

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 19TH DAY OF DECEMBER 2022 / 28TH AGRAHAYANA, 1944

RPFC NO. 264 OF 2022

AGAINST THE ORDER DATED 20.05.2022 IN MC 54/2017 OF FAMILY
COURT, IRINJALAKUDA

REVISION PETITIONER/RESPONDENT:

AMALDEV
AGED 38 YEARS
S/O VASU, KULANGARAPPARAMBIL HOUSE, KALLUR VILLEGE,
MUTTITHADI POST, VELLANICODE DESOM,
THRISSUR DISTRICT, PIN - 680317.

BY ADV T.N.MANOJ

RESPONDENTS/PETITIONERS:

- 1 PREEJA, AGED 31 YEARS,
D/O PALLATHERI PREMDAS, PALLATHERI HOUSE,
MATTATHOOR VILLAGE, MOLLAMKODAM DESOM,
CHALAKKUDY TALUK, P.O.MATTATHRURKUNNU,
THRISSUR DISTRICT, PIN - 680684.
- 2 EVAYAVAN GOGULDEV,
AGED ABOUT 6 YEARS,
MINOR, S/O PREEJA, REPRESENTED BY THE MOTHER
AND GUARDIAN PREEJA AGED 31 YEARS,
D/O PALLATHERI PREMDAS,
PALLATHERI HOUSE, MATTATHUR VILLAGE,
MOLLAMKODAM DESOM, CHALAKKUDY TALUK,
P.O.MATTATHOORKUNNU, THRISSUR DISTRICT,
PIN - 680684.

BY ADV SIRAJ KAROLY

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 08.12.2022, THE COURT ON 19.12.2022 DELIVERED THE
FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

R.P(F.C). No.264 of 2022

Dated this the 19th day of December, 2022

O R D E R

This Revision Petition has been filed under Section 19(4) of the Family Court Act read with Section 397 and 401 of the Code of Criminal Procedure. Revision petitioner, who is the respondent in M.C.No.54/2017 on the files of the Family Court, Irinjalakuda, impugns order dated 20.05.2022 in the above M.C arraying the petitioners in the above M.C as respondents.

2. Heard the learned counsel for the revision petitioner as well as the respondents.

3. The respondents herein, who are the wife and minor child, aged 1½ years (in 2017), had approached the Family Court

and pressed for grant of allowance of maintenance on the assertion that they did not have any means of maintenance. The further case put up by the respondents before the Family Court was that the revision petitioner is an Automobile Mechanic and had been earning Rs.50,000/- per month. Further he had landed properties. Accordingly, the respondents pressed for grant of maintenance @ Rs.10,000/- and Rs.4,000/- respectively to them.

4. The revision petitioner/respondent filed counter denying his job as an Automobile Mechanic, running workshop. He also denied landed properties in his name or any job. It was contended by the revision petitioner before the trial court that he was assisting his uncle, who was doing business of ayurvedic herbs and was getting Rs.8,000/- per month. Further, he pointed out treatment expenses of his mother, who suffers from kidney failure.

5. The Family Court appraised the contentions while trying

the M.C along with O.P.No.691/2016 and O.P.No.295/2017 and as per common order/judgment dated 20.05.2022 the Family Court granted maintenance to the petitioners @ Rs.5,000/- and Rs.4,000/- respectively, from the date of the petition.

6. The learned counsel for the revision petitioner argued at length to convince this Court that the revision petitioner had produced Ext.B8 salary certificate, showing his monthly income to the tune of Rs.12,000/- before the Family Court and the Family Court failed to take note of that aspect while fixing the quantum of maintenance as Rs.9,000/- per month (5000 + 4000). The learned counsel for the revision petitioner further argued that as per Annexure-A also, the revision petitioner has placed his salary certificate showing the income as Rs.12,161/-. In fact, Annexure-A cannot be considered in this case since it should have been produced before the Family Court in accordance with the procedure established by law to let the same in evidence.

7. The learned counsel for the revision petitioner placed a decision of the Delhi High Court reported in [(2014) 0 Supreme (Del) 566], ***Akanksha Jain v. Manish Jain*** pointing out paragraphs 29 to 32 of the above judgment to contend that quantum of maintenance shall be reasonable amount after taking into consideration the income of the spouses and the needs of the claimants having regard to the status of the parties, the family background, the standard of living to which the claimant has been accustomed, legal and other obligations of the person liable to make the payment and other relevant circumstances. Paragraphs 29 to 32 of the above judgment read as follows:

“29. It is true that in various cases of similar nature, parties do not truthfully reveal their income, status of the family, details of the properties owned by them. Similar things have happened on the present case. Considering the overall view and facts and circumstances, as already stated in the earlier part of the order, this Court is not inclined to grant maintenance for the period starting from the date of application under Section 24 of the Act upto 31st January 2012 when the

full disclosure was made. However, the petitioner is entitled to receive maintenance after the said period. It is the admitted position that the petitioner does not have any financial support from any quarter. Let me now examine the aspect of quantum of maintenance from the period starting from 1st February, 2012 till disposal of the divorce petition filed by the husband which is pending before the learned Trial Court.

30. It is settled law that while deciding amount of ad-interim maintenance Judge also ought to have taken into consideration properties of the husband and his joint family and their business and social status as well as financial position.

31. Quantum of maintenance contemplated under Section 24 of the Act is that which appears to the Court to be reasonable. In considering the question, naturally, the Court must take into consideration income of the spouses and the needs of the claimant having regard to the status of the parties, their family background, the standard of living to which the claimant has been accustomed, legal and other obligations of the person liable to make the payment and other relevant circumstances.

32. In the case of Sh.Bharat Hegde v. Smt. Saroj Hegde, 140 (2007) DLT 16 in which it was observed that the relevant considerations to be taken into account at the time of

assessing maintenance claims are: Status of the parties, reasonable wants of the claimant, the independent income and property of the claimant, the number of persons, the non-applicant has to maintain, the amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in matrimonial home, non-applicant's liabilities, if any, provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant, and the payment capacity of non-applicant. Equally, and as it often is the case, some guesswork is not ruled while estimating the income of the non-applicants when all the sources or correct sources are not disclosed. Paras 7 & 8 of the said judgment read as under:

“7. Maintenance awarded cannot be punitive. It should aid the applicant to live in a similar life style she/he enjoyed in the matrimonial home. It should not expose the non applicant to unjust contempt or other coercive proceedings. On the other hand, maintenance should not be so low so as to make the order meaningless.

8. xxxx xxxx”

8. Whereas the learned counsel for the respondents zealously opposed the contention and it is pointed out that the revision petitioner is a person having Diploma in Mechanical Engineering, he has been doing the job of a Mechanic and has been

getting Rs.50,000/-, as contended. Accordingly, it is pointed out by the learned counsel for the revision petitioner further that the revision petitioner produced Ext.B8 salary certificate before the Family Court during November, 2019 showing his salary to the tune of Rs.16,000/-. Thereafter, during evidence he had produced another salary certificate showing his income at Rs.12,000/-. Some what same is the salary now attempted to be established by producing Annexure-(a) also. It is also pointed out that maintenance arrived at in the order cannot be excessive and the same deserves no interference.

9. It is submitted by the learned counsel for the respondent that a physically able bodied person is legally and morally bound to maintain his wife and children and the obligation is more when he is professionally qualified. He argued further that merely by producing a salary certificate issued by a private concern, without examining the authors and proving its contents by subjecting

themselves to cross examination, the said salary certificates cannot be the foundation to hold the income of the revision petitioner as has been shown in the certificates. He also would submit that grant of maintenance contemplated under Section 125 Cr.P.C is the outcome of benevolent piece of legislation arising out of the constitutional mandate. Therefore, the amount shall be just and reasonable to meet the day to day expenses of the wife and child. He also submitted that attempts to establish less income, based on salary certificates issued by private concerns shall be deprecated.

10. In the decision *Akanksha Jain v. Manish Jain* (*supra*) highlighted by the learned counsel for the revision petitioner, the Delhi High Court considered maintenance under Section 24 of the Hindu Marriage Act and settled certain principles.

11. As regards to the legal position, in the matter of grant of allowance of maintenance under Section 125 of Cr.P.C, the law is well settled.

12. As early in [(1978) 4 SCC 70], ***Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal & Ors.*** the Apex Court held that the same falls within the constitutional sweep of Article 15(3) reinforcing Article 39 of the Constitution of India.

13. In [(1997) 7 SCC 7], ***Jabsir Kaur Sehgal v. District Judge Dehradun & Ors.*** the Apex Court held as under:

“The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.”

14. In [(2005) 3 SCC 636], ***Chaturbhuji v. Sita Bai*** the Apex Court held that Section 125 provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain

his wife, children and parents when they are unable to maintain themselves.

15. In [(2021) 2 SCC 324], **Rajnish v. Neha & anr.**, the Apex Court had dealt with the relevant factors for determination of maintenance and held that, *if wife is earning, it cannot operate as a bar from being awarded maintenance by husband. In a marriage of long duration, where parties have endured relationship for several years, it would be a relevant factor to be taken into consideration. On termination of relationship, if wife is educated and professionally qualified, but had to give up her employment opportunities to look after needs of family being primary caregiver to minor children and elder members of family, this factor would be required to be given due importance. With advancement of age, it would be difficult for a dependent wife to get an easy entry into workforce after a break of several years. Living expenses of child would include expenses for food, clothing, residence, medical*

expenses, education of children. Serious disability or ill health of a spouse, child/children from marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance.

16. The legal position is not in dispute that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate. Living expenses of child would include expenses for food, clothing, residence, medical expenses, education of children. Serious disability or ill health of a spouse, child/children from marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance. It is further settled in law that merely

because the wife is earning money, it could not be a ground to reject the claim for maintenance. The rationale is that the amount she would earn, if not sufficient to maintain the wife, then also the husband is bound to maintain his wife and to give her sufficient sum for her sustenance.

17. In this case, admittedly the revision petitioner is a Mechanical Engineering Diploma Holder. Clever attempts of qualified persons to establish less income by producing salary certificates issued from private entrepreneurs, without opportunity to the other side to cross-examine the author of the document to test its genesis, shall not be the sole basis of considering the income of the husband/respondent in a maintenance petition and such certificates alone shall not be decisive in determining the income also. The courts shall consider the entire evidence, the professional or other qualifications, otherwise the physical condition and all other attenuating circumstances of the husband/respondent, while

quantifying the maintenance allowance. In this case, the revision petitioner, a professionally qualified person, could very well earn a reasonable sum, to maintain the wife and child by paying Rs.5,000/- and Rs.4,000/- each, ordered by the Family Court and the same is his statutory obligation. If at all he could not do the job, according to his qualification, he shall do other jobs so as to earn sufficient income. In such a case, mere production of salary certificates showing reduced income starting from 2019 onwards shall not have any decisive nature in so far as payment of quantum of maintenance is concerned. It is true that the treatment, if any, of the mother also has to be attended by the revision petitioner. But the foregoing discussions would go to show that the revision petitioner could give treatment to his mother also after earning a substantial sum, since Rs.9,000/- alone was the amount granted as the maintenance allowance in this case. In view of the above, it has to be held that the Family Court, after evaluating the materials

available, after holding that the respondents did not have any means of maintenance, granted only minimum amount of Rs.5,000/- and Rs.4,000/- as maintenance to the respondents and the said amount could not be held as on higher side, in any way.

18. Therefore, this Revision Petition fails and is accordingly dismissed.

The revision petitioner is directed to clear the entire arrears from the date of petition till this day, within a period of one month from today, and on failure to do so, the respondents are at liberty to file a proper application before the Family Court to execute the sentence, in accordance with law.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF RPFC 264/2022

PETITIONER'S ANNEXURES

ANNEXURE (a) TRUE COPY OF THE SALARY SLIP FOR THE
MONTH OF OCTOBER 2022 OBTAINED FROM M/S
HYSON MOTORS.