

Nusaiba Vs. Faisal

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Court : Kerala

Decided On : Dec-19-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Nusaiba

Respondent : Faisal

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 19TH DAY OF DECEMBER 2014 28TH AGRAHAYANA, 1936 RPFC.No. 426 of 2014 ()
----- AGAINST THE

ORDER

IN MC1392013 of FAMILY COURT, THRISSUR DATED 2008-2014 REVISION PETITIONER: ----- NUSAIBA, AGED 26 YEARS, D/O. SHAMSUDHEEN, KARAUPAMVETIL HOUSE, URAKAM DESOM URAKAM P.O., TRICHUR-680562. BY ADVS. SRI. VINAY RAMDAS SRI. T. S. SARATH RESPONDENT/RESPONDENT: ----- FAISAL, AGED 34 YEARS, S/O. KOYAMMU, THEKKUMCHERY HOUSE, VALIYACHENAM DESOM PARALAM VILLAGE, CHERPU P.O., TRICHUR-680561. R1 BY ADV. SRI. K. I. SAGEER THIS REV. PETITION (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 19-12-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: RPFC.No. 426 of 2014 () ----- APPENDIX PETITIONER'S ANNEXURES:

ANNEXURE A1- TRUE COPY OF MC.139/13 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, TRICHUR SEEKING MAINTENANCE UNDER SECTION 125 OF CRPC. ANNEXURE A2 - A CONTRACT ENTERED BETWEEN THE PETITIONER AND RESPONDENT WHEREIN RESPONDENT UNEQUIVOCALLY PROMISED NOT TO PHYSICALLY OR MENTALLY HARM THIS PETITIONER AND HE HAD ALSO PROMISED TO RETURN THE GOLD ORNAMENTS THAT WERE TAKEN FROM THE PETITIONER HAD MINOR CHILD FARHANASRIN. ANNEXURE A3 - COPY OF PRIVATE COMPLAINT CMP.105/13 FILED BEFORE THE JFCM-1, TRICHUR ALLEGING OFFENCE U/S 498 A AND 406 OF IPC. ANNEXURE A4 PETITION FOR RESTITUTION OF CONJUGAL RIGHTS BEFORE THE FAMILY COURT, TRICHUR AS OP.NO.192/13 FILED BY THE RESPONDENT. ANNEXURE A5 CERTIFIED COPY OF O.P FOR RETURN OF GOLD ORNAMENTS FILED BY THE PETITIONER AS 1562/13 BEFORE THE FAMILY COURT, TRICHUR. /TRUE COPY/ P.S. TO JUDGE CL - K. RAMAKRISHNAN, J.

..... R.P.(FC)No.426 of 2014
..... Dated this the 19th day of December, 2014.

ORDER

The first petitioner in M.C.No.139/2013 on the file of the Family Court, Thrissur is the revision petitioner herein.

2. The revision petitioner filed the application for maintenance under Section 125 of the Code of Criminal Procedure claiming maintenance to herself and her child. It is alleged in the petition that the respondent herein married the revision petitioner on 29.6.2008 and in that wedlock the second petitioner in the lower court was born. They lived together as husband and wife for some time. Thereafter due to the ill treatment met by her at the hands of the respondent and his family members, she was compelled to reside separately. Though in the mediation as the respondent had agreed that he will not ill treat her she had started living together with him but the ill treatment continued. So she was compelled to live separately. Thereafter the respondent was not providing any maintenance. He is a plumber cum electrician and running a poultry farm and getting not less than Rs.30,000/-

per month from his profession and Rs.75,000/- per month from the poultry business. The revision petitioner is not having R.P.(FC)No.426 of 2014 2 any employment and she is unable to maintain herself and her child. They required Rs.25,000/- each for their maintenance, which the revision petitioner is capable of providing. So she prayed for allowing the application.

3. The respondent appeared and filed a detailed counter admitting the marriage and paternity but denied the allegations of cruelty. According to him, the petitioner was not interested in living with him in the family house and though he had taken a rented house and shifted his residence with the family, she was insisting to go and reside in her family house and she used to leave the house without any reason. She has filed several false complaints and in one of the conciliation attempts, he was made to sign certain documents so as to purchase peace. He has filed an application for restitution of conjugal rights as O.P.No.192/2013 before the family court and that was pending. He denied the allegation that he was getting Rs.30,000/- from his profession and Rs.75,000/- from the poultry business. In fact, he is not having any poultry business and the quantum of maintenance claimed is excessive. He is prepared to maintain them and they are not entitled to get maintenance. So he prayed for dismissal of the application. R.P.(FC)No.426 of 2014 3 4. The revision petitioner was examined as PW1 and the respondent was examined as RW1. No documentary evidence adduced on either side. After considering the evidence on record, the court below found that the revision petitioner is residing separately without any justifiable cause and she is not entitled to get maintenance and rejected the prayer for maintenance to her but allowed maintenance to the second petitioner in the lower court at the rate of Rs.2,500/- per month payable by the respondent herein from the date of petition. Aggrieved by the rejection of maintenance to the revision petitioner and also the quantum of maintenance awarded to the second petitioner, the revision petitioner filed this revision.

5. Heard both sides.

6. The counsel for the revision petitioner submitted that the court below had not properly appreciated the evidence. In fact it was admitted by the respondent in the

counter statement that he had made to sign certain documents in the mediation held at the instance of both the family members and also admitted that there is a criminal complaint filed alleging offence under Section 498 A of the Indian Penal Code. Further, after the disposal of the case, he had remarried and the offer for maintenance and taking R.P.(FC)No.426 of 2014 4 them back is without any bonafide. So the court below was not justified in denying maintenance to the revision petitioner and the quantum of maintenance awarded to the second petitioner is also very meagre.

7. On the other hand, the counsel for the respondent argued that the evidence of PW1 and RW1 will go to show that the revision petitioner is residing separately without any reasonable cause or justifiable ground and the application for restitution of conjugal rights filed by him is pending. The revisional court is not expected to interfere with the order of the court below on facts, unless it is perverse.

8. It is an admitted fact that the respondent married the revision petitioner and in that marriage, the second petitioner in the lower court was born. It is also an admitted fact that after the marriage, they were living together as husband and wife originally in the family house of the respondent and thereafter they have shifted to another house at Edappal, which according to the revision petitioner, is the official quarters given to him when he obtained employment in the concern by name Urutech. But it is also an admitted fact that earlier there was a mediation held and on account of the mediation, she had started living with the respondent. It was mentioned by PW1 that, in the mediation, R.P.(FC)No.426 of 2014 5 the respondent had agreed that he will not ill treat her. It was on that basis she came back and started residing together. But, thereafter also the ill treatment continued. This fact was in a way denied by RW1 in his evidence, though in the counter statement he had stated that he was made to sign certain documents in the mediation settlement under compulsion. So that also will go to show that there was something which is not possible for her to reside in the house happened and that prompted her to live with the child separately and as per the mediation and on the basis of the undertaking, she had come back and resided with them. It is true that the respondent had filed an application for restitution of conjugal rights and that

was pending at the time when the case was disposed of. But during the course of arguments in the case, it was fairly conceded by the counsel for the respondent that the respondent married another lady and he is residing with her now. So the offer made by him appears to be not bonafide and the application for restitution of conjugal rights was filed only with a view to shirk from the liability to pay maintenance to the petitioner. Further it was admitted by RW1 that a police complaint was filed against the respondent and his family members alleging offence under Section 498 A of the Indian R.P.(FC)No.426 of 2014 6 Penal Code. The court below was not justified in disbelieving the evidence of PW1 only on the ground that she had not narrated the instances of ill treatment in detail and she was not treated for any injury said to have been sustained by her on account of the assault made by the respondent on her. These are not sufficient to disbelieve the case of the revision petitioner to deny maintenance to her.

9. In the decision reported in Sunita Kachwaha and others v. Anil Kachwaha (2014 (4) KHC SN15, the Hon'ble Supreme Court has held that since the proceedings under Section 125 of the Code of Criminal Procedure is of summary nature, it is not necessary for the court to ascertain as to who was wrong and the minute details of matrimonial dispute. Therefore maintenance cannot be denied for the reason that wife has left the matrimonial house without reasonable cause or justifiable ground. So the court below was not justified in denying maintenance to the revision petitioner for the reasons stated by the court below in the impugned order and the finding of the court below on this aspect is liable to be set aside and the revision petitioner is entitled to get maintenance from her husband namely the respondent herein. So the findings of the court below that the revision petitioner is not entitled to R.P.(FC)No.426 of 2014 7 get maintenance is set aside.

10. As regards the liability to pay maintenance and quantum of maintenance is concerned, it was brought out in evidence that the revision petitioner is without any employment. The respondent also had no case that she was getting any income. Though he had a case that she was working as a salesgirl in a textile shop, no evidence has been adduced to prove this fact. It was admitted by RW1 that he is a plumber cum electrician and doing contract work in Urutech, Edappal. Though the revision petitioner had a case that he is having poultry business and getting huge

income, she had not produced any document to prove this fact. The respondent had no case that he is unable to maintain her as well. He was working in Gulf earlier but now is working in the native place. So considering these aspects, it can be safely concluded that the respondent is having capacity to pay maintenance but he had neglected to pay maintenance to the wife.

11. Considering the status of the parties, the amount of Rs.2,500/- awarded to the child, aged four years appears to be reasonable and no enhancement is required on this aspect. As regards the revision petitioner is concerned, she has to be provided maintenance to lead a decent life considering the R.P.(FC)No.426 of 2014 status of both the parties. It has to be considered that now the respondent had married another lady and residing with that lady. Considering these aspects, this Court feels that fixing maintenance at the rate of Rs.3,500/- per month to the revision petitioner will be sufficient and that will meet the ends of justice. So the respondent is directed to pay maintenance at the rate of Rs.3,500/- per month to the revision petitioner from the date of petition and the maintenance ordered to the child is hereby confirmed as it is reasonable. Three months time is granted to the respondent to pay the arrears of maintenance to the revision petitioner in three monthly equal instalments. With the above modification of the order of the lower court, the revision is allowed in part and disposed of accordingly. Office is directed to communicate this order to the concerned court immediately. Sd/- K.RAMAKRISHNAN, JUDGE. cl /true copy/ P.S to Judge R.P.(FC)No.426 of 2014
9