

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

TUESDAY, THE 12TH DAY OF JANUARY 2021 / 22TH POUSHA, 1942

RPFC.No.538 OF 2018

AGAINST THE ORDER IN MC No.408/2016 DATED 30-12-2016 OF

FAMILY COURT, KOZHIKODE

REVISION PETITIONER/RESPONDENT:

FATHIMA FIDHA,
AGED 10 YEARS, (MINOR) ,
REPRESENTED BY HER MOTHER HASNATH,
D/O.ABDUL ASEEZ, AGED 28 YEARS, KARAPATTAPURAYIL
HOUSE, KEDAVUR AMSOM, CHAMAL DESOM,
THAMARASSERY, KOZHIKODE.

BY ADV. SRI.MANSOOR.B.H.

RESPONDENT/PETITIONER:

FAISAL C.P.
AGED 35 YEARS,
S/O.SULAIMAN, POMBRACHALIL HOUSE,
ELETTIL AMSOM, VALIYAPARAMBU DESOM,
THAMARASSERY, KOZHIKODE-673572.

BY ADV.SRI.K.A.SALIL NARAYANAN

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON
12.01.2021, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 12th day of January, 2021

The revision on hand is filed against an order passed by Family Court, Kozhikode on 30.12.2016 in M.C.No.408 of 2016. The above M.C. was filed by the respondent seeking to set aside the order passed by Family Court in M.C.No.265 of 2011 on 08.08.2012, granting maintenance allowance at the rate of Rs.1,500/- per month to a minor girl namely Fathima Fida, who is his daughter. It is contended in the petition that she was put by the next friend who is none other than her mother in an Yatthemghana namely 'Kuttikkattoor Muslim Yatthemghana' and her expenditures including food, dress, treatment and education were met with by the authorities of that institution. It is further contended that the mother is remarried and at present is utilising the monthly maintenance allowance ordered in favour of the minor child for her own personal needs and thereby the purpose intended to be achieved by Section 125 Cr.P.C is defeated.

2. The respondent has filed the counter statement denying all the averments as above. It is contended that the minor girl was admitted by her in 'Darul Qur' anil Kareem which is only a residential school meant for imparting education to children and the fee and other expenses of the minor girl are paid by herself.

3. In M.C.No.408 of 2018, the petitioner was examined as PW1. Evidence of any nature was not adduced by the respondent. The Family Court after appreciation of the entire evidence declined to pass an order cancelling the order in M.C. No.265/2011 but issued directions as follows:

“ xxxxxx

- b) the respondent can open S/B Account in a Nationalised Bank in the name of the minor child Fathima Fida and has to intimate the same to the petitioner within a period of one month.
- c) the petitioner can deposit the amount of maintenance allowance as ordered by this court in MC 265/2011 in the above S/B Account and can get discharge of his liabilities.
- d) the bank authorities can pay the amount deposited in the above S/B Account after attaining majority to the child Fathima Fida or on getting order from this court before attaining majority.
- e) the respondent is given liberty to file CMP for execution of the order.
- f) any of the parties can furnish the copy of the order before the concerned bank for observing the directions of the court.”

The respondent being aggrieved by directions issued as b, c and d, has preferred the revision on hand.

4. Sri.B.H.Mansoor, appearing for the revision petitioner has contended that the minor girl in fact was admitted in a school namely 'Darul Qur' anil Kareem' and her entire expenditures including the fee for her education are paid by her mother. According to him, the husband failed to establish the contentions raised in the M.C. But after drawing certain inferences and assumptions, the Family Court issued directions as above. It is further urged that the impugned order would defeat the very purpose of Section 125 Cr.P.C., which was incorporated into the Code of Criminal Procedure by the Parliament to prevent destitution and vagrancy. According to him, though the mother is remarried, the minor girl is still maintained by her. It is further contended that the direction to deposit the maintenance amount in SB Account opened in the name of the minor girl and to disburse it on attainment of her age of majority or to issue appropriate orders for release of the amount by the court, will only defeat the purpose intended to achieve by Section 125 Cr.P.C. It is further pointed out that the respondent has neither opened a bank account nor deposited

any amount, despite the directions issued by the court vide the impugned order, till date. Accordingly, the order under challenge was sought to be set aside.

5. The learned counsel for the respondent in the revision has contended that the revision petitioner is admittedly remarried and therefore there is no basis in taking advantage of the directions issued by the Family Court, in its order passed in M.C.No. 265 of 2011. According to him, apart from denying the averments in the M.C., the revision petitioner did not adduce any evidence to establish on the contrary and in that context, the Family Court is perfectly justified in issuing directions as b, c, and d, vide the impugned order.

6. The records of the case revealed that, at the time when the revision was taken on file, a report was called for by this Court from Deputy Superintendent of Police, District Crime Branch, Malappuram after conducting a discreet enquiry into the allegations raised by the respondent against the revision petitioner in the revision on hand. The Deputy Superintendent of Police, District Crime Branch, Malappuram after conducting a discreet enquiry, has submitted a report, which is appended to the revision on hand. Alongwith the report, extract of the

register maintained by the institution namely 'Darul Qur' anil Kareem and a certificate evidencing the factum of registration of the society under the Societies Registration Act are also produced.

7. Before advertng to the report, this Court has gone into the impugned order to see whether it suffers for any reason. For the sake of clarity, the parties to this revision will hereinafter be referred to as the husband and the wife in accordance with their status in marriage.

8. The husband was the petitioner in M.C.No.408 of 2016 and the respondent in M.C. No.265 of 2011. He tendered oral evidence as PW1 that his minor daughter Fathima Fida is admitted at present in an Yatheemghana namely Kuttikkattoor Muslim Yatheemghana and the authorities of that institution are taking care of her. According to him, he was informed of the factum by one of his relative namely Beevathu. The husband failed to examine the said Beevathu. He failed to examine any other witnesses and to adduce any documentary evidence to justify his averments as above. The Family Court found it impossible to get the views of the affected party, she being a minor at the relevant time. Regarding the averment about

remarriage, the Family Court has observed that the wife failed to enter into the box to state the truth about the allegation that she was married to another person and was staying with him. For the failure of the wife to tender evidence, to refute the averment, the Family Court inferred that she is remarried and is staying alongwith her second husband. In that context, the Family Court has also observed that though the housing of the minor at the orphanage is not proved, it cannot be said to be incorrect. The Family Court has found that while considering the grievance projected by the father of the minor child due regard must be given to the best interest of the child. Accordingly, the prayer of the husband for issuance of a direction to deposit the amount in SB Account in the name of the minor child itself was allowed so as to enable her to receive it on her attainment of age of majority and directions were also issued as above.

9. The Family Court is unjustified in doing so for the reasons as follows:

1. The husband failed to establish his allegations against the wife regarding her remarriage and housing of the minor girl child in an Yatheemghana.
2. He failed to adduce any evidence to establish that the expenditures of the minor girl were met with by authorities of

the Yatheemghana itself.

3. Under Section 125 Cr.P.C the court is empowered to fix the maintenance allowance at the monthly rate and to pay the same to the wife, children or parents upon proof by them of the neglect or refusal by a person responsible to pay it and having the status with reference to them respectively as husband, father or son.
4. Monthly allowance as is indicated from the very word is meant to be disbursed to the person who has claimed it and found by the court entitled to, solely to meet the expenditures in a month.
5. Maintenance allowance if ordered to be deposited, the daily sustenance of the party in whose favour it was ordered would be in peril. As contemplated by the provision itself, a consequent event, which would have the impact of placing any of the categories of persons entitled to get the maintenance allowance in a pedestal when he/she would be self sufficient to maintain himself/herself, upon proof of that by the person responsible to pay it alone, the entitlement can be taken away by the court.

Under section 125 Cr.P.C., a child evenafter attainment of age of majority is entitled to get monthly maintenance allowance upon proof that the physical or mental incapacity it has at the relevant time made it unable to maintain.

10. In the above circumstances, the impugned order to the extent it directs the husband to open SB Account in the name of the minor in a Nationalised Bank and to deposit the monthly maintenance allowance in the minor's favour in that account and to the bank authorities to disburse the amount in deposit on attainment of the age of majority by the minor girl or on the basis of an order passed by the court directing the release of the amount in the minor's favour, suffers from illegality, impropriety and infirmity. The Family Court cannot be justified in issuing directions to the above effect. As rightly pointed out by the learned counsel, maintenance allowance envisaged under Section 125 Cr.P.C is meant to be released to the party or to the next friend, in case the party is a minor. The term monthly maintenance allowance itself indicate that it is an allowance ordered to the claimant so as to enable him/her to meet the expenditures incurred monthly towards food, clothing, shelter and education. If the monthly maintenance allowance is ordered to be deposited, it would defeat the very purpose intended by the parliament while incorporating Section 125 in the Code of Criminal Procedure.

11. In the enquiry report, filed by the Deputy Superintendent of Police, District Crime Branch, Malappuram referred to supra, it is stated that the institution namely 'Darul Qur' anil Kareem is situated at Malappuram and it is run by a Society stands registered under the Societies Registration Act since 25th November, 2015. It is further reported that the institution is not a Yatthemghana but a residential school where girl students are admitted for education from 5th to 10th standard and about 70 girl students are studying there. It is further reported that the institution is concentrating on religious studies as well as academic education. Rs.5,000/- is collected as admission fee and Rs.5,700/- as monthly fee for food, accommodation and tuition from each students. The minor girl is admitted in 6th standard in the institution on 03.05.2016 by her mother. The admission fee of Rs.5,000/- was remitted by her mother. At present, the minor girl is studying in 8th standard. It is also reported that the mother used to visit the daughter at least twice in every month and the monthly fee is also remitted by her without failure. The father of the minor girl had not visited till July 2018. The father has started visiting to the institution to see his daughter once in every month from August

2018 onwards but he has not remitted any amount towards tuition fee or other expenditures of the minor girl.

12. In view of the factums disclosed from the report, this Court finds no justification in the Family Court in issuing directions as b,c, and d vide the impugned order. The directions are only to be set aside.

In the result, revision petition is allowed. The directions of the Family Court in M.C.No.265 of 2011 would automatically be revived and the husband is directed to comply with those and the wife/mother of the minor girl is permitted to receive the monthly maintenance allowance ordered in favour of the minor girl and to see that it is utilised only for the benefit and welfare of the minor.

Sd/-

MARY JOSEPH

JUDGE

RPFC.No.538 OF 2018

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APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: CERTIFIED COPY OF THE ORDER
DATED 30.12.2016 IN M.C.
408/2016 PASSED BY THE
FAMILY COURT, KOZHIKODE.

ANNEXURE B: CERTIFIED COPY OF THE ORDER
IN CMP 332/2016 IN
M.C.265/2011 OF FAMILY
COURT, KOZHIKODE

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P A TO JUDGE