IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 16TH DAY OF DECEMBER 2020 / 25TH AGRAHAYANA, 1942

RPFC.No.154 OF 2020

AGAINST THE ORDER IN MC 77/2017 OF FAMILY COURT, PALA

REVISION PETITIONER/RESPONDENT IN M.C.

JUSTINE @ JOSEPH,
AGED 37 YEARS,
S/O. MATHEW, VALIYAPAIKATTU HOUSE,
ULLANAD P.O, BHARANANGANAM VILLAGE,
MEENACHIL TALUK, KOTTAYAM.
PIN 686 651

BY ADVS.
DR.SEBASTIAN CHAMPAPPILLY
DR.ABRAHAM P.MEACHINKARA
SRI.GEORGE CLEETUS
SRI.P.A.SAINUDEEN
SMT.MARGARET MAUREEN D ROSE

RESPONDENT/PETITIONER IN M.C.

MAREENA GEORGE,
AGED 35 YEARS,
D/O. GEORGEKUTTY, PAIKADA HOUSE,
KONIPPADU P.O, MELUKAVU VILLAGE,
KOTTAYAM DISTRICT.
PIN-686 652

BY ADV. SMT.K.SUNITHA VINOD

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 14-12-2020, ALONG WITH OP(Crl.)No.322/2020, THE COURT ON 16-12-2020 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 16TH DAY OF DECEMBER 2020 / 25TH AGRAHAYANA, 1942

OP(Crl.).No.322 OF 2020

AGAINST THE ORDER IN MC 12/2016 OF FAMILY COURT, PALA

PETITIONER:

MAREENA GEORGE,
PAIKADA HOUSE,
KONIPADU P.O., MELUKAVU VILLAGE,
KOTTAYAM-686652

BY ADV. SMT.K.SUNITHA VINOD

RESPONDENTS:

JUSTINE @ JOSEPH,
S/O. MATHEW, VALIYAPAIKATTU HOUSE,
ULLANADU P.O.,
BHARANANGANAM VILLAGE,
MEENACHIL TALUK,KOTTAYAM-686651

BY ADVS. DR.SEBASTIAN CHAMPAPPILLY
DR.ABRAHAM P.MEACHINKARA
SRI.GEORGE CLEETUS
SRI.P.A.SAINUDEEN
SMT.MARGARET MAUREEN D ROSE

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 14-12-2020, ALONG WITH RPFC.No.154/2020, THE COURT ON 16-12-2020 DELIVERED THE FOLLOWING:

COMMON ORDER

[RPFC.154/2020 & OP(Crl.).322/2020]

Dated this the 16th day of December, 2020

Since the revision and the Original Petition were originated from the same factual matrix and the parties being the same, both are taken up together and the following common order is issued.

2. The parties to the proceedings on hand will hereinafter be referred to as the husband and the wife in accordance with their status in matrimony. The revision on hand is directed against an order passed by Family Court, Pala in M.C.No.77 of 2017 on 22.02.2020. The above M.C. was filed by the husband under Section 127 Cr.P.C. seeking for a modification by reduction of the rate of maintenance stands ordered by the Family Court in favour of the wife. In M.C No.77 of 2017 filed by the husband, the following averments were made. Rs.2,000/- was ordered by the Family Court, Ettumanoor as monthly maintenance to the wife by order passed in M.C.No.337 of 2010. Against the order,

the wife preferred R.P(F.C) 51 of 2013 before this Court seeking to enhance the maintenance amount from Rs.2,000/- to Rs.10,000/-. After sometime, the revision was sought to be withdrawn by the wife on 16.11.2015 and it was dismissed. An application was filed by the wife as M.C. No.12 of 2016 before the Family Court seeking for enhancement of the monthly maintenance of Rs.2,000/- stands ordered by the Family Court originally. In M.C.No.12 of 2016, a modification was allowed by the Family Court and the monthly maintenance was enhanced from Rs.2,000/- to Rs.10,000/-. R.P.(F.C) No.308 of 2017 was preferred by the husband against the above order and that was dismissed. The wife is well educated with M.A., M.Phil, B.Ed and is working as a Teacher. She is also getting a monthly income of Rs.20,000/- from tuitions. She is eligible to get a job as teacher in some schools but intentionally avoided the same and joined for PhD research in Kerala University, wherefrom Rs.8,000/- was obtained by way of Fellowship. Original Petition filed by the wife seeking for return of money was partly allowed by this Court and as directed by the Hon'ble High Court Rs.9,00,000/- was deposited towards satisfaction of the decree on 30.11.2016. The

wife received the amount and deposited the same in SBI, Erattupetta Branch wherefrom she gets Rs.5,625/- as interest. Thus the wife is having a total income of Rs.33,625/-. Her parents are holding 10 acres of property and she being the only child of her parents, is entitled to inherit that. A petition was filed as O.P.(Div) 978 of 2010 before the Family Court, Ettumanoor seeking for a decree of divorce. A decree of divorce was obtained from Family Court, Ettumanoor against which an appeal was preferred by the wife, but it was dismissed. The husband was working in a private Insurance company namely HDFC and was getting Rs.12,000/- as monthly salary. Due to financial crisis, certain branches of the Company wherein the husband was working were closed. The husband is residing in a house at Pala for a monthly rent of Rs.6,000/-. Based on the averments raised as above, the orders in M.C 337 of 2010 and 12 of 2016 were sought to be set aside.

3. In the counter statement filed, it was contended by the wife that she is entitled to receive maintenance from her husband, that she does not have any job and is doing PhD, that an order was passed by Family Court, Ettumanoor in M.C No.337

of 2010 and Rs.2,000/- was awarded as monthly maintenance, that the husband got a job in HDFC Life Insurance and also owned 2 hectres and 21 ares of property in Bharananganam Village and that the Family Court, Ettumanoor has ordered on 31.05.2017 to enhance the monthly maintenance to Rs.10,000/- against which R.P.(F.C) No.308 of 2017 was preferred by the husband but was dismissed vide judgment dated 29.11.2017 observing that a circumstance warranting alteration of the maintenance awarded originally does not exist, that there was a direction in M.C No.12 of 2016 to produce Salary Certificate but intentionally it was evaded, that the wife was working as a Teacher and also gets additional income from tuition classes, that She is also getting a sum of Rs.8,000/- as Fellowship and that Rs.9,00,000/- was handed over to the father of the wife, being the patrimony given at the time of marriage.

4. Husband was examined before the Family Court as PW1 and Exts.A1 to A10 were marked. The wife was examined as RW1 and Ext.B1 was marked. On appreciation of the entire evidence, the Family Court found no reason to interfere with the order passed by it in M.C No.12 of 2016 and it was dismissed.

5. Aggrieved by the said order, the husband is now before this Court in the revision on hand. It is contended by Dr. Sebastian Champappilly that the Family Court has gone wrong in dismissing M.C.No.77/2017 by the impugned order. According to him the Family Court failed to appreciate the facts of the case and the evidence available on record, while passing the impugned order. After passing of the order in M.C.No.337/2010 granting monthly maintenance at the rate of Rs.2,000/- in favour of the wife, a sum of Rs.9,00,000/- was also deposited by the husband in her favour at Family Court, Pala on 30.11.2016. Admittedly, the amount received was deposited and a sum of Rs.5,625/- was received by her monthly as interest from the said deposit. The wife is also engaged in taking tuition classes for school going children and gets Rs.20,000/- monthly. Apart from that she has also teaching assignments in a private college. Thus she was having a total monthly income of around Rs.40,000/- apart from the maintenance amount now stands ordered by the Family Court. The husband had only a monthly income of Rs.25,016/-. This Court has observed while passing an order on 29.11.2017 in R.P.(FC) No.308 of 2017 that the status of the

husband has to be taken as the yardstick for fixation of the quantum of maintenance and in view of the observation made by this Court in Annexure-6 order the Family Court has refused to interfere with the earlier order granting monthly maintenance at the rate of Rs.10,000/-. The Family Court has misconceived the monthly earning of the husband as Rs.39,359/- against reality that he was getting only Rs.25,016/- after compulsory deductions of tax and Provident Fund. The net income the husband gets monthly is only Rs.10,186/-. It was further contented that HDFC Standard Life Insurance Limited wherein the husband works now is in the process of cutting 50% of the salary in view of the current financial crisis caused by the Covid-19 pandemic. According to the learned counsel, the wife earns more income than the husband. According to him, though the above aspects were brought to the notice of the Family Court as changes in circumstances occurred after preferring the M.C., the court failed to advert to those while passing the impugned order. According to him, the context being so, interference with the impugned order is expedient in the interest of justice.

6. Smt.Sunitha Vinod, the learned counsel for the wife has contended that though M.C.No.77 of 2017 was filed under Section 127 Cr.P.C., change in circumstances were not brought to the notice of the Family Court. According to her, the contentions now projected in M.C. No.77 of 2017 by the husband being the very same contentions which had been projected by him in the original M.C, cannot be considered as changes in circumstances to get the order of maintenance originally passed, modified. According to the learned counsel, revision filed by the wife against the order passed in M.C.No.337 of 2010 seeking for enhancement was withdrawn and M.C.No.12 of 2016 was filed before the Family Court seeking for enhancement of the maintenance amount of Rs.2,000/- ordered originally. An order was passed on 31.05.2017 raising the monthly maintenance to Rs.10,000/-. Against that order the husband has filed R.P.(FC) No.308 of 2017 but it was dismissed vide judgment dated 29.11.2017.

7. In R.P.(FC) No.308 of 2017 the main argument advanced was that he was getting only Rs.12,000/- as salary and a huge sum has been credited every month towards loan

dues. According to him, from the remaining sum, he has to meet the day to day expenses of the family and also the medical expenses of his parents. It was also contended that Rs.9,00,000/- was also paid to the wife in execution of a decree obtained by her in an Original Petition filed by her. It was further contended that from the M.Phil Course pursued by her, Rs.8,000/- was obtained as Fellowship. Despite raising contentions as above, the revision petition was dismissed by this Court. While dismissing the revision, this Court has found that Rs.9,00,000/- paid to the wife was not towards alimony, but only patrimony, that the wife was doing research and was staying in a hostel at the University campus and therefore Rs.8,000/- given as fellowship cannot be taken as her income as contended, that no materials are produced by the husband to show that the wife was earning any income, that the gross income and taken home salary of the husband are not established by him and that Rs.50,000/- is paid towards loan and the claim that the expenditures of himself and the parents are also met with do not tally with the monthly income disclosed by the husband. This Court has also found from the copy of the proceedings of the

Family Court produced by wife that three specific postings were given to the husband to adduce evidence, but he failed to avail those by remaining absent and therefore, his contention that sufficient opportunity was denied to him to adduce evidence cannot survive. It was also found by this Court that the amount fixed by the Family Court does not call for interference when viewed in the backdrop of the status of the wife, her educational qualifications and family background.

8. The very same contentions which have been taken in RP(FC) No.308 of 2017 are found taken in M.C. No.77 of 2017 also. It is also found that though M.C. No.77 of 2017 was preferred under Section 127 Cr.P.C, the reliefs sought was to get the orders passed by the Family Court in M.C. No.337 of 2010 and M.C. No.12 of 2016, set aside. As already stated, the order in M.C. No.337 of 2010 has become final for the reason that challenge has not been raised against the order passed in R.P. (FC) No.308 of 2017 preferred against. Therefore, there is no basis for seeking to set aside the order in M.C.No. 337 of 2010 again. As far as the prayer to set aside the order in M.C.No.12 of 2016 is concerned, the grounds projected in M.C.No.77 of 2017

are found the same as those already taken up while contesting M.C.No.12 of 2016 and therefore cannot be considered as change in circumstances occurred after passing of the order in the M.C. The Family Court has found in the impugned order that the circumstances projected in M.C.No.77 of 2017 do not have the colour of change in circumstances, in its appreciation of evidence in the proper perspective. The revision on hand fails for the reason and deserves to be dismissed.

9. However it was conceded by the learned counsel for the respondent in the revision that a sum of Rs.1,000/- can be deducted from Rs.10,000/- stands ordered as monthly maintenance by the impugned order.

10. In the above circumstances, this Court is inclined to reduce Rs.1,000/- from Rs.10,000/- stands ordered as monthly maintenance by the impugned order. Therefore, the husband shall pay monthly maintenance at the rate of Rs.10,000/- to the wife from the date of M.C. No.12 of 2016 as ordered by the Family Court and Rs.9,000/- from the date of this order.

11. O.P(Crl.)322 of 2020 was filed by the wife seeking for a direction to Family Court, Pala to consider and dispose of C.M.P

Nos.04 of 2019, 69 of 2019, 33 of 2020 and 69 of 2020 filed by her in M.C No.12 of 2016 within a timeframe fixed by this Court.

12. The direction was sought for the reason that strict and speedy measures are not taken by Family Court, Pala in C.M.Ps filed by the wife for realising the maintenance amount due to her. According to the learned counsel Sub section (3) of Section 125 provides for issuance of warrant for levying the sum payable as monthly maintenance, as fine in case of default and also to sentence such persons with imprisonment for a term which may extent to one month or until payment sooner made for the whole or any part of each months allowance and expenses of proceedings remaining unpaid after the execution of the warrant.

13. It is noticed that the Family Court has passed an order in M.C No.12 of 2016 directing the husband to pay Rs.10,000/- as monthly maintenance to the wife. From CMPs preferred as above, it is revealed that the husband has defaulted payment of monthly maintenance and therefore, it stands as arrears. The applications were found filed in the year 2019 and 2020. Even after lapse of more than two years, the applications have not been pursued with properly. Though effective measures are

provided under Sub-Section (3) of Section 125 to realise the dues of maintenance from the respondent in case of default, the Family Court has not resorted to those. In the above circumstances, this Court finds every reason to issue the direction as sought for.

In the result, R.P.(FC) stands allowed in part by reducing Rs.1,000/- from Rs.10,000/- stands ordered as monthly maintenance by the impugned order with effect from the date of this order. O.P.(Crl.) stands allowed and the Family Court, Pala is directed to take effective and proper measures for recovery of arrears of maintenance without failure at the earliest, not later than two months from the date of this Order.

Sd/-

MARY JOSEPH
JUDGE

MJL/ttb

APPENDIX OF RPFC 154/2020

PETITIONER'S ANNEXURES:

ANNEXURE 1	**TRUE COPY OF THE CHALAN ISSUED BY THE FAMILY COURT PALA ON 30-11-2016 EVIDENCING DEPOSIT OF RS 9/- LAKH**
ANNEXURE 2	**TRUE COPY OF THE LOAN CONFIRMATION LETTER ISSUED BY THE CHOONDACHERRY CO-OPERATIVE BANK LTD**
ANNEXURE 3	**TRUE COPY OF THE ORDER DATED 1-12-2012 IN M.C NO. 337 OF 2010 OF THE FAMILY COURT, ETTUMANOOR**
ANNEXURE 4	**TRUE COPY OF THE ORDER IN R.P (FC) NO. 51 OF 2013 DATED 12-11-2015**
ANNEXURE 5	**TRUE COPY OF THE ORDER DATED 31-5-2017 IN M.C NO 12 OF 2016 DATED 31-5-2017 ON THE FILE OF THE FAMILY COURT PALA**
ANNEXURE 6	**TRUE COPY OF THE ORDER DATED 29-11-2017 IN R.P (F.C) NO. 308 OF 2017**
ANNEXURE 7	**TRUE COPY OF THE PETITION FILED AS M.C NO. 77 OF 2017 ON THE FILE OF THE FAMILY COURT, PALA**
ANNEXURE 8	**TRUE COPY OF THE REVISION PETITIONER'S PAY SLIP FOR THE MONTH OF JULY 2018**
ANNEXURE 9	**TRUE COPY OF THE RENTAL AGREEMENT DATED 21-4-2016**
ANNEXURE 10	**TRUE COPY OF THE RENT RECEIPT DATED 1-8-2018**
ANNEXURE 11	**CERTIFIED COPY OF THE ORDER PASSED BY THE FAMILY COURT, PALA IN M.C NO. 77 OF 2017 DATED 22ND FEBRUARY 2020**

RESPONDENT'S ANNEXURES: : NIL

APPENDIX OF OP(Crl.) 322/2020

PETITIONER'S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE ORDER DTD 31.05.2017 IN M.C 12/2016 ON THE FILE OF FAMILY COURT, PALA**
EXHIBIT P2	**TRUE COPY OF THE ORDER DTD 29.11.2017 OF THE HON'BLE HIGH COURT IN R.P(F.C) NO.308/2017**
EXHIBIT P3	**TRUE COPY OF THE ORDER DTD 22.02.2020 IN M.C 77/2017 ON THE FILE OF THE FAMILY COURT, PALA**
EXHIBIT P4	**TRUE COPY OF THE C.M.P.NO.4/2019 IN MC 12/2016 (FOR THE DUES FROM MAY 2018-DECEMBER 2018) FILED ON 11.01.2019**
EXHIBIT P5	**TRUE COPY OF THE C.M.P.NO.69/2019 IN M.C 12/2016 PENDING BEFORE THE FAMILY COURT, PALA**
EXHIBIT P6	**TRUE COPY OF THE C.M.P.NO.33/2020 IN M.C 12/2016 PENDING BEFORE THE FAMILY COURT, PALA**
EXHIBIT P7	**TRUE COPY OF THE C.M.P.NO.69/2020 IN M.C 12/2016 PENDING BEFORE THE FAMILY COURT, PALA**

RESPONDENT'S EXHIBITS: NIL