



2025:KER:2953

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 15TH DAY OF JANUARY 2025 / 25TH POUSHA,

1946

RPFC NO. 334 OF 2022

AGAINST THE ORDER DATED 25.08.2022 IN MC NO.98 OF
2015 OF FAMILY COURT, TIRUR

REVISION PETITIONER/PETITIONERS:

- 1 HASEENA
AGED 38 YEARS
D/O SAIDALAVI MUKKATTIL HOUSE K PURAM AMSOM
DESOM K PURAM POST TIRUR TALUK MALAPPURAM
DISTRICT TANUR POLICE STATION LIMIT, PIN -
676307
- 2 MUHAMMED SAHAL
AGED 19 YEARS
S/O SUHAIB MUKKATTIL HOUSE K PURAM AMSOM DESOM
K PURAM POST TIRUR TALUK MALAPPURAM DISTRICT,
PIN - 676307
- 3 MUHAMMED SAFAL
AGED 15 YEARS
REPRESENTED BY MOTHER HASEENA (1ST REVISION
PETITIONER) MUKKATHIL HOUSE K PURAM AMSOM
DESOM K PURAM POST TIRUR TALUK MALAPURAM
DISTRICT, PIN - 676307

BY ADVS. JAMSHEED HAFIZ
K.K.NESNA



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RESPONDENT/RESPONDENT:

SUHAIB
AGED 40 YEARS
S/O POKKER HAJI PARAMMAL HOUSE CHERUVANNUR
VALAVANNUR POST TIRUR TALUK MALAPPURAM
DISTRICT KALPAKANCHERY POLICE STATION LIMIT,
PIN - 676551

THIS REV.PETITION(FAMILY COURT) HAVING BEEN
FINALLY HEARD ON 15.01.2025, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

**"CR"****ORDER**

This revision petition has been filed challenging the order passed in M.C.No.98/2015 on the files of the Family Court, Tirur dated 25.8.2022.

2. The 1st petitioner is the wife of the respondent. Petitioners 2 and 3 are the children of the 1st petitioner, born in wedlock with the respondent. The petitioners filed a maintenance case against the respondent under Section 125 of Cr.P.C claiming maintenance at the rate of ₹10,000/- to the 1st petitioner, ₹8,000/- to the 2nd petitioner and ₹6,000/- to the 3rd petitioner. The Family Court, after trial, granted monthly maintenance at the rate of ₹4,000/- to the 1st petitioner and ₹1,500/- each to the petitioners 2 and 3. Dissatisfied with the quantum of maintenance granted, the petitioners have approached this Court.

3. I have heard Sri Jamsheed Hafiz, the learned counsel for the petitioners. Even though notice has been served on the respondent, there is no appearance.

4. The marital relationship and paternity are not in dispute. Admittedly, the 1st petitioner does not have any job or source of income. According to the petitioners, the respondent is working abroad in a supermarket and earns more than ₹1,00,000/- per month. It is also alleged that the respondent



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earns ₹25,000/- per month from the landed property. The respondent has admitted that he was employed in Gulf. However, he has taken a contention that he has returned from Gulf and now working as an employee in a bakery in Madras. According to him, he is only getting ₹8,000/- per month. He has also contended that he is suffering from various ailments and has to maintain his second wife.

5. As stated already, the definite case of the petitioners is that the respondent is employed at Gulf and earns ₹1,00,000/- per month. The respondent has admitted that he was employed at Gulf, but, according to him, he has returned from Gulf and now working as an employee in a bakery in Madras. However, absolutely no piece of evidence has been produced by the respondent to prove where he works now and what his income is, which is a fact within his exclusive knowledge. Even though the respondent has taken up a contention that he is suffering from various ailments, no document has been produced to prove the same. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children and cannot contend that he is not in a position to earn sufficiently to maintain his family. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse



inference may be drawn by the Court [**Rajnesh v Neha & Another** (2021)2 SCC 324].

6. The respondent is aged 40 years. He has no case that he has any incapacity to earn. Nothing has been produced to show his physical inability, if any. Since the respondent has failed to produce any material to prove his present employment and income, the adverse inference has to be drawn against him. The petitioner has given positive evidence that the respondent is earning ₹1,25,000/- per month.

7. The respondent has taken yet another contention that the 1st petitioner left his company, refused to live with him without any sufficient reason and hence not entitled to maintenance. It is also contended that with the meagre income he gets from his present job, he has to maintain his second wife as well. The Muslim Personal Law, though, permits the husband to contract a second marriage during the subsistence of the first marriage in exceptional circumstances, specifically mandates that the husband is bound to treat both wives equally and equitably. A Muslim wife who resides separately from her husband on his contracting a second marriage is not disentitled from claiming her statutory right of maintenance under CrPC/BNSS [See **Badruddin v Aisha Begum** (1957) All. LJ. 300]. The fact that the husband has a second wife and is liable to maintain her cannot be a factor in denying maintenance to the first wife or reducing the quantum of maintenance she is entitled to.



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Considering the entire facts and circumstances of the case, the means of the respondent and the requirement of the petitioners, I am of the view that monthly maintenance granted by the Family Court is too low. Hence, the monthly maintenance granted by the Family Court is enhanced to ₹8,000/- to the 1st petitioner and ₹3,000/- each to the petitioners 2 and 3. The revision petition is allowed as above.

sd/-

DR. KAUSER EDAPPAGATH

JUDGE

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