was solemnized on 12/9/1984 and they cohabited together upto 2009. The petitioner wilfully neglected and refused to provide maintenance allowance to her from 4/10/2009 onwards. She has no job or income; whereas the petitioner was working in military service and now he is getting ₹16,000/- per

mensem as pension. In addition to that, now he is working in a local institution having monthly income of ₹10,000/- also. That apart, he is doing real estate business and getting ₹25,000/- per mensem in that account. Thus, the petitioner is getting a total monthly income of ₹51,000/-.

2. Per contra, the petitioner contended that he has been paying maintenance allowance to the respondent and the respondent has sufficient income to maintain herself. He has no means to pay maintenance allowance as claimed by the respondent. After considering the rival contentions, the Family Court directed the revision petitioner to pay maintenance allowance at the rate of ₹5,000/- to the respondent. The legality of the entitlement of maintenance allowance and the correctness of the quantum of maintenance determined by the court below are under challenge in this revision petition.

3. The learned counsel for the petitioner

advanced arguments challenging the findings, whereby the court below directed the petitioner to pay maintenance allowance as referred above. The learned counsel for the petitioner pointed out that the respondent herself admitted that she is in possession and enjoyment of 1.25 Acres of property. Therefore, the respondent has sufficient means to maintain herself. But the court below has failed to appreciate the evidence of the respondent in its correct perspective. Per contra, the learned counsel for the respondent advanced arguments to justify the direction in the impugned order. The learned counsel submits that, in fact, at the beginning of the cross-examination, the respondent had deposed that she had 1.25 Acres of property and subsequently, she reiterated the said version by stating that now she has no property at all in her name and she has no income from the property which she owns. This point was again clarified in re-examination by stating that she

has 10 cents of property only and there is no income from the said property.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. The short question that arises for consideration is, whether the court below can be justified in directing the petitioner to pay maintenance allowance at the rate of ₹5,000/- per mensem. The marital status of the respondent as legally wedded wife, who is entitled to get maintenance allowance under Sec.125 of the Cr.P.C., is not disputed. The contention raised by the learned counsel for the petitioner is that the respondent has sufficient means to maintain herself. According to him, she owns 1.25 Acres of property and she is getting income from that property for her livelihood.

6. Going by the evidence adduced by the respondent in her cross-examination, it is seen that her first statement is a little confusing and the

subsequent statement is not in consonance with the first statement. The learned counsel for the petitioner submits that firstly her version was not correctly recorded. On a close scrutiny, it could be seen that subsequently she unambiguously clarified that she has 10 cents of property only and from that property she has no income at all. This subsequent version was not challenged in cross-examination and no question was put to the respondent suggesting that the latter version is contrary to her first opening statement in the deposition. It is pertinent to note that, subsequently, even though in re-examination she again clarified it in consonance with the latter version, no cross-examination was done contradicting the statement in re-examination with the permission of the court. Therefore, it could reasonably be presumed that the petitioner himself admitted her latter version that, at present, she owns 10 cents of property only. More importantly, no documents had been produced

to substantiate the contention that the respondent owns 1.25 Acres of property. Therefore, I am of the view that her deposition cannot be taken as an admission accepting the petitioner's contention that she has 1.25 Acres of property and she is getting income from the said property.

7. On the other hand, the petitioner himself admitted that he is a pensioner getting pension and the amount which is being received by the petitioner as pension stands proved by Ext.P4 which shows that he is getting around ₹16,000/- per mensem. No evidence has been adduced to show that the respondent has any job or any kind of source of income. Under Sec.125 of the Cr.P.C., the husband is liable to provide maintenance allowance to the wife in accordance with her living status and day-to-day requirements. Considering the steep hike of the cost of living consequent on inflation, I am of the view that if the petitioner is getting ₹16,000/- per mensem, the

direction to pay maintenance allowance at the rate of ₹5,000/- to his wife is just and proper and warranting no interference under the revisional jurisdiction.

This revision petition is dismissed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge