

HIGH COURT OF KERALA**Bench: Justice C.S. Dias****Date of Decision: 30 October 2023**

RPFC NO. 436 OF 2016

AGAINST THE ORDER/JUDGMENT IN MC 95/2016 OF FAMILY
COURT,NEDUMANGAD**SUNI REVISION PETITIONER/S****Versus**1 **SANDHYAMOL**2 **ASHIL S.S**3 **ASHMI S.S.****.....RESPONDENT/S****Section, Acts, and Rules Mentioned:**

Section 125 of the Code of Criminal Procedure (CrPC)

Sec.19(4) of the Family Courts Act

Subject: Revision Petition Challenging the Family Court's Order on
Maintenance Allowance.**Headnotes:**

Revision Petition – Maintenance Allowance – Challenge to Family Court's
order directing the revision petitioner to pay maintenance to the respondents
– Revision petitioner was previously the respondent in Family Court
proceedings. [Para 1]

Section 125 of CrPC – Respondents seek maintenance under Section 125 of the Code of Criminal Procedure at varying rates – Claims of abandonment and insufficient financial support by the revision petitioner. [Para 2-3]

Financial Status – Conflicting accounts of financial status for both parties – Revision petitioner claimed a daily income of Rs.350/- as an auto-rickshaw driver, while respondents alleged that he had a previous monthly income of Rs.1,00,000/- in the Gulf. [Para 12-13]

Cohabitation and Abandonment – Revision petitioner’s claim of separation without sufficient cause refuted – No efforts to resume cohabitation or initiate proceedings for restitution of conjugal rights demonstrated. [Para 10]

Quantum of Maintenance – Family Court’s determination of maintenance amounts discussed – Revision petitioner’s past employment and earnings in the Gulf considered in setting the maintenance amounts. [Para 11, 16]

Decision – No error, illegality, or impropriety found in Family Court’s order – Revision petition dismissed – Direction given for adjustment of any interim maintenance amounts deposited. [Para 17-18]

Referred Cases:

- Anju Garg vs. Deepak Kumar Garg (2022 LiveLaw SC 805)

Representing Advocates:

For the Revision Petitioner: Sri. Latheesh Sebastian

For the Respondents: Sri. M. Abdul Rasheed

**THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 30.10.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

RP(FC)No.436 of 2016

ORDER

The revision petition is filed questioning the legality and correctness of the order passed by the Family Court, Nedumangad in M.C No.95/2016 directing the revision petitioner to pay maintenance allowance to the respondents. The revision petitioner was the respondent and the respondents were the petitioners before the Family Court.

2. The respondents – the wife and children of the revision petitioner – had filed the application against the revision petitioner under Sec.125 of the Code of Criminal Procedure (for short, 'Code') for an order of maintenance at the rate of Rs.10,000/-, Rs.4,000/- and Rs.3,000/- respectively. They had averred in the application that the first respondent was married to the revision petitioner on 22.8.2004 and in their wedlock the second respondent was born on 1.11.2005 and the third respondent was born on 14.1.2010. The revision petitioner had deserted the respondents since 13.4.2013. The first respondent is unemployed. The revision petitioner is employed as a heavy vehicle driver in the Gulf and is earning a monthly income of Rs.1,00,000/-. He also has a monthly agricultural income of Rs.5,000/-. Despite having sufficient means, the revision petitioner has refused to maintain the respondents. Hence, the application.

3. The revision petitioner filed a written objection admitting his marriage with the first respondent and the paternity of the respondents 2 and 3. However, he contended that the first respondent is employed as a Teacher in a private school and a parallel college, and is getting a monthly income of Rs.13,500/-. The revision petitioner has returned from the Gulf and is presently working as an auto-rickshaw driver and is getting only a daily income of Rs.350/-. The first respondent is living separately from the revision petitioner without any sufficient cause. Hence, the application may be dismissed.

4. In the trial, the first respondent was examined as PW1 and Exts P1 to P4 were marked on her side, and the revision petitioner was examined as CPW1 and Exts R1 to R5 were marked in evidence.

5. The Family Court, after analysing the pleadings and materials on record, by the impugned order, partly allowed the application, by directing the revision petitioner to pay the first respondent monthly maintenance allowance @ Rs.7,000/- and the respondents 2 and 3, monthly maintenance allowance @ Rs.3,000/- each from the date of petition (26.2.2016).

6. Assailing the said order, the present revision petition is filed.

7. Heard; Sri.Latheesh Sebastian, the learned counsel appearing for the revision petitioner and Sri.Abdul Rasheed, the learned counsel appearing for the respondents.

8. Is there any illegality, impropriety or irregularity in the impugned order?

9. The revision petitioner admits his marriage with the first respondent and the paternity of the respondents 2 and 3.

10. The respondents' case is that the revision petitioner deserted them since 13.4.2013. Although the revision petitioner has the contention that the first respondent is living separately from him without any sufficient cause, there is no material on record to prove that he has taken any effort to resume cohabitation or initiate proceedings to seek for a decree of restitution of conjugal rights. Thus, the said contention has to necessarily fail.

11. Therefore, the only point that emanates is whether the quantum of maintenance awarded by the Family Court is justifiable or not.

12. Admittedly, the revision petitioner is a driver by profession. He has conceded that he is presently working as an auto-rickshaw driver and earning a daily income of Rs.350/-.

13. The respondents have a case that the revision petitioner is a heavy vehicle driver and was employed in the Gulf and drawing a salary of Rs.1,00,000/- per month. To substantiate their assertion, they confronted and marked Ext R2 letter submitted by the revision petitioner to his employer on 6.4.2011, for enhancement of his basic salary from Omani riyal 90 to 160, wherein he has stated that he is a heavy vehicle driver. Therefore, it is proved that the revision petitioner was employed abroad and is a heavy vehicle driver. Although the revision petitioner has a case that the first respondent is a Teacher in a private school and a parallel college, there is no material to substantiate his bald assertion.

14. It is undisputed that the respondents 2 and 3 were born on 1.11.2005 and 14.1.2010, respectively, and are school going children.

15. It is trite law that an able-bodied person is bound to maintain his wife and children [read **Anju Garg vs. Deepak Kumar Garg** (2022 LiveLaw SC 805)].

16. On a consideration of the status, qualification and the fact that the revision petitioner was a heavy vehicle driver working in Oman and that the respondents have no proven means to maintain themselves, I am definitely of the view that the Family Court has rightly fixed the quantum of maintenance @ 13,000/- per month.

17. I do not find any error, illegality or impropriety in the impugned order passed by the Family Court warranting interference by this Court in exercise of the discretionary powers under Sec.19(4) of the Family Courts Act.

18. The revision petition is devoid of any merits and is hence, consequentially dismissed. Needless to mention, if at all the revision petitioner has deposited any amount before the Family Court, pursuant to the interim orders passed by this Court, he is entitled for adjustment of the said amount while calculating the arrears of maintenance.

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