

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 29TH FEBRUARY 2008 / 10TH PHALGUNA 1929

RPFC.No. 67 of 2008()

MC.540/2006 of FAMILY COURT, PALAKKAD
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REVISION PETITIONER/RESPONDENT:

SUNILKUMAR, S/O. RAMACHANDRAN,
KOTHOTTIL VEEDU, CHEMBUTHARA, PALAKKAD (P.O),
THRISSUR.

BY ADV. SMT.A.K.PREETHA
SRI.M.R.RAJESH

RESPONDENTS: PETITIONERS:

1. M. GEETHANJALI, D/O.K.K.GOPALAKRISHNAN,
"SREE ANJALI", MANJAKKAD, SHORNUR, PIN-679121,
OTTAPPALAM TALUK.

2. ADHITYA, MINOR 1 1/2 YEARS,
S/O. M.GEETHANJALI, "SREE ANJALI", MANJAKKAD,
SHORNUR, PIN-679121, OTTAPPALAM TALUK.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 29/02/2008, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

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R.P.F.C. No. 67 OF 2008
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Dated this the 29th day of February, 2008

O R D E R

This revision petition is directed against an order passed under section 125 Cr.P.C. directing the petitioner to pay an amount of Rs.2,500/- per month to the first claimant wife and Rs.1,000/- per month to the 2nd claimant, his minor child aged 1½ years.

2. Marriage, paternity and separate residence are all admitted. A contention was raised in the counter statement that the wife was residing separately without any justifiable reason. It was further contended that the wife was employed and she is not a person unable to maintain herself. It was further urged that the petitioner does not have sufficient means to pay the amounts claimed. Total amount of Rs.6,000/- per month was claimed in the petition.

3. Parties went to trial on these contentions. Except the evidence of PW1 and CPW1, the rival contestants, no

other materials are placed before court.

4. The learned Judge of the Family Court considered the materials available before him and came to the conclusion that the wife has succeeded in establishing that there was sufficient reason to insist on separate residence. It was further held that on the available evidence a direction to pay maintenance at the rate of Rs.2,500/- and Rs.1,000/- respectively to the claimants was absolutely justified. Accordingly, the learned Judge proceeded to pass the impugned order.

5. The petitioner claims to be aggrieved by the impugned order. What is the grievance? The learned counsel for the petitioner urged two grounds in support of the challenge raised. First of all, it is contended that the wife has no sufficient reason to justify separate residence. Secondly, it is contended that the quantum of maintenance awarded is at any rate excessive.

6. I have considered both these contentions. The learned Judge of the Family Court first of all took note of the

fact that the offer made to maintain the claimant wife on condition that she lives with the petitioner does not appear to be bona fide. The learned Judge came to that conclusion on the ground that the petitioner had not made a specific offer when he was examined as a witness to maintain her on condition that she lives with him, though such plea was raised in the counter statement admittedly. That according to me may be one relevant input but not the final one.

7. The learned Judge then took note of the only pieces of evidence which were available before him ie, the interested testimony of both the contestants. The wife was young and she was having a child aged 1½ years. She was choosing to insist on separate residence advancing a specific reason to justify separate residence. She asserted that she was subjected to matrimonial cruelty. The husband, the petitioner, had no specific reason to urge to explain the separate residence of the spouses. It was, in these circumstances, the learned Judge of the Family Court took the view that the claimant wife is entitled for separate

maintenance. I find the process of reasoning adopted by the learned Judge to be absolutely cogent and reasonable. I find no reason to interfere with that finding.

8. Coming to the question of means a contention was raised that the wife is employed as a teacher. Not a semblance of material was adduced in support of this contention which was denied by the wife on oath. The finding that the wife is unable to maintain herself does appear, in these circumstances, to be acceptable notwithstanding the circumstance that the wife is an educated woman.

9. Coming to the means of the petitioner, the learned Judge took note of the conflicting evidence that was available. The learned Judge took note of the admitted stand of the petitioner herein that he was earlier running a bus service. The wife had a case that he was even now running the bus service. The learned Judge further took note of the admitted evidence of the petitioner that he had properties at the time of marriage. The learned Judge took note of the fact that the subsequent disposal of such properties though asserted was

not attempted to be proved at all. It was in these circumstances that the learned Judge of the Family Court came to the conclusion that the claimant wife is unable to maintain herself and the petitioner husband has sufficient means. The learned Judge had also taken note of the well established principle of even an able bodied person can be mulcted with liability under section 125 Cr.P.C. to pay maintenance.

10. Lastly and finally the counsel contends that the quantum of maintenance awarded is excessive. An amount of Rs.2,500/- for the wife and Rs.1,000/- for the child is not necessary or justified, it is urged.

11. I have considered all the above contentions. I am of the opinion that the learned Judge was reasonable and cogent in coming to the conclusion that the claimant wife is unable to maintain herself and the petitioner having sufficient means is bound to maintain his wife and child. The quantum of maintenance awarded appears to be realistic and reasonable and not at any rate excessive or perverse as to

persuade this Court to invoke its revisional jurisdiction of superintendence and correction.

12. It will be apposite in this context to remind this court of the contours of such revisional jurisdiction. It is trite that unless the findings are grossly erroneous, incorrect or improper, the revisional jurisdiction should not be invoked to interfere with the discretion exercised by the trial court in the matter of appreciation of evidence - in choosing to act on the evidence of PW1 in preference to that of RW1 in this case, and in the matter of discretion in fixing the quantum of maintenance. I do not, in these circumstances, find any reason to interfere. This R.P.F.C. is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

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