

Vijeesh Vijayan Vs. Ajitha

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Court : Kerala

Decided On : Oct-21-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Vijeesh Vijayan

Respondent : Ajitha

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN TUESDAY, THE 21ST DAY OF OCTOBER 2014 29TH ASWINA, 1936 RPFC.No. 247 of 2014 ----- MC4292011 of FAMILY COURT, THRISSUR REVISION PETITIONER/RESPONDENT: ----- VIJEESH VIJAYAN, AGED 28 YEARS VIJEESH BHAVANAM, PUTHAN CHANDA DESOM & PO PANAMANA VILLAGE, KARUNAGAPPILLY TALUK KOLLAM - 691 587. BY ADVS.SRI.C.HARIKUMAR SMT.C.B.ANUROOPA RESPONDENTS/PETITIONERS: ----- 1. AJITHA, AGED 24 YEARS D/O NANGAKKIL JAYASREE WADAKANCHERY DESOM/P.O/VILLAGE, THALAPPILLY TALUK THRISSUR - 680 583 2. MINOR POOJA VIJEESH, AGED 3 YEARS D/O VIJESH (MINOR REP. BY MOTHER AND GUARDIAN 1ST PETITIONER AJITHA) AGED 24 YEARS D/O NANGAKKIL JAYASREE WADAKANCHERY DESOM/P.O/VILLAGE, THALAPPILLY TALUK THRISSUR - 680 583. R1,R2 BY ADV. SRI.NAGARAJ NARAYANAN R1,R2 BY ADV. SRI.SAIJO HASSAN R1,R2 BY ADV. SRI.BENOJ C AUGUSTIN R1,R2 BY

ADV. SRI.PRATHAP PILLAI R1,R2 BY ADV. SRI.SEBIN THOMAS R1,R2 BY
ADV. SRI.VIVEK V. KANNANKERI R1,R2 BY ADV. SMT.J.KASTHURI R1,R2 BY
ADV. SRI.VISHNU BHUVANENDRAN PUBLIC PROSECUTOR, SMT.SEENA
RAMAKRISHNAN THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 21.10.2014, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING: K.RAMAKRISHNAN, J ----- R.P.(F.C)No.247
OF 2014----- Dated this the 21st day of October, 2014

ORDER

----- Counter petitioner in M.C.No.429/2011 on the file of the Family Court, Thrissur is the revision petitioner herein. Respondents herein filed M.C.No.429 of 2011 before the Family Court claiming maintenance under section 125 of the Code of Criminal Procedure (hereinafter called the Code).

2. It is alleged in the petition that, the marriage between the first petitioner and the respondent therein was solemnised on 09.08.2009 as per custom and second petitioner was born in the wedlock on 30.10.2010. On account of harassment met at the hands of the respondent and family members, she could not live in that house and she had to leave the matrimonial home and she filed a complaint before the Wadakkancherry police station and due to their intervention, it was settled earlier and they started residing together again. Again, the ill-treatment continued and she filed a complaint before the Wadakkancherry police station and they registered a case. Now, she is residing in a rented house. The respondent is not paying any maintenance. There is no income of her own. The respondent is a police constable drawing `20,000/- per month and he is having landed properties and getting R.P.(F.C)No.247 OF 2014 `10,000/- per month from the properties as well. So he is capable of providing maintenance to them but neglected to maintain them.. The first petitioner requires `15,000/- for her maintenance and `4,000/- maintenance for the child. So, the petitioner filed the application for maintenance.

3. Respondent appeared and filed counter denying the allegations. The marriage and paternity of the child are admitted. According to the respondent, he is not a police constable and he is not having any property and he is not having income of Rs.30,000/- per month as mentioned in the petition. It was a love marriage and in

fact the family members of both parties were against the marriage and the marriage was registered against the wishes of family members and thereafter they have started residing together in a rented house. First petitioner was showing cruelty towards to him and threatened to commit suicide. Thereafter, she left the house voluntarily. He was looking after the first petitioner and the child till then. She left the house to attend the marriage of her sister without informing the respondent and thereafter she did not come back. She filed a false complaint before the police and he is now residing with his friends and relatives as parents of the respondent will not allow the respondent to enter the house. He has no permanent employment. First petitioner is working in a private institution getting a monthly income of `7500/- per month. He is R.P.(F.C)No.247 OF20143 prepared to maintain them if they are prepared to come and live with him. They are not entitled to get maintenance. So he prayed for dismissal of the application.

4. First petitioner and respondent was examined as PW1 and RW1 respectively and Exts.A1 to A3 were marked on the side of the petitioners and D1 to D5 were marked on the side of the respondent. After considering the evidence on record, the Family Court found that the petitioners were justified in living separately and they have no income to maintain themselves and the respondent has neglected to maintain them and directed the revision petitioner to pay `3000/- to the first petitioner and `1500/- to the second petitioner as maintenance per month from the date of petition and first petitioner was allowed to withdraw the maintenance awarded to the second petitioner. Dissatisfied with the same, the present revision petition has been filed by the revision petitioner.

5. Since respondents are appeared through counsel, when notice was issued on admission, this court felt that the revision petition can be admitted and disposed of on merit after hearing both sides today itself. So, the revision petition is admitted and heard and disposed of today itself.

6. The counsel for the revision petitioner submitted that he is not appointed as a police constable and he is working in a private R.P.(F.C)No.247 OF20144 institution and getting only `5500/-. He is prepared to maintain them if they come and reside with him. The amount awarded is excessive.

7. On the other hand, the counsel for the respondents submitted that there is no evidence adduced on the side of the revision petitioner to prove that first petitioner is having any employment and he is in the selection list of the police constable and he is not disabled from doing any work to earn income. The amount awarded is reasonable.

8. The marriage and paternity of the child are admitted. It is also in away admitted in the counter statement that they were now residing separately as well. The court below on appreciation of evidence of PW1 and RW1 came to the conclusion that the petitioners are justified in residing separately. Though, revision petitioner had a case that first respondent herein is working in a private establishment and getting `7500/- per month, no document has been produced or no acceptable evidence has been adduced to prove this fact. Further, this fact was denied by PW1 when such a suggestion was given to her as well. It was admitted by RW1 that he is in the select list of police constable. The documents produced by him are not sufficient to prove that he is maintaining the respondents herein. The mere fact that he is not having any fixed income or he is working in a private concern etc R.P.(F.C)No.247 OF20145 are not a ground for denying maintenance to the wife and child. Section 125 of the Code itself has been enacted for the purpose of providing protection to deserted women and to avoid vagrancy. Further, the Hon'ble Supreme Court in several decisions has observed that the amount of maintenance would be fixed in commensurate with the status of the parties working condition in which they lived at the time when they were living together etc. It is also held in the decision in Bhuvan Mohan Singh Vs.Beena reported in 2014(3) KLT314 after reiterating all the decisions on this aspect that there is no duty cast on the husband to provide financial support even if the husband is required to earn money with physical labour if he is able bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds. In this case, the revision petitioner had no case that he is incapable of earning or disabled from doing any work. Further, he had not produced any document to prove his actual income though he had a case that he is getting only Rs.5500/- per month. He had withheld the best evidence available by not producing the same before the court to prove his actual income. So, under the circumstances and also

considering the living condition nowadays, the amount of `3000/- fixed for maintenance for the first petitioner in the lower court and `1500/- to the second petitioner in the lower court R.P.(F.C)No.247 OF20146 cannot be said to be excessive or unreasonable. The court below has perfectly justified in awarding the maintenance from the date of petition as well. So, under the circumstances, no illegality has been committed by the court below in fixing the quantum of maintenance which requires interference at the hands of this court. So, the revision petition lacks bonafides and the same is liable to be dismissed. In the result the revision petition is dismissed. Sd/- K.RAMAKRISHNAN, JUDGE R.AV
//true copy// PA to Judge

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