

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 25TH FEBRUARY 2010 / 6TH PHALGUNA 1931

RPFC.No. 349 of 2007()

MC.83/2006 of FAMILY COURT, ERNAKULAM

REVISION PETITIONER/RESPONDENT:

**MOHAMMED KUNJU, AGED 43 YEARS,
S/O. ALIYAR, MUKKADA HOUSE, CHOONDY KAVALA,
CHELAMATTOM VILLAGE, PERUMBAVOOR,
ERNAKULAM DISTRICT.**

**BY ADVS. MR.M.A.ABDUL HAKHIM,
MR.JYOTHISH.J.KALLINGAL.**

RESPONDENT(S): PETITIONERS:

- 1. RUKSANA, AGED 13 YEARS,
THUNDATHIL VEEDU, PALLIPRAM KARA,
MARAMBILLI VILLAGE, PERUMBAVOOR, ERNAKULAM.
(MINOR REPRESENTED BY HER MOTHER AND GUARDIAN SMT.RAMLA).**
- 2. MOHAMMED SOUD, AGED 7 YEARS,
THUNDATHIL VEEDU, PALLIPRAM KARA,
MARAMBILLI VILLAGE, PERUMBAVOOR, ERNAKULAM.
(MINOR REPRESENTED BY HER MOTHER AND GUARDIAN SMT.RAMLA)**
- 3. RAMLA, W/O. MUHAMMED KUNJU,
THUNDATHIL VEEDU, PALLIPRAM KARA,
MARAMBILLI VILLAGE, PERUMBAVOOR, ERNAKULAM.**
- 4. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

**R3 BY ADVS. MR.T.K.VIPINDAS,
SMT.P.K.PRIYA.**

R4 BY SR. PUBLIC PROSECUTOR MR. BENNY VARGHESE

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 25/02/2010, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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M.N. KRISHNAN, J.

.....
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.....

Dated this the 25th day of February, 2010.

O R D E R

This revision is preferred against the order of the Family Court, Ernakulam in M.C.No.83/2006. The wife and two minor children moved against the revision petitioner for maintenance and the family court on a consideration of the materials granted them maintenance at the rate of Rs.750/= each. The finding on the question of entitlement of maintenance to the wife as well the quantum awarded to all are under challenge in this revision.

2. Heard the learned counsel appearing for both sides. It has to be stated that the matrimonial relationship is totally almost broken down and there are four cases pending with respect to the matrimonial disputes. The court found that the wife may not be able to live with such a husband and held that she is entitled to maintenance. It is a finding on fact which does not suffer from any serious infirmity.

3. Now the learned counsel for the revision petitioner would submit that he had effected a divorce on the wife. If

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it is so, it is for him to move the appropriate court and it is not the subject matter of the revision at all. It is also submitted by the learned counsel for the wife that he had remarried. That is also the matter which has to be separately placed before the competent court. So the only question that survives for determination is regarding the quantum of maintenance. The learned counsel for the respondents very strongly urges before me that this Court shall not interfere with the meagre amount of maintenance ordered by the family court. I cannot disagree with her when the learned counsel submits that the amount ordered is extremely reasonable. But the purport under Section 125 of Cr.P.C is to consider the capacity of the husband also in fixing the quantum of maintenance and if it is not done, the order for maintenance will not have the desired result. Here the husband is a driver by profession in a Government Department. He would contend that he is having a carry home salary of Rs.3,350/=. The court found that the salary after deduction taken into consideration for fixing the maintenance is Rs.3490/=. One of the daughters is staying

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in an orphanage. The court found that no evidence is adduced to prove that money is spent for her boarding and lodging there. The husband would contend that he has to look after his mother besides an unmarried sister. It is true that there is social responsibility for the man. But that social responsibility does not ipso facto give him the right to abandon his wife and children. Therefore it is desirable to take into consideration the total materials available. He is a driver by profession in a Government department. He has to work long trips. He may have to take food from outside considering the nature of his avocation. He has to pay some amount to his mother as well.

4. So taking into consideration all these facts, reasonable order of maintenance would be Rs.700/= to the wife and Rs.600/= each to the children. I make it clear that if there is change of circumstance, the parties can move for enhancement as well for cancellation.

5. Therefore the revision is disposed of by modifying the order of maintenance payable by the husband to the wife at Rs.700/= and Rs.600/= each to the children payable

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from the date of petition. The mother is authorized to withdraw the amount on behalf of the minor children.

Disposed of accordingly.

M.N. KRISHNAN, JUDGE

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