



2021:KER:20504

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 17TH DAY OF MAY 2021 / 27TH VAISAKHA, 1943

RPFC NO. 400 OF 2014

AGAINST THE ORDER DATED 30.09.2014 IN MC 73/2013 OF

FAMILY COURT, KOZHIKODE

REVISION PETITIONER/RESPONDENT:

ARUN R.NAIK,
AGED 37 YEARS,
S/O.V.RAMDAS NAIK, 1/3758 A, BILATHIKULAM ROAD,
P.O.ERANHIPALAM, PIN - 673 006.

BY ADV SRI.DEVAPRASANTH.P.J.

REVISION RESPONDENTS/PETITIONERS:

- 1 SHWETHA ARUN NAIK,
AGED 35 YEARS,
W/O.ARUN NAIK, 35/217 D, ORCHID VALLEY,
PLOT NO.6, TR-39, MERIKUNNU P.O.,
A.R.CAMP ROAD, CALICUT, KERALA, PIN 673012.
- 2 NIRVRUTHI.A.NAIK (MINOR)
REPRESENTED BY MOTHER SHWETHA ARUN NAIK,
AGED 35 YEARS, 35/217 D, ORCHID VALLEY,
PLOT NO.6, TR-39, MERIKUNNU P.O.,
A.R.CAMP ROAD, CALICUT, KERALA, PIN 673012.

BY ADVS.

SRI.P.A.HARISH
SRI.V.V.SURENDRAN

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 14.09.2020, ALONG WITH RPFC.468/2014, THE COURT ON
17.05.2021 PASSED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 17TH DAY OF MAY 2021 / 27TH VAISAKHA, 1943

RPFC NO. 468 OF 2014

AGAINST THE ORDER DATED 30.09.2014 IN MC 73/2013 OF
FAMILY COURT, KOZHIKODE

REVISION PETITIONERS/PETITIONERS:

- 1 SHWETHA ARUN NAIK,
AGED 35 YEARS,
W/O.ARUN NAIK, RESIDING AT 35/217D,
ORCHID VALLEY, PLOT NO.6, TR.39,
POST MARIKUNNU, A.R.CAMP ROAD, CALICUT-673012.
- 2 NIVRUTHI A NAIK, (MINOR) AGED 11 YEAR,
REPRESENTED BY MOTHER SHWETHA ARUN NAIK,
RESIDING AT 35/217D, ORCHID VALLEY, PLOT NO.6,
TR.39, POST MARIKUNNU, A.R.CAMP ROAD,
CALICUT-673012.

BY ADVS.

SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENT/RESPONDENT:

ARUN R. NAIK,
S/O.V.RAMDAS NAIK, 1/3758A, BILATHIKULAM ROAD,
POST ERANHIPALAM, KOZHIKODE-673006.

BY ADV SRI.DEVAPRASANTH.P.J.

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 14.09.2020, ALONG WITH RPFC.400/2014, THE COURT ON
17.05.2021 PASSED THE FOLLOWING:



MARY JOSEPH, J.

R.P.(F.C) Nos.400 and 468 of 2014

Dated this the 17th day of May, 2021

COMMON ORDER

The order dated 30.09.2014 passed by Family Court, Kozhikode in M.C.No.73 of 2013 is taken up in challenge by the respondent as R.P.(F.C.) No.400 of 2014 and by the petitioners as R.P.(F.C.) No.468 of 2014. The above M.C was filed by the revision petitioners in R.P.(F.C.) No.468 of 2014 seeking for monthly maintenance allowance at the rate of Rs.30,000/- and Rs.20,000/- to them.

2. For the sake of clarity, the parties to these revisions will hereinafter be referred to as petitioners 1 and 2 and respondent in accordance with their status in the M.C. before the Family Court.

3. In the M.C, the 1st petitioner had adduced oral evidence as PW1 and marked Exts.A1 to A10 as documentary evidence. On the respondent's side, oral evidence was adduced by him as RW1 and Exts.B1 to B11 were marked as



documentary evidence. The Family Court has appreciated the above evidence and allowed the M.C granting monthly maintenance allowance at the rate of Rs.10,000/- to the 1st petitioner and Rs.7,000/- to the 2nd petitioner, from the date of the petition. The Family Court has also directed the respondent to pay a lumpsum of Rs.30,000/- at the beginning of every academic year before June 30th subject to enhancement at the rate of 10% yearly to the 2nd petitioner for her education with effect from the date of the petition. The amount directed to be paid by the respondent to the petitioners in compliance of order dated 11.04.2012 in I.A.No.518 of 2012 in Matrimonial Appeal No.52 of 2012 was also allowed to be adjusted to the arrears of maintenance allowance stands ordered by the impugned order. The 1st petitioner being the mother and the guardian of the 2nd petitioner was also authorised to receive the maintenance allowance as well as the educational expenses of the 2nd petitioner from the respondent. Alleging that quantum of monthly maintenance allowance ordered by the Family Court as above is on the lower side and seeking for enhancement, R.P.(F.C) No.468 of 2014 was filed by the petitioners. Alleging that the quantum of monthly maintenance allowance ordered



by the Family Court as above is on the higher side and seeking for a modification by reduction of the amount, R.P.(F.C.) No.400 of 2014 was filed by the respondent. It was also contended by the respondent in the above revision that the Family Court is unjustified in directing the payment of Rs.30,000/- to the 2nd petitioner before June 30th of every year with 10% annual enhancement, in addition to Rs.7,000/- ordered as monthly maintenance allowance to her. The said part of the impugned order is sought to be set aside.

4. The learned counsel for the respondent has contended that the 1st petitioner though has adduced oral evidence as PW1 to the effect that the respondent was doing business in gold alongwith his father, that he was having gold purifying unit on his own and was earning Rs.2,50,000/- therefrom, that being the only son of his father, he is also getting income from landed property belongs to him and that around Rs.3,00,000/- was obtained by him as share of profit from the business jointly conducted by him with his father and as rent and that he was getting Rs.1,50,000/- monthly from the jewel craft business conducted by him and that thereby he was getting a total income of Rs.7,00,000/- monthly, she failed to adduce any independent evidence to substantiate the same.



5. Similarly, the 1st petitioner suppressed the factum that she was employed and earning income on her own, therefrom. While adducing evidence as PW1, the 1st petitioner has admitted that she had secured a job as receptionist in a school from June, 2010 to August, 2010 and thereafter she had joined DIDS, Opposite IQRA Hospital, Kozhikode and worked for one year for a salary of Rs.8,000/-, evidence in that regard was overlooked by the Family Court while fixing Rs.10,000/- as the monthly maintenance allowance payable to her. According to him, the respondent as RW1 has denied to have any joint business with his father other than 'Venketesh Naik Jewellers' at Kozhikode and that income is not received therefrom and spoken to the effect that the above firm is running on heavy loss and therefore is at the verge of closing down, that he is not having any jewel craft business at present, that he has severed entire connection with the said business way back in 2009, that he is only working in the field of purifying the gold, and that Rs.2,000/- alone was earned by him as rent from the room leased out, the Family Court failed to appreciate the above evidence tendered by him in its proper perspective. In Ext.B4, the income tax return for the financial year 2013-2014, marked by him in evidence, his



annual income was shown as Rs.1,48,120/-. According to the learned counsel from the income tax return, Rs.12,500/- can be derived as the maximum monthly income of the respondent, but the Family Court discarded it on technical reasons and found him as a man having sufficient income and accordingly fixed Rs.10,000/- and Rs.7,000/- respectively as monthly maintenance allowance payable to petitioners 1 and 2.

6. It is further contended by the learned counsel for the respondent that despite the averments made by the 1st petitioner in the petition seeking maintenance allowance that Rs.12,400/- will have to be paid as tuition fee of the 2nd petitioner annually, Rs.5,000/- towards uniforms, Rs.3,000/- towards books and Rs.5,000/- towards incidental expenses for the academic year 2013-2014, evidence to substantiate those is not adduced. Even in the said context, the Family court has issued a direction to the respondent to pay a consolidated sum of Rs.30,000/- before 30th June of every academic year subject to enhancement of 10% yearly in addition to Rs.7,000/- payable as monthly maintenance allowance. According to the learned counsel, the Family Court is highly unjustified in fixing the rates of monthly maintenance allowance as above and also directing the respondent to pay



Rs.30,000/- annually in addition to that subject to enhancement at the rate of 10% annually. According to him interference with the impugned order and modification by way of reduction of the rates of monthly maintenance allowance and reversal of the order to the extent it directs payment of a lumpsum of Rs.30,000/- annually to the 2nd petitioner subject to enhancement at the rate of 10% yearly, is necessary.

7. The learned counsel for the respondent has relied on **Rashmi Tiwari v. Dr.Sanjeev Tiwari** [2019 KHC 3894], **Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy** [2017 (2) KHC 606] and **Ajitha Kumari and Another v. K.D.Jayasekharan** [2016 (5) KHC 664] to substantiate his contentions.

8. The learned counsel for the petitioners has contended that the respondent has admitted his family as reputed jewellers in Kozhikode city. Though it was deposed by the respondent that 'Venketesh Naik Jewellers', which is a joint business conducted by him with his father and is under his management is running on heavy loss for the last 7 years and is on the verge of closing down, no evidence is adduced by him to substantiate the same. Though it was admitted by him that he was doing work in a gold purifying unit, he has



not produced any materials to establish the income derived from the said business. Though he has deposed that only Rs.2,000/- was obtained as rent by leasing out the rooms stand in his name, rental agreement is not produced by him. Though he has attempted to establish by producing Exts.B2 to B7 that his annual taxable income for financial years 2011-2012, 2012-2013 and 2013-2014 was only meagre, the Family Court failed to rely stating those as incomplete documents. The Family Court has found the documents as manipulated by the respondent to defeat the petitioners' claim for monthly maintenance allowance from the respondent. Though it was deposed by RW1 that Exts.B2 to B7 are documents prepared by his Chartered Accountant on the basis of his cash books, vouchers etc., such materials were not made available to this Court. The Family Court has found Exts.B2 to B7 as documents prepared by the respondent in his self-assessment and there is absolutely nothing to establish acceptance of those by the Income Tax Department. Accordingly, the Family Court has repelled the contention of the respondent that he was having only a meagre monthly income of Rs.12,500/-. The Family Court has also found the respondent as a man of having sufficient income to pay reasonable sum as monthly



maintenance allowance to the petitioners. According to the learned counsel the 1st and 2nd petitioners admittedly holding the status of wife and child of the respondent, have the entitlement to get monthly maintenance allowance at the rates of Rs.30,000/- and Rs.20,000/- respectively as claimed by them. According to the learned counsel, the 1st petitioner admittedly had worked in two different establishments, only for a period of one year with a monthly earning of Rs.8,000/-, after getting separated from the respondent. According to the learned counsel, the 1st petitioner has no permanent employment and had worked only temporarily and is not evidenced as holding any job at the relevant time of consideration of the M.C by the Family Court. The 2nd petitioner being in the custody of the 1st petitioner, is maintained by the latter. Accordingly, it was canvassed that the monthly maintenance allowance stands ordered as payable to the petitioners by the impugned order being unjust and unreasonable, there is every justification for enhancing it to the quantum claimed by the 1st petitioner in the M.C.

9. The marriage of the respondent with the 1st petitioner and birth of the 2nd petitioner in the wed lock were not denied by the respondent. The respondent failed to



establish his contention that the 1st petitioner was permanently employed at the relevant time and has income of her own for maintaining herself and the 2nd petitioner. The 1st petitioner has admitted that she had worked temporarily for about 1 year after separation from the respondent and had a monthly income of Rs.8,000/-. As rightly held by this Court in **Ajitha Kumari** supra it is the burden of the wife to establish the income of the husband to get a better sum awarded as monthly maintenance allowance and on her failure to call for the records pertaining to drawal of salary by the husband, she cannot be said to have made out a ground for getting enhancement of the monthly maintenance allowance already awarded by the Family Court.

10. In the case on hand, the 1st petitioner bound to discharge the burden to establish the monthly income of the respondent, failed in her attempt to do so. What was made available for reliance to the Family Court is her interested version regarding the monthly income of the respondent. She failed to adduce any independent evidence to support her version. Therefore, the 1st petitioner in the case on hand thoroughly failed to establish the monthly income of the respondent. The respondent as RW1 has deposed that the



joint business in gold in partnership with his father is being run in loss and is on the verge of closing down. Therefore apart from the oral evidence adduced by the petitioner, independent evidence supporting it is not forthcoming. Exts.B2 to B7 are only acknowledgments of filing of Income Tax Returns before the Income Tax Authorities. Though it was stated by RW1 that for the preparation of Exts.B2 to B7 the Chartered Accountant has also relied on materials relating to his business in gold and Rs.1,48,120/-, was shown as the annual income for the financial year 2013-2014, the Family Court did not rely on those doubting its veracity. It is pertinent to note that the source of income of the respondent is not particularly derived from Exts.B2 to B7.

11. In **Kalyan Dey Chowdhury** supra relied on by the learned counsel for the respondent it was held by the Apex Court that 25% of husband's net salary would be just and proper to be awarded as monthly maintenance allowance to the wife and in **Rashmi Tiwari** supra that 25% of the total income of the husband can be ordered as interim maintenance allowance to the wife. Dictums in the above cases cannot squarely be applied to the context on hand for the reason that evidence is lacking to establish either the net income or gross



income to award payment of 25% of it as monthly maintenance allowance in favour of the 1st petitioner.

12. It is settled position of law that the monthly maintenance allowance payable to the wife must be befitting to the status of the parties and the capacity of the husband to pay it. Therefore, convincing evidence must be adduced by the wife to establish the income of the husband. In the case on hand, evidence in that regard is totally lacking. As held in **Ajitha Kumari** supra it is the burden of the wife raising averments about the job and the monthly income of the husband to establish those by adducing cogent evidence. The 1st petitioner though averred in the petition that the respondent has monthly income around Rs.7,00,000/- from different sources, failed to discharge her burden to establish those by adducing evidence. The respondent though denied the claim of the 1st petitioner, admittedly has earning from the gold purifying unit maintained by him and as rent from leasing out of rooms owned by him. When the husband claims that he has some other sources of income and also earning therefrom, under Section 106 of the Indian Evidence Act it is his burden to substantiate, those being purely within his personal domain of knowledge. In the case on hand, as



observed earlier Exts.B2 to B7, though produced by the respondent, are insufficient to establish his sources of income and the total income derived from each of those by him. Rather, Exts.B2 to B7 only refers about the taxable income of the respondent during different financial years. Therefore, the respondent by failing to produce cogent evidence to substantiate his income made the Family Court to take adverse inference that he has sufficient income. The petitioners being the wife and child of the respondent are entitled to receive just and reasonable sums as monthly maintenance allowance from him to sustain the status, the latter was holding in the society.

13. As conceded by the 1st petitioner while adducing evidence, she is a Diploma holder in Computer. Though was deposed as staying in a rented accommodation after her separation from the respondent, the court was convinced from the evidence adduced by her that door No.XXXV/217 D of Kozhikode Corporation occupied by her belongs to her mother and rent is not required to be paid. As revealed from the evidence, the 1st petitioner was employed temporarily in two institutions. Being a Diploma holder in Computer and having working experience in the field, she has every job prospects



also. The M.C was filed in the year 2013 and the impugned order was passed in 2014. The 1st petitioner failed to aver in the petition seeking maintenance allowance that she was employed anywhere at any point of time. Rather her claim was that she is unemployed and did not earn any income. The respondent has brought out in evidence during cross examination that the 1st petitioner was employed. The 1st petitioner as PW1 has stated that her employment was only for a short duration of one year. Therefore, she may be having the materials to establish the factum but she failed to produce those. Therefore, her version that she was employed for only one year cannot be taken for granted. Even if she is not employed, there is job prospectus for her for being educationally qualified. In that context, this Court is perfectly justified in reducing the monthly maintenance allowance of Rs.10,000/- ordered by the Family Court as payable to the 1st petitioner to Rs.7,000/-.

14. The 2nd petitioner was awarded with Rs.7,000/- as monthly maintenance allowance by the Family Court. The factum that the 2nd petitioner is pursuing with her education at in Silver Hills Public School, Paroppadi is not disputed by the respondent. His only stand was that he is paying the expenses



of education of the 2nd petitioner at the school. According to him, money was actually given to the 1st petitioner and the fee was paid by her from the said amount. But, in the absence of evidence to establish, this Court is not in a position to accept that. However, evidence available would disclose that the 2nd petitioner was admitted in that school by the respondent while they were staying together. The education at Silver Hills Public School, Paroppady being a costly affair, and the fee admittedly is paid by the respondent, he can be said to be an affluent person.

15. Though evidence is not adduced to establish the payment of expenses of education by the respondent, it can be discerned that huge fees is collected by the institution wherein the 2nd petitioner was studying.

16. The Family Court has ordered the monthly maintenance allowance in favour of the 2nd petitioner as Rs.7,000/- and directed the respondent to pay the same and also an additional sum of Rs.30,000/- within June 30th of every academic year subject to 10% increase annually. The said direction undoubtedly is an unjustifiable one and will not sustain for the reason that the monthly maintenance allowance contemplated under Section 125 Cr.P.C will take



within its sweep all genuine expenses of the child viz. expenses for education, food, shelter, medicine etc. and therefore, a court while fixing it shall take into account all possible and reasonable expenditures of a child. Therefore, if a lumpsum amount is fixed by the Family Court as payable, undoubtedly it would take care of all reasonable expenditures of the child. Moreover, the direction to pay Rs.30,000/- annually to the 2nd petitioner, in every academic year in addition to a lumpsum amount ordered as payable towards monthly maintenance allowance, is devoid of any basis.

17. The Family Court has fixed the monthly maintenance allowance payable to the 2nd petitioner as Rs.7,000/- after duly considering the educational expenses also. Therefore the direction to pay Rs.30,000/- as additional sum only to meet the educational expenses is devoid of merits and liable to be set aside. However Rs.7,000/- being fixed as monthly maintenance allowance at a time when the child has only commenced her education, and since years passed, the educational expenses also must have increased. Therefore, this Court finds it expedient in the interest of justice to enhance Rs.7,000/- stands payable to the 2nd petitioner as monthly maintenance allowance to Rs.10,000/-.



In the result, both revisions are allowed in part. The monthly maintenance allowance stands ordered in favour of the 1st petitioner by the impugned order is modified and reduced to Rs.7,000/- and that to the 2nd petitioner is modified and enhanced to Rs.10,000/-. The direction to pay Rs.30,000/- before 30th June of every academic year subject to 10% enhancement annually is set aside. The respondent shall see that the modified rates of monthly maintenance allowance is paid with effect from the date of the petition. The direction in the impugned order to adjust the interim maintenance paid in obedience to the order passed by the Family court on 11.04.2012 in I.A.No.518 of 2012 in M.A.No.52 of 2012 is maintained. The authorization given to the 1st petitioner as mother and guardian of the 2nd petitioner to receive the monthly maintenance allowance payable on behalf of her is also maintained.

Sd/-

**MARY JOSEPH
JUDGE**

NAB