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Rasheed Mon vs Shemeera

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SooperKanoon Citation : sooperkanoon.com/1369276

Court : Kerala

Decided On : Nov-10-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : RPFC/291/2023

Appellant : Rasheed Mon

Respondent : Shemeera

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS FRIDAY, THE 10TH DAY OF NOVEMBER 2023 / 19TH KARTHIKA, 1945 AGAINST THE ORDER IN MC 39/2020 OF FAMILY COURT,THRISSUR REVISION PETITIONER/RESPONDENT: RASHEED MON AGED 52 YEARS, S/O HAMEED, NALAKATH HOUSE, POOVATHUR P.O PAVARATTY VILLAGE, CHAVAKKAD TALUK, THRISSUR, PIN - 680511. BY ADVS. K.I.SAGEER MUHAMMED YASIL RESPONDENTS/PETITIONERS 1 & 2: 1 SHEMEERA, AGED 39 YEARS D/O IBRAHIM, RAYAMARAKKAR HOUSE, OTTATHENGU P.O, ORUMANAYUR VILLAGE,CHAVAKKAD TALUK, THRISSUR, PIN - 680506 2 FATHIMA SHERIN AGED 13 YEARS D/O SHEMEERA,

REPRESENTED BY SHEMEERA RAYAMARAKKAR HOUSE, OTTATHENGU P.O ORUMANAYUR VILLAGE,CHAVAKKAD TALUK, THRISSUR, PIN - 680506. BY ADVS. CHACKO C A C.M.CHARISMA(K/424/2002) THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 10.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

The revision petition is filed questioning the

legality and correctness of the order passed in M.C.No.39/2020 of the Family Court, Thrissur, ordering the revision petitioner to pay the respondents - his wife and daughter - monthly maintenance allowance @ Rs.7,000/- & Rs.5,000/-, respectively, from the date of petition (21.01.2020). The revision petitioner was the respondent and the respondents were the petitioners before the Family Court.

Brief facts:

2. The respondents had filed the application before the Family Court under Section 125(1) of the Code of Criminal Procedure,1973 (Code, for the sake

of brevity), against the revision petitioner for an order

of monthly maintenance allowance on the assertion that the first respondent was married to the revision petitioner on 24.06.2000 and the second respondent was born in their wedlock on 26.4.2008. Their older daughter has already attained majority. The second respondent is studying in the fifth standard. The

children are in the care and custody of the firstres

harassed her. The revision petitioner has deserted the respondents since 2.12.2019. Although he is working as a civil sub contractor and earning a monthly income of Rs.50,000/-, he has willfully refused to maintain the respondents, who are unable to maintain themselves. Hence, the application.

3. The revision petitioner had filed a written

objection, denying the allegations in the application. He contended that the first respondent is a Tailor and is earning Rs.10,000/- per month. Their older daughter

is employed and is earning Rs.25,000/- per month.The re

sufficient reason or cause. The revision petitioner does not have any job or source of income. Hence, the application may be dismissed.

4. In the trial, the first respondent was examined as PW1 and the revision petitioner was examined as RW1 and Exts D1 to D3 were marked in evidence through him.

5. The Family Court, after analysing the pleadings and materials placed on record, by the impugned order, partly allowed the application by directing the revision petitioner to pay monthly maintenance allowance to the respondents @ Rs.7,000/- & Rs.5,000/- respectively, from the date of petition.

6. Confronted with the said order; the revision petition is filed.

7. Heard; Sri.K.I.Sageer, the learned counsel appearing for the revision petitioner and Sri. C.A Chacko, the learned counsel appearing for the respondents.

8. Is there any illegality, impropriety or irregularity in the impugned order?

9. The revision petitioner admits his marriage with the first respondent and the paternity of the second respondent.

10. The respondents case is that the revision petitioner has deserted them since 2.12.2019. Although the revision petitioner is a civil sub contractor and earning Rs.50,000/- per month, he has refused to maintain the respondents.

11. The revision petitioner's defence was that the first respondent is a tailor and is earning Rs.10,000/-

per month. Their older daughter is earning Rs.25,000/- per month. The first respondent is living away from the revision petitioner without any sufficient cause or reason. The revision petitioner does not have any job or income. Therefore, he

is not liable to maintain the respondents.

12. In the celebrated decision in Rajnesh v. Neha and Anr. [2020 (6) KHC 1], the Hon'ble Supreme Court has held that the Maintenance laws have been enacted as a measure of social justice to provide recourse to dependant wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.

13. In Captain Ramesh Chander Kaushal v.

Veena Kaushal & Ors. [(1978) 4 SCC 70], the Hon'ble Supreme Court has declared that the provision of maintenance is a measure of social justice and specially enacted to protect women and children, who fall within the constitutional sweep of Article 15(3) and reinforced by Article 39.

14. In Bhuwan Mohan Singh v. Meena & Ors.

[(2015) 6 SCC 353], the Hon'ble Supreme Court has observed that Section 125 of the Code was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children, since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, husband was required to earn money even by physical labour, if he is able bodied and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.

15. It is well-settled that Courts are permitted to do some guesswork in fixing the quantum of maintenance.

16. In the case on hand, the revision petitioner's defence was that the first respondent is living separately from him without any sufficient cause. Indisputably, the revision petitioner has neither taken any steps to resume cohabitation with the first respondent nor has he filed a petition for a decree for

restitution of conjugal rights. Therefore, the defence that the first respondent is living separately without sufficient cause is untenable and is only liable to be

rejected.

17. Now, coming to the quantum of maintenance. The respondents had claimed that the revision petitioner is a civil sub contractor and earning Rs.50,000/- per month. Although the revision petitioner contended that the first respondent is working as a tailor, he did not produce any material to substantiate his defence. He further alleged that he is not in a position to do any work due to his ailments.

18. The revision petitioner has miserably failed to to provide any material to substantiate that he is permanently disabled from doing any work.

19. It is the sacrosanct duty of the revision

petitioner to maintain his wife and daughter. The revision petitioner, who was 50 years of age at the time of filing of the application, it is deemed to be an able bodied person and having a notional daily income of not less than Rs.1,000/-. Since the revision petitioner has failed to produce any material to prove his income, no adverse inference is drawn against him.

20. On an overall consideration of the pleadings and materials on record, I do not find any illegality,

impropriety or irregularity in the impugned order

passed by the Family Court warranting interference by this Court under Section 19(4) of the Family Courts Act,1964. The revision petition is devoid of any merits and is resultantly, dismissed. Sd/- C.S.DIAS ma/10.11.2023 JUDGE

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