

Mat.Appeal.No.524 OF 2015

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.HARILAL

&

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 25TH DAY OF FEBRUARY 2020 / 6TH PHALGUNA,
1941

Mat.Appeal.No.524 OF 2015

AGAINST THE JUDGMENT IN OP 57/2009 DATED 11-03-2015 OF
FAMILY COURT,TRIVANDRUM

APPELLANT/RESPONDENT:

REGHUTHAMAN NAIR
S/O. RAMANKUTTY NAIR, AGED 55 YEARS,RESIDING
AT SIVASADANAM, T.C 31/1246(1), PETTAH,
PALKULANGARA P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.K.RAVI (PARIYARATH)

RESPONDENTS/PETITIONERS:

1 SINDHU K.V.
W/O. REGHUTHAMAN NAIR, AGED 45
YEARS,RESIDING AT KRISHNABHAVAN, TC 23/530.
VALIYASALA, THIRUVANANTHAPURAM-695001.

2 SREE DHANYA R.S
D/O. SINDHU K.V, AGED 20 YEARS,RESIDING AT
KRISHNABHAVAN, T.C 23/530, VALIYASALA,
THIRUVANANTHAPURAM-695001.

R1-2 BY ADV. SMT.M.VANAJA
R2 BY ADV. K.SASEENDRAN KUMAR

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD
ON 25-02-2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

The appellant is the respondent in O.P. No.57/2009 of the Family Court, Thiruvananthapuram. The petitioners in the above original petition are the respondents in this Mat.Appeal. The parties are for the sake of convenience, referred to as per their litigate status before the Family Court as 'petitioners' and 'respondent'.

2. The petitioners had filed the original petition, inter alia, pleading as follows: The 1st petitioner is the wife of the respondent. Their marriage was solemnised on 3.4.1993. In their wedlock, the 2nd petitioner was born on 4.1.1994. The respondent deserted the petitioners in 1998. He filed O.P. No.722/1997 seeking a decree for the dissolution of his marriage with the 1st petitioner. The 1st petitioner filed O.P. No.829/1998 seeking an order for maintenance and other consequential reliefs. The Family Court allowed O.P. 829/1998 by ordering the respondent to pay monthly

maintenance allowance to the 2nd petitioner at the rate of Rs.750/-. There has been change of circumstances, hence the 2nd petitioner needs an amount of Rs.3000/- as monthly maintenance allowance, to meet to her present day expenses and maintenance. The respondent is financially sound. He is a licensed Electrical Consultant Supervisor and Contractor, and he earns an amount of Rs.15,000/- per month. The respondent is taking hasty steps to dispose of his land properties in order to defeat the 2nd petitioner's right to realise maintenance from him. The 2nd petitioner has attained marriageable age and she requires an amount of Rs.10 lakh for her marriage. Hence the order granting maintenance allowance to the 2nd petitioner at the rate of Rs.750/- may be enhanced to Rs.3000/- per month. The respondent may also be directed to meet to the educational and marriage expenses of the 2nd petitioner. Though the 1st petitioner is ready for a re-union, the respondent is not amenable.

3. The original petition was opposed by the respondent, who filed a written objection, inter alia, contending as follows: The marriage as well as the paternity of the 2nd petitioner is admitted. The marital relationship between the couple is irretrievably broken down. The respondent and the petitioners are living separately for the last more than 13 years. Though O.P. 722/1997 filed by the respondent seeking a decree for divorce was dismissed by the Family Court, subsequently the respondent has preferred an appeal challenging the order. O.P.No.829/1998 filed by the 1st petitioner for a decree for recovery of gold ornaments and for maintenance allowance for the 2nd petitioner was partly dismissed. The Family Court, directed the respondent to pay Rs.750/- per month to the 2nd petitioner. The respondent challenged the said order before this Court and the appeal is pending consideration. This Court granted the respondent temporary custody of the 2nd petitioner for a day. The Family Court had disallowed the 1st petitioner's claim

for maintenance as she is a Post-graduate and is employed as a Teacher in a private English Medium School. She is at present the Headmistress of the school. She is drawing a salary of more than Rs.10,000/- per month. The claim for enhanced maintenance is not allowable, as the respondent is aging and that he is a dependent on his widowed mother who is getting family pension. He is unable to do any work due to the injuries that were inflicted on him by the 1st petitioner and her brothers. He has three cents of property in Petta Village in Thiruvananthapuram which was allotted to him as his family share reserving the life estate of his mother. The respondent has paid the entire arrears of maintenance due to the 2nd petitioner in E.P. 17/2005. Hence the O.P may be dismissed.

4. The Family Court after going through the pleadings formulated two points: (i) Whether the 2nd petitioner was entitled to enhancement of maintenance, if so, what is the quantum? (ii) Whether

the 2nd petitioner was entitled to marriage expenses?.

5. The 1st petitioner was examined as PW1 and Exts.A1 to A16 were marked through her. The respondent and two other witnesses were examined as CPW1 to CPW3 and Exts.B1 to B6 were marked through them.

6. The Family Court after evaluating the pleadings and evidence on record, by the impugned judgment dated 11.3.2015 partly allowed the O.P, by directing the respondent to pay the 2nd petitioner monthly maintenance allowance at the rate of Rs.2750/- from 19.1.2009 till the 2nd petitioner secures an employment and the 2nd petitioner was permitted to realise from the respondent an amount of Rs.1,53,637/- towards her educational expenses and an amount of Rs.6,70,000/- towards her marriage expenses.

7. It is aggrieved by the above judgment, that this Mat.Appeal is filed.

8. Heard the learned counsel for the appellant

and the learned counsel for the respondent.

9. The learned counsel for the appellant/respondent argued that the Family Court has gone wrong in ordering enhanced maintenance at the rate of Rs.2750/- per mensem and also directing the respondent to pay an amount of Rs.1,53,637/- towards educational expenses and Rs.6,70,000/- towards the marriage expenses of the 2nd petitioner. According to the learned counsel, the Family Court has failed to consider the financial capacity of the respondent, to pay the above said amounts. The respondent is presently unemployed due to the injuries that were inflicted on him by the 1st petitioner and her brothers which led to the registering of CC No.94/1999 and CC 452/2002. After the alleged incident, the respondent is unable to carry on his avocation. Likewise, the amount ordered as marriage expenses is exorbitant and extortionate. He relied on the decision of this Court in *Ambika v. K.Aravindakshan* [2018 (1) KHC 32 (DB)] and argued

that the daughter cannot lavishly spent money for her marriage and the means of the father is to be considered while fixing the quantum of marriage expenses. According to him, an amount of Rs.6,70,000/- is beyond the paying capacity and resources of the respondent. Hence he prayed that the appeal be allowed and O.P. be dismissed.

10. Per contra, the learned counsel for the respondents/petitioners argued that the Family Court has rightly passed the impugned judgment taking into consideration the fact that the respondent is a A class licensed Electrical Consultant Supervisor/Contractor and earning an amount of more than Rs.40,000/- per month. He has 24 cents of landed property and is deriving an income of Rs.5000/- per mensem from the property. He has also inherited three cents of property at Pettah, in the heart of Thiruvananthapuram, where he is living. In addition to the above income, he is living with his mother, who is a family pensioner getting a pension of Rs.5000/- per month. The

respondent has willfully neglected to maintain the 2nd petitioner. Only a paltry amount of Rs.750/- was ordered 15 years back which the respondent has reluctantly paid that too in the execution proceedings. The 2nd petitioner has attained majority on 4.1.2012. At present she is 26 years of age and she needs the support of the respondent for her education and marriage. She has successfully completed her graduation in Physiotherapy. The respondent has not contributed any amount towards the education of the 2nd petitioner. Though he is an able bodied person and is statutorily bound to maintain the 2nd petitioner. The allegation that the 1st petitioner and her brothers inflicted injuries on the respondent is false. The criminal case registered against the 1st petitioner and her brothers as C.C No.457/2002 ended in acquittal by Ext.A15 judgment which was confirmed in revision by Ext.A16 judgment. Hence the said allegation cannot be believed. The learned counsel prayed that the appeal be dismissed confirming the order passed by

the Family Court.

11. We have re-appreciated the entire pleadings and evidence in the original petition. The points that arise for consideration in this appeal are:

(i) Whether the respondent is liable to pay enhanced maintenance allowance to the 2nd petitioner?

(ii) Whether the respondent is liable to pay the educational expenses as well as the marriage expenses of the 2nd petitioner?

12. Section 3 (b) (i) and (ii) of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as 'Act') reads as follows:

“3. **Definitions-** In this Act, unless the context otherwise requires-

(a) the expressions “customs” and “usage” signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not

unreasonable or opposed to public policy: and

Provided further that, in the case of a rule applicable only to a family, it has not been discontinued by the family:

(b) "Maintenance" includes--

(i) in all cases, provision for food, clothing residence, education and medical attendance and treatment;

(ii) in the case of an unmarried daughter, also the reasonable expenses of an incident to her marriage."

13. Section 20 of the Act casts a liability on a Hindu to maintain his legitimate children.

14. It is an admitted fact that the 2nd petitioner is the daughter of the respondent. It is also on record that the Family Court as early as on 14.1.2005 ordered the respondent to pay maintenance allowance to the 2nd petitioner at the rate of Rs.750/- per mensem as per its order in O.P. 829/1998. It was after a decade, that the present impugned judgment has been passed, directing the respondent to pay enhanced maintenance allowance to the 2nd petitioner at the rate of Rs.2,750/-

i.e, an additional amount of Rs.2000/- per month than the earlier order.

15. The faint defence of the respondent is that he is unable to carry on his avocation as a licensed Electrical Consultant Supervisor/Contractor. No document was produced to substantiate his alleged disability. Ext.B1 is the wound certificate dated 2.8.1998. Exts.B2 and B3 are treatment records of the year 2014. The said documents do not establish that the respondent is permanently disabled from carrying on his avocation. The reason for the disability is that the 1st petitioner and her brothers inflicted injuries on him. It is on record that the 1st petitioner and her brothers were acquitted of the charges as per Ext.A15 and A16 judgments, proving them to be innocent. Hence the said plea cannot be accepted.

16. The 1st petitioner produced Ext.A2 photograph, Ext.A11 Electrical Supervisor 'B' Grade Examination Application, Ext.A13 visiting card, which

all establish and prove that the respondent is an 'A' Grade licensed Electrical Supervisor/Contractor. Thus, it is proved by the petitioners that the respondent is an able bodied person doing electrical contract work. It is also established in the oral testimony of PW1 that the respondent has landed properties of 24 cents and an another three cents. Taking into consideration all the above aspects and materials, it is evident that the respondent is an affluent person and well placed in life. Moreover, the order in O.P. No.829/1998 has attained finality, whereby the respondent's affluence, and his liability to maintain his daughter has become final. Therefore, it is only the quantum of maintenance, that the respondent is liable to pay his daughter that needs to be determined.

17. The Family Court after evaluating the oral testimonies of PW1 and CPW1 to CPW3, the documentary evidence by way of Exts.A1 to A16 and Exts.B1 to B6 arrived at the conclusion that the respondent is getting an income of more than

Rs.40,000/- per month, as pleaded by the 1st petitioner. Keeping in mind the above amount, the Family Court ordered the respondent to pay the 2nd petitioner monthly maintenance allowance at the rate of Rs.2,750/-, i.e, Rs.2,000/- per month more than the amount ordered in O.P No.829/1998.

18. Taking into consideration the status and standard of living of the respondent, who is a licensed Electrical Supervisor/Contractor, and the statutory liability cast on the respondent as per Sections 3 and 20 of the Act, we do not find that enhanced amount ordered by the Family Court is extortionate or unreasonable, for meeting the maintenance expenses of the 2nd petitioner who is now a woman aged 26 years. In light of our above findings, we confirm the enhanced maintenance allowance @ Rs.2,750/- ordered by the Family Court to be paid by the respondent to the 2nd petitioner every month.

19. Now coming to the next point whether the

2nd petitioner is entitled for educational expenses and marriage expenses as claimed in the original petition?.

20. Undisputedly, the respondent has not met to the educational expenses of the 2nd petitioner, other than for paying the monthly maintenance amount at the rate of Rs.750/- as directed in O.P No.829/1998. Admittedly, the 2nd petitioner, at the time of filing the original petition, was doing her graduation in Physiotherapy. The defence of the respondent against the above claim was that the 1st petitioner is employed as a Headmistress in a Private School and she is drawing a salary of more than Rs.10,000/- per month. As the 2nd petitioner is in the care and custody of the 1st petitioner, it is the 1st petitioner's duty and responsibility to look after to the educational expenses of the 2nd petitioner.

21. In view of the definition of maintenance under the Act which includes educational expenses and marriage expenses, in the case of an unmarried

daughter, the respondent is statutorily liable to maintain the 2nd petitioner..

22. As discussed in point No.1, we have already found that the respondent is a 'A-class Electrical Consultant Supervisor/Contractor and that he is earning more than Rs.40,000/- per month, and that he has landed properties. The 1st petitioner had produced and proved Ext.A1 series copies of the school fee receipts relating to the second petitioner's education expenses and also Ext.A7 copy of the examination result of the 2nd petitioner's first year graduation. It is established that the 2nd petitioner underwent studies in Physiotherapy. By Ext.A7, it was proved that the 2nd petitioner secured 484 marks out of 640. The 1st petitioner in her oral testimony had categorically deposed that the 2nd petitioner while undergoing graduation was staying in a hostel. It was the 1st petitioner who paid the hostel fees , tuition fee and mess fee of the 2nd petitioner. As per Ext.A1, a total amount of Rs.2,30,455/- was paid towards the

educational expenses of the 2nd petitioner. The prayer of the petitioners was to direct the respondent to pay the second year's college fees. Taking into consideration the expenses that were incurred by the 1st petitioner for the 2nd petitioner for education, the Family Court directed the respondent to contribute 2/3rd of the total educational expenses of the 2nd petitioner. We do not find any illegality or impropriety in the above finding considering the income, status and avocation of the respondent. The said amount is not beyond the paying capacity of the respondent. Hence, there is no scope for any interference with the said finding.

23. Coming to the question regarding the quantum of reasonable expenses in connection with the marriage of the 2nd petitioner, the Family Court had ordered the respondent to pay an amount of Rs.6,70,000/- as against the petitioners claim for Rs.10,00,000/-. The said expense was arrived at by calculating the value of 25 sovereigns of gold

ornaments, at the then current rate was valued at Rs.5.5 lakhs, to be given as the 2nd petitioner's share in her parental properties. Likewise, an additional amount of Rs.4.5 lakh was calculated towards the incidental expenses for the marriage.

24. The Family Court accepting the said amount as reasonable marriage expenses, directed the respondent to pay 2/3rd of Rs.10 lakh, which was rounded off to Rs.6,70,000/-.

25. As already found, the respondent is an 'A'-class licensed Electrical Supervisor/Contractor getting an income of over Rs.40,000/- per month. He has also 24 cents of property and other three cents of property in the heart of Thiruvananthapuram. Other than for the partly sum of Rs.750/-, which was being paid as ordered by the Family Court, the respondent has not contributed any amount towards any other expenses.

26. Section 3(b) (ii) of the Act casts a statutory liability on the respondent to pay reasonable expenses in connection with the marriage of the 2nd petitioner.

The decision that was relied on by the learned counsel for the respondent, in Ambika's case (supra) cannot have any application to the facts of this case, because an amount of Rs.10 lakh claimed towards the marriage expenses cannot be said to be to conduct a lavish and extravagant marriage.

27. All that the petitioners sought was to give the 2nd petitioner 25 sovereigns of gold ornaments as her share in her parental properties and reasonable expenses in connection with the marriage. The Family Court directed the respondent to only pay 2/3rd of the total amount of Rs.10,00,000/-, which was fixed at Rs.6,70,000/-. Thus, we are of the view that, considering the status and standard of living of the respondent, the marriage expenses fixed by the Family Court at Rs.6,70,000/- is reasonable and moderate. The said amount is well within the paying capacity of the respondent.

28. In the totality of the facts and circumstances of the case, we do not find any ground to interfere with

the findings of the Family Court and the directions to the respondent to pay maintenance at the rate of Rs.2750/- to the 2nd petitioner and pay Rs.1,53,637/- towards her educational expenses and R.6,70,000/- towards her marriage expenses. The Mat.Appeal is devoid of any merits and is hence dismissed.

Sd/-K.HARILAL, JUDGE

ma/27.02.2020

Sd/- C.S. DIAS, JUDGE

/True copy/

P.S to Judge