

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

RPFC.No. 472 of 2014

AGAINST THE ORDER IN MC 185/2013 of FAMILY COURT, TIRUR
DATED 24-04-2014.

REVISION PETITIONER/RESPONDENT:

ABDUL MAJEED, AGED 53 YEARS,
S/O. YAHOO, THACHAPARAMBA KALLINGAL HOUSE,
NEAR JARAM, B.P. ANGADI P.O., TIRUR, MALAPPURAM.

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENT(S)/PETITIONERS:

1. ALEEMA, AGED 36 YEARS,
D/O. UMMER, KONDATTAYIL HOUSE, ALAMKODE AMSOM,
CHERUMUKKU DESOM, ALANKODE POST, PONNANI TALUK,
MALAPPURAM - 676 505.

2. AJMAL, AGED 18 YEARS,
S/O. ABDUL MAJEED, KONDATTAYIL HOUSE,
ALAMKODE AMSOM,
CHERUMUKKU DESOM, ALANKODE POST, PONNANI TALUK,
MALAPPURAM - 676 505.

3. STATE OF KERALA,
REPRESENTEDBY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNKAULAM - 682 031.

R1 & R2 BY ADV. SMT.N.DEEPA

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 03-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P. (FC) No.472 of 2014

Dated this the 3rd day of July, 2015

ORDER

The revision petitioner is the respondent in M.C.No.185 of 2013 on the files of the Family Court, Tirur, filed by the 1st and 2nd respondents herein, who are the wife and son of the revision petitioner. The above M.C. was filed claiming maintenance allowance under Sec.125 of the Code of Criminal Procedure from the revision petitioner. According to the 1st respondent, she is the legally wedded wife of the petitioner and the 2nd respondent is the child born in that wed-lock. Therefore, they are entitled to get maintenance allowance from the petitioner under Sec.125 of the Cr.P.C. without any interruption. Now

the petitioner has neglected to maintain them and refused to pay maintenance allowance to them from 2008 onwards. The 1st respondent has no job or income and she is unable to maintain herself; whereas the revision petitioner is a driver by profession and he is also involved in vehicle sales. He is earning ₹30,000/- per month. The respondents claimed maintenance allowance at the rate of ₹4,000/- each per month.

2. The revision petitioner admitted the marital status of the 1st respondent and the paternity of the 2nd respondent; but he denied the allegation that he refused to maintain the respondents 1 and 2. According to him, the respondents are living separately from July 2008 onwards, without sufficient cause. It is also contended that the marriage between the petitioner and the 1st respondent was dissolved by an order dated 26/3/2011. According to the revision petitioner, he is suffering from cardiac disease and a substantial amount is required for his treatment. It is

also contended that the quantum of amount determined by the court below is excessive and disproportionate with his income. Thus, the legality of the entitlement of the maintenance allowance and the correctness of the quantum fixed by the court below are under challenge in this revision petition.

3. Heard the learned counsel for the revision petitioner.

4. The marital status of the 1st respondent and the paternity of the 2nd respondent are admitted. The petitioner himself admitted that now the respondents are residing separately; according to him, the respondents are not entitled to get maintenance allowance due to lack of sufficient reason. Though he made an allegation that the 1st respondent was arrested by the Deputy Superintendent of Police, Tirur, in Crime No.216 of 2011 registered under the Immoral Traffic (Prevention) Act, he has not produced any document to substantiate the said contention. Even though he contended that he is suffering from cardiac

disease and produced Exts.R1 and R2, those documents do not show that he is physically disabled or incapacitated to do work so as to earn for the livelihood of his family. That apart, Exts.R1 and R2 are the documents of the year 2010. As rightly held by the court below, Exts.R1 and R2 are not sufficient to accept the petitioner's contention that he is not in a position to provide maintenance allowance to his wife. Even though the 1st respondent is a divorced wife, she is entitled to get maintenance allowance under Sec.125(1) of the Cr.P.C. At the time of passing the impugned order, the 2nd respondent has completed 18 years and thereby, the court below found that he is not entitled to get maintenance allowance from the petitioner. The mere fact that the 1st respondent has been arrested in a crime registered under the Immoral Traffic (Prevention) Act, even if it is admitted, the same will not absolve the petitioner from providing maintenance allowance to his wife. It has come out in evidence that the 1st respondent has no job or

income. The husband is liable to pay maintenance allowance to his wife and children in accordance with their family status, standard of living and day-to-day needs.

5. In the above view of the matter, I find that the quantum of maintenance allowance determined by the court below is reasonable, just and proper and no interference is called for.

6. The learned counsel for the revision petitioner submits that the 1st respondent has married again. But I am of the opinion that in the absence of any documentary evidence, the said submission cannot be accepted in this revision petition and it will stand left open for the consideration under Sec.127 of the Cr.P.C., if the said contention is proved.

7. The revision petitioner is given four months time to pay the arrear, provided that half of the entire arrear shall be paid within two months from today and the remaining balance shall be paid within the next two months. In the event of failure to pay the first

instalment, this instalment facility will stand automatically vacated and the respondents will be at liberty to realise the entire arrear in lump sum, in accordance with law.

This RP(FC) is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

Nan/

//true copy//

P.S. to Judge