

Hamsa Vs. Hairunnisa

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Court : Kerala

Decided On : Dec-01-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Hamsa

Respondent : Hairunnisa

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY, THE 1ST DAY OF DECEMBER 2014 10TH AGRAHAYANA, 1936 RPFC.No. 441 of 2014 ()
----- AGAINST THE

ORDER

IN MC5602011 of FAMILY COURT, THRISSUR, DATED 22.09.2014 REVISION PETITIONER(S)/RESPONDENT: -----

HAMSA, AGED 48 YEARS, S/O. HYDROSE HAJI, VALAVIL (VADAKKEKALAM) VEETIL, MALESAMANGALAM DESOM AND P.O., THIRUVILWAMALA VILLAGE, THALAPILLY TALUK, PIN 680588. BY ADVS. SMT. K.P. SANTHI SRI. RILGIN V. GEORGE RESPONDENT(S)/PETITIONERS: -----

1. HAIRUNNISA, AGED 38 YEARS, WIFE OF VALAVIL VEETIL HAMSA, VALAVIL (VADAKKEKALAM) VEETIL, MALESAMANGALAM DESOM AND P.O., THIRUVILWAMALA VILLAGE, THALAPILLY TALUK, PIN 680588 NOW RESIDING AT D/O. ENKAKATTIL

SULAIMAN, P.O.CHELAKKARA, ATHIMAHAKALANKAVU DESOM,
CHELAKKARA, THALAPILLY, PIN680586.

2. MINOR JASNA, AGED17YEARS, (MINORS REPRESENTED BY THEIR MOTHER AND GUARDIAN HAIRUNNISA) 3. MINOR HASNA, AGED15YEARS, (MINORS REPRESENTED BY THEIR MOTHER AND GUARDIAN HAIRUNNISA) 4. MINOR SHAHABAS, AGED5YEARS, (MINORS REPRESENTED BY THEIR MOTHER AND GUARDIAN HAIRUNNISA) THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON0112-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ss K. RAMAKRISHNAN, J.

..... R. P.(F.C.) No.441 of 2014 . . .
..... Dated this the 1st day of December,
2014

ORDER

Counter petitioner in M.C.No.560/2011 on the file of the Family Court, Thrissur, is the revision petitioner herein. The application for maintenance was filed by the first respondent herein for herself and on behalf of minor children/ respondents 2 to 4, against the revision petitioner under Section 125 of the Code of Criminal Procedure.

2. It is alleged in the petition that, their marriage was solemnised on 22.02.1987 and thereafter they were residing together and in that wedlock, respondents 2 to 4 were born and after the marriage by spending 23,000/-, the parents of the first petitioner have provided a job to the revision petitioner in Gulf. During the initial period he was paying maintenance, but later he discontinued to pay maintenance on the ground that he has not getting enough money. She was treated cruelly from her matrimonial house and she had to leave the house. He did R. P.(F.C.)No.441 of 2014 2 not provide any maintenance. He was trying to take steps to divorce the first petitioner and conduct another marriage. They require 10,000/- each for their livelihood. He is getting not less than 1,00,000/- per month as his income and he is also having rubber estate and getting 1.5 lakhs as annual income from his landed property. So he is capable of maintenance, but he did not pay any maintenance.

So they were compelled to file the application for maintenance, as mentioned above.

3. The revision petitioner, who is the counter petitioner in the lower court appeared and filed counter. He admitted the marriage and paternity of the children. He denied the allegation that, the amounts were given by the parents of the first respondent so as to enable him to get a job at Gulf. He had also denied that ,he has getting an income of 1,00,000/-per month as salary and also getting 1.5 lakhs from his rubber estate. He was treated them with love and affection. He provided maintenance to them. R. P.(F.C.)No.441 of 2014 3 He had purchased 40 cents of property having rubber plantation in the name of the first petitioner and she is in possession of the same. She was not obeying the lawful directions given by the revision petitioner and she along with the younger child eloped with one Rathish and Noufal and her father filed a complaint and a crime was registered as Crime No.152/2009 and on knowing about the same, he came from Gulf on 03.04.2009. After investigation, it was revealed that she was raped by the other two persons and after filing the final report, it was tried as S.C.No.942/2010 for the offence under Section 376 of the Indian Penal Code, but since she did not support the case of the prosecution, it was ended in acquittal. He had divorced her. He had sent 60,000/- through bank and also sent 30,000/- for the purpose of nursing course for the first daughter. He lost his employment and now he is working as a coolie. He is unable to maintain family and he is not having income to maintain the petitioners. So he prayed for dismissal of the R. P.(F.C.)No.441 of 2014 4 application.

4. First petitioner was examined as PW1 and no documents were produced on her side. The revision petitioner was examined as RW1 and the father of the first petitioner was examined as RW2 and Exts.D1 to D8 were marked on his side. After considering the evidence on record, the court below found that, the revision petitioner had neglected to maintain the petitioners/ the respondents herein and directed him to pay the maintenance at the rate of 1,500/- each from the date of petition and the liability to pay maintenance to the petitioners 2 to 4 will be up to their majority. This is also being challenged by the revision petitioner by filing this revision.

5. Considering the scope of enquiry and the nature of evidence adduced, this court felt that, the revision can be disposed of at the admission stage itself, after hearing the counsel for the revision petitioner and dispensing with notice to the respondents. R. P.(F.C.)No.441 of 2014 5 6. The counsel for the revision petitioner submitted that, the documents and the evidence of RWs 1 and 2 will go to show that she eloped with two persons and she was living with them and on the basis of the complaint given by the father of the first petitioner shows that she is not entitled to get maintenance. Further he is not having income, now as he has lost his employment and working here as a coolie. So the amount awarded is excessive.

7. It is an admitted fact that, the revision petitioner married the first respondent and in the wedlock respondents 2 to 4 were born to them. It is also an admitted fact that now the relationship between them strained and the respondent is now residing with the minor children. It is also come out to the evidence of RW2 that, on the basis of a complaint given by him, when his daughter was missing, a case was registered as Crime No.152/2009 for man missing and thereafter it was revealed that, the first respondent was taken by one Naofal and Rathish and on getting them back, R. P.(F.C.)No.441 of 2014 6 on the basis of the statement given by the revision petitioner, the case was converted to Section 376 of the Indian Penal Code, on the ground that she was raped by them against her will. After investigation final report was filed and it was numbered as S.C.No.942/2010, where the present first petitioner has given evidence against her statement earlier given to the police and on that basis, the case was ended in acquittal evidenced by Ext.D5. Even if the entire documents are accepted, it cannot be said that, she was living in adultery as mentioned in Section 125 of the Code of Criminal Procedure, so as to deny her maintenance. She went along with them on promise of getting an employment. So it cannot be said that, she was living in adultery, so as to deny maintenance to her from her husband.

8. Though it was stated by RW1 that, he was divorced her, but there is no evidence adduced to prove this fact. He had also no case that he had complied with the R. P.(F.C.)No.441 of 2014 7 obligations of payment of 'matha' and fair and reasonable provision to the first petitioner on the basis of the divorce said to

have been pronounced by him. No evidence to show that, it was communicated to her or to the mahal etc., were produced by the revision petitioner. So under the circumstances, court below came to the conclusion that, the marriage still subsists and so he is liable to pay maintenance to the first petitioner also. No evidence has been adduced on the side of the revision petitioner to prove that she is having other income to maintain herself. Further, though he had stated that sending money etc., no documents has been produced to prove that. So under the circumstances, court below was perfectly justified in coming to the conclusion that, he is liable to pay maintenance to the respondent, as he had neglected to maintain them.

9. Further he had no case that, he is incapable of earning money by doing any work also. According to him R. P.(F.C.)No.441 of 2014 8 he is working as a coolie. The court below had taken his daily income as 650/- per day and quantified the monthly income as 15,000/- per month, which cannot be said to be excessive. So under the circumstances, the amount of 1,500/- each per month as maintenance directed to be paid by the revision petitioner to the petitioners cannot be said to be excessive, considering the status of the parties and also the cost of living nowadays. So there is no merit in the revision and the same is liable to be dismissed. In the result, the revision petition is dismissed. Office is directed to communicate this order to the concerned court, immediately. Sd/- K. RAMAKRISHNAN, (Judge) // True Copy// P.A. to Judge ss

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