IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 27TH DAY OF JANUARY 2025 / 7TH MAGHA, 1946

RPFC NO. 501 OF 2023

AGAINST THE ORDER DATED 25.10.2023 IN MC NO.89 OF 2018 OF FAMILY COURT, PATHANAMTHITTA

REVISION PETITIONER/RESPONDENT:

JAYAPRAKASH E.P, AGED 56 YEARS
S/O. LATE PADMANABHAN NAIR, AMRITHA SAGAR, THENIHPPALAM P.O., KADAIKKATTUPARA ROAD, MUDRA CORNER, MALAPURAM DISTRICT 676 121. PRESENTLY RESIDING AT ATILYA SAGAR, SIVAGIRI NAGAR, KULAI HASABETTUE P.O., DAKSHINA KANNADA, KARNATAKA, PIN - 575019

BY ADV JAYAPRAKASH E.P(Party-In-Person)

RESPONDENTS/PETITIONER:

1 **SHENEY P, AGED 47 YEARS**
D/O. ACHUTAN NAIR, ANJALI HOUSE, THUVAYOOR SOUTH P.O., KADAMPANADVILLAGE, ADOOR TALUK, PATHANAMTHITTA DISTRICT 691 552 PRESENTLY RESIDING AT 69/785, CHAITHANYA GARDENS, OPPOSITE ARA 25A HOUSE, NEAR GOVT. MODEL SCHOOL, MANARCUD P.O., THIRUVANANTHAPURAM, PIN - 695009

2 **AMRITHA JAYAPRAKASH, AGED 24 YEARS**
D/O JAYAPRAKASH E.P ANJALI HOUSE, THUVAYOOR SOUTH P.O., KADAMPANADVILLAGE, ADOOR TALUK, PATHANAMTHITTA DISTRICT 691 552 PRESENTLY RESIDING AT 69/785, CHAITHANYA GARDENS, OPPOSITE ARA 25A HOUSE, NEAR GOVT. MODEL SCHOOL, MANARCUD P.O., THIRUVANANTHAPURAM, PIN - 695009

BY ADVS.JACOB P. ALEX
JOSEPH P.ALEX(K/1-C/2002)
MANU SANKAR P.(K/000823/2018)
AMAL AMIR ALI(K/000773/2019)

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 06.12.2024, ALONG WITH RPFC.16/2024, THE COURT ON 27.01.2025 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 27TH DAY OF JANUARY 2025 / 7TH MAGHA, 1946

RPFC NO. 16 OF 2024

AGAINST THE ORDER DATED 25.10.2023 IN MC NO.89 OF 2018 OF FAMILY COURT, PATHANAMTHITTA

REVISION PETITIONER/PETITIONER:

1 SHENEY P
AGED 45 YEARS
W/O. JAYAPRAKASH, ANJALI HOUSE, THUVAYOOR SOUTH
P.O, KADAMBANADU VILLAGE, ADOOR TALUK,
PATHANAMTHITTA DISTRICT, PIN - 691552

2 AMRITHA JAYAPRAKASH
AGED 25 YEARS
D/O. JAYAPRAKASH, ANJALI HOUSE, THUVAYOOR SOUTH
P.O, KADAMBANADU VILLAGE, ADOOR TALUK,
PATHANAMTHITTA DISTRICT, PIN - 691552

BY ADVS.JACOB P.ALEX
JOSEPH P.ALEX
MANU SANKAR P.
AMAL AMIR ALI

RESPONDENT/RESPONDENT:

JAYAPRAKASH E.P, AGED 56 YEARS
S/O LATE PADMANABHAN NAIR, AMRITHSAGAR, THENIPALAM P.O., KADAIKKATTUPARA, ROAD MUDRA CORNER, MALAPPURAM DISTRICT, PIN- 676121. PRESENTLY RESIDING AT ATILYA SAGAR, SIVAGIRI NAGAR, KULAI HOSABETTU P.O., DAKSHINA KANNADA DISTRICT - KARNATAKA, PIN - 575019

BY ADV JAYAPRAKASH E.P(Party-In-Person)

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 06.12.2024, ALONG WITH RPFC.501/2023, THE COURT ON 27.01.2025 DELIVERED THE FOLLOWING:

"C.R."

O R D E R

Both these Revision Petitions have been filed challenging the order passed by the Family Court, Pathanamthitta in M.C. No.89/2018 dated 25/10/2023.

2. The 1st petitioner in the maintenance case before the Family Court is the legally wedded wife (hereinafter, wife) of the respondent therein (hereinafter, husband). Two children were born out of their wedlock. The 2nd petitioner therein is the elder daughter. The wife and husband have been at loggerheads for many years. They are living separately. There are a series of litigations between them. The elder daughter is living with the wife, while the younger daughter is living with the husband. The wife and the elder daughter filed a maintenance case against the husband, claiming maintenance @ ₹45,000/- each per month. They alleged that they have no job or source of income and are unable to maintain themselves. They further alleged that the husband is working in the Merchant Navy and earns ₹9,00,000/- per month. The husband resisted the maintenance case. He filed a counterstatement. He raised a specific contention that the wife is working as a clerk in Matsyafed and is able to maintain herself. He further contended that the elder daughter has attained majority and hence she is not entitled to claim maintenance

invoking Section 125 of the Criminal Procedure Code (Cr.P.C).

3. The parties went on trial. On the side of the petitioners, the wife gave evidence as PW1 and Exts.A1 to A4 series were marked. On the side of the respondent, the husband himself gave evidence as RW1 and a witness from Matsyafed was examined as RW2. After the trial, the Family Court found that the wife is working as a Data Entry Operator at Matsyafed, she is earning a monthly salary of ₹21,175/- and therefore, she is not entitled to maintenance. So far as the elder daughter is concerned, it was found that she became a major and thus is not entitled to maintenance under Section 125(1)(c) of the Cr.P.C. It has come out in evidence that the husband has taken life insurance policies in the name of the wife and Exts.B2 to B4 original certificates relating to the same were in his custody. The Family Court directed the husband to hand over those certificates to the wife and elder daughter. R.P.F.C. No.16/2024 has been filed by the wife and elder daughter challenging the impugned order rejecting their claim for maintenance. R.P.F.C. No.501/2023 has been filed by the husband challenging the direction in the impugned order to hand over Exts.B2 to B4 certificates to the wife and elder child.

4. I have heard Sri. Jacob P. Alex, the learned counsel for the wife and elder child as well as the husband who appeared in person.

5. The learned counsel for the wife and elder daughter submitted that the Family Court went wrong in declining the maintenance to both wife and elder daughter. According to the learned counsel, the appointment of the wife as a clerk in Matsyafed is a temporary and contractual one, and the meagre income she gets out of the contract employment cannot be taken as a bar in granting maintenance to her under Section 125 of the Cr.P.C. Reliance was placed on ***Rajnesh v. Neha*** [(2021) 2 SCC 324]. The learned counsel further submitted that even though under Section 125(1)(c) of the Cr.PC, a daughter who attained majority is not entitled to claim maintenance from the father, a daughter who attained majority is entitled to claim maintenance from her father under Section 20(1) of the Hindu Adoptions and Maintenance Act (for short, the HAMA) till she gets married and hence the Family Court ought to have granted maintenance to the elder daughter as well invoking the provisions of the HAMA. On the other hand, the husband, who appeared in person, submitted that the wife is permanently employed at Matsyafed and earns substantial income to support herself and the elder daughter. He further contended that the wife and elder daughter had no claim under Section 20(3) of the HAMA before the Family Court and hence, at this stage, they cannot claim maintenance invoking the said provision. The husband also submitted that he is jobless and

earns only ₹27,000/- from the LIC Pension Scheme he has with the LIC, and from the said income, he has to support himself and his younger daughter, who has recently joined MBBS.

6. The marital relationship and the paternity of two children are not in dispute. It is also not disputed that the husband and wife are living separately. The elder daughter is with the wife and the younger daughter is with the husband. The maintenance to the wife was denied by the Family Court on two grounds – (i) the wife is employed at Matsyafed and has sufficient means to maintain herself, (ii) the wife left the company of the husband and younger child without any valid reason, and the husband has never refused or neglected to maintain the wife and the elder child till separation.

7. Section 125 of Cr.P.C (Section 144 of BNSS) is a measure of social justice especially enacted to protect women and children and falls within the constitutional scheme of Article 15 (3) reinforced by Article 39. Under this provision, any person having sufficient means is liable to maintain his wife if she is unable to maintain herself or his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or his legitimate/illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself,

or his father or mother, unable to maintain himself or herself. The object of the provision being one to achieve social justice for the marginalized members of society – destitute wives, hapless children, and parents, it is to be construed liberally for the welfare and benefit of the wife, children and parents. True, maintenance under Section 125 of Cr.P.C (Section 144 of BNSS) is provided to the wife who is unable to maintain herself. However, "unable to maintain herself" in Section 125 of Cr.P.C (Section 144 of BNSS) does not mean that the wife must be in a state of penury. In *Rajnesh* (supra), the Supreme Court has held that even if the wife is earning, it cannot operate as a bar from being awarded maintenance by her husband. In *Chaturbhuj v. Sita Bai* [(2008) 2 SCC 316], it was held that the court has to determine whether the income of the wife is sufficient to enable her to maintain herself in accordance with the lifestyle of her husband in the matrimonial home. In *Sunita Kachwaha v. Anil Kachwaha* [(2014) 16 SCC 715], the husband raised a contention that since the wife was employed as a teacher and had sufficient income, she was not entitled to maintenance from the husband. The Supreme Court repelled this contention and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance. Relying on *Sunita Kachwaha* (supra), the Bombay High Court held that neither the mere potential to earn nor the

actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance. The difference between 'capable of earning' and 'actual earning' has been highlighted clearly in *Shailja and Another v. Khobbanna* [(2018) 12 SCC 199], wherein the Supreme Court decided that a wife who was capable of earning could not be barred from claiming maintenance. It was also held that merely because the wife is capable of earning, it would not be sufficient ground to reduce the maintenance awarded by the Family Court. In *Reema Salkan v. Sumer Singh Salkan* [(2019) 12 SCC 303], it was held that the plea of the husband that he does not have any source of income *ipso facto* does not absolve him of his liability to maintain his wife if he is able-bodied and has educational qualifications. Thus, the law is well settled that even if a wife has the capability to earn or is earning something, it does not disentitle her from claiming maintenance from her husband. The test is whether the wife is able to maintain herself more or less in the status in which her husband has maintained her. The wife is entitled to live the same standard of life as she lived along with the husband.

8. The definite case of the wife is that though she has managed to get a temporary contract at Matsyafed after separation, the salary she gets from the said employment is not sufficient to maintain herself and the elder child. The evidence of

PW1 (wife) and RW2 (Deputy General Manager of Matsyafed), Ext.X1 salary particulars pertaining to the wife and Ext.X2, the notification pertaining to the post of Data Entry Operator at Matsyafed would show that the wife is now working as a Data Entry Operator on a temporary basis and drawing a salary of ₹21,175/- per month. It is not a permanent employment. It has come out in evidence that the wife is now residing in a rented house and the elder child is depending on her. The claim for maintenance by a wife who is unable to maintain herself would also include the expenses incurred by her towards the reasonable expenses of the child who is dependent on her. Merely because the child is a major would not prevent the wife from claiming maintenance from her spouse to meet the needs of the dependent child. Section 125 of Cr.P.C does not prevent such a situation.

9. As stated already, it has come out in evidence that the wife held a job that was not permanent in nature. Her engagement was purely temporary, and the income she gets from the employment is a meagre one, which is hardly sufficient to supplement the day-to-day expenditures of herself and her daughter. The wife’s temporary job, even if it provides some income, would not disentitle her to claim maintenance from her husband if she asserts that the said income is insufficient for her

maintenance.

10. The evidence on record would show that the husband was working as a Captain in the Merchant Navy and an experienced sailor with a high income. According to the wife, the husband is earning ₹9,00,000/- per month. The husband, while examined as RW1, admitted that he was working as a Sailor in ships. However, according to him, his employment was on a contract basis and he used to get a chance to work three to four months a year with a remuneration of ₹5,00,000/- to ₹6,00,000/-. He further contended that, at present, he is unemployed and suffering from various ailments. Admittedly, the husband is educated and an experienced Sailor. Ext.B5 would show that his sailing certificate was valid till 2005. He also admitted during the examination that he used to do some private jobs while sailing. All this evidence would show that he is capable of earning. The medical documents produced on the side of the husband are not sufficient to hold that he is suffering from any serious ailment, and incapable of doing any work. The admission of the husband that he is earning a pension of ₹27,000/- from LIC pension fund investment would itself prove that he has a huge investment in the LIC pension fund. The husband who is capable of earning could not evade his lawful duty of maintaining his wife merely by stating that he is not presently employed. An able-bodied

husband must be presumed to be capable of earning enough to support his family unless he can prove genuine inability with concrete evidence. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court [*Rajnesh* (supra)]. Even though the wife has filed a statement showing her assets and liabilities, no such statement is filed by the husband. The husband has failed to discharge the said burden with the necessary materials to prove that he is unable to maintain his wife and child.

11. The finding of the Family Court that the wife left the company of the husband without any reason and that till the date of separation, the latter never neglected or refused to maintain the former is without any basis. The definite case of the wife is that she was forced to leave the matrimonial home along with her elder daughter after 21 years of married life due to the acts of cruelty and severe abuse including physical violence. The said case set up by the wife gets corroboration from the fact that the police have registered Crime No.313/2017 against the husband under Sections 498, 323, 324 and 506 of IPC. No evidence has been adduced by the husband to show that he has maintained the

wife.

12. For the reasons stated above, the finding in the impugned order that the wife is not entitled to claim maintenance from the husband cannot be sustained. The Family Court erred in not awarding maintenance to the wife who does not have any permanent source of income.

13. The maintenance claimed by the elder daughter was denied by the Family Court on the ground that she had attained majority even before the filing of the maintenance case. The learned counsel for the wife submitted that though under Section 125 of Cr.PC (Section 144 of BNSS), a minor daughter is entitled to maintenance from her parents only till she attains majority; the Family Court ought to have granted maintenance, taking cue from Section 20(3) of the HAMA under which the right of maintenance is given to a minor daughter till her marriage. Reliance was placed on ***Jagdish Jugtawat v. Manju Lata and Others*** [(2002) 5 SCC 422] and ***Abhilasha v. Parkash and Others*** [(2021) 13 SCC 99].

14. The provisions of Section 125 of Cr.P.C (Section 144 of BNSS) are applicable irrespective of personal law. Section 125 of Cr.P.C limits the claim of maintenance of a child until he/she attains majority. By virtue of Section 125(1)(c)/Section 144(1)(c) of BNSS, an unmarried daughter, even though she has attained majority, is entitled to maintenance where such unmarried

daughter is, by reason of any physical or mental abnormality or injury, unable to maintain herself. The scheme under Section 125(1) Cr.P.C (Section 144(1) of BNSS), thus, contemplates that claim of maintenance by a daughter, who has attained majority, is admissible only when, by reason of any physical or mental abnormality or injury, she is unable to maintain herself. However, as per Section 20 of the HAMA, the obligation of a parent to maintain his daughter who is unmarried extends till she is married. The provision of Section 125 of Cr.P.C (Section 144 of BNSS) is a speedy and summary remedy and applies independently of the personal law of the parties. This provision does not cover the civil liability of a husband or father under his personal law to maintain his wife and children. The pristine Hindu law always recognized the liability of a father to maintain an unmarried daughter. Section 20(3) of the HAMA is a recognition of the principles of Hindu law regarding the obligation of a Hindu to maintain his/her daughter, who is unmarried and is unable to maintain herself out of her own earnings or other property. The obligation, which is cast on the father to maintain his unmarried daughter, can be enforced by her against her father if she is unable to maintain herself by enforcing her right under Section 20.

15. But the crucial question is whether an unmarried

daughter who has attained majority is entitled to claim maintenance from her father in a proceeding under Section 125 of Cr.P.C (Section 144 of BNSS) although she is not suffering from any physical or mental abnormality or injury. The said question came up for consideration before the Supreme Court in ***Jagdish Jugtawat*** (supra). In that case, the mother of a minor unmarried girl filed an application under Section 125 of Cr.P.C claiming maintenance from her father before the Family Court. The Family Court allowed the claim. The father challenged the order of the Family Court before the High Court in revision, mainly contending that the daughter is entitled to maintenance till she attains majority and not thereafter. The High Court, though, accepted the legal position that under Section 125 of Cr.P.C., a minor daughter is entitled to maintenance from her parents only till she attains majority but declined to interfere with the orders passed by the Family Court, taking the cue from Section 20(3) of the HAMA. The Supreme Court held that the High Court was justified in upholding the order of the Family Court, by which it granted maintenance under Section 125 of Cr.P.C to the daughter even after her attaining majority but till her marriage, taking the view that it would avoid multiplicity of proceedings as otherwise the party would be forced to file another petition under Section 20(3) of the HAMA for further maintenance. Again, the question came

up for consideration before the Supreme Court in ***Abhilasha*** (supra). In ***Abhilasha*** (supra) it was found that the judgment in ***Jagdish Jugtawat*** (supra) cannot be read to laying down the ratio that in proceedings under Section 125 of Cr.P.C filed by the daughter against her father, she is entitled to maintenance relying on the liability of the father to maintain his unmarried daughter as contained in Section 20(3) of the HAMA. It was further held that the Supreme Court in ***Jagdish Jugtawat*** (supra) while hearing the criminal appeal against the judgment of the High Court was exercising jurisdiction under Article 136 of the Constitution of India, and in the facts of that case, the Supreme Court refused to interfere with the judgment of the High Court and hence no ratio can be read in the judgment of ***Jagdish Jugtawat*** (supra) as contended by the appellant in that case. However, in paragraph 34 of the judgment, it was observed that in a case where the Family Court has jurisdiction to decide a case under Section 125 of Cr.P.C as well as the suit under Section 20 of the HAMA, the Family Court can exercise jurisdiction under both the Acts and in appropriate case can grant maintenance to unmarried daughter even though she has become major enforcing her right under Section 20 of the HAMA so as to avoid multiplicity of proceedings.

16. Coming to the facts of the case, the wife or elder

daughter did not take a plea at all before the Family Court that the latter is entitled to maintenance invoking Section 20(3) of the HAMA. Even in the revision petition, such a plea is not taken. The plea is taken for the first time before this court during arguments. Considering all these facts, I am of the view that this case cannot be treated as an appropriate case where the Family court could have granted maintenance to the elder daughter even though she has become major enforcing her right under Section 20 of the HAMA. The finding of the Family Court that the elder daughter is not entitled to maintenance under Section 125 of Cr.P.C, thus, warrants no interference. However, the elder daughter is at liberty to file a separate application for maintenance invoking Section 20(3) of the HAMA before the Family Court.

17. R.P.F.C No. 501/2023 has been filed challenging the direction in the impugned order directing the husband to hand over Exts.B2 to B4 life insurance policy certificates to the wife and elder daughter. It is not in dispute that Exts.B2 to B4 life insurance policy certificates stand in the name of the wife and the elder daughter. Hence, they are entitled to the said certificates. I find no reason to interfere with the said direction of the Family Court.

18. In the light of the above discussions, the finding in the impugned order that the wife is not entitled to claim maintenance

from the husband is hereby set aside. I hold that the wife can very well claim maintenance from her husband. MC is remitted to the Family Court to decide the quantum of maintenance. The parties shall appear before the Family Court on 18/2/2025. The Family Court is directed to dispose of the MC in accordance with law after affording further opportunities, if any, to the parties to adduce evidence within a period of three months from the date of the appearance of the parties.

The revision petitions are disposed of as above.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp

APPENDIX OF RPFC 16/2024

RESPONDENT ANNEXURES

Annexure R1	**TRUE COPY OF THE O.P. 1159/2017 PENDING ON THE FILES OF THE FAMILY COURT PATHANAMTHITTA DATED 15.12.20217**
Annexure R2	**TRUE COPY B DIARY PROCEEDING AT FAMILY COURT PATHANAMTHITTA IN MC 89/2018 DATED 03.01.2024**
Annexure R3	**TRUE COPY OF THE ORDER DATED 17.01.2023 IN TR.P (CRL). NO.65/2022 BEFORE THE HIGH COURT OF KERALA**
Annexure R4	**TRUE COPY OF THE ORDER DATED 02.02.2023 IN TR.P (C). NO. 526/2022 BEFORE THE HIGH COURT OF KERALA**
Annexure R5	**OPCRL 363/2023 ORDER DATED 24.05.2023 BEFORE THE HIGH COURT OF KERALA**
Annexure R6	**TRUE COPY OF 'B-DIARY' PROCEEDINGS RECORDS AT FAMILY COURT, THIRUVALLA DATED 15.06.2023**
Annexure R7	**TRUE COPY OF THE DOCUMENTS SUBMITTED BY PETITIONER IN TRP(C) 844/2023 DATED.10.10.2024 SHOWING CRLMP 6/2023 INTERIM MAINTENANCE DISMISSED ON 14.09.2023 AT FAMILY COURT, PATHANAMTHITTA**
Annexure R8	**TRUE COPY OF THE ORDER DATED 11.01.2024 IN TR.P (C). NO. 844/2024 BEFORE THE HIGH COURT OF KERALA**

PETITIONER ANNEXURES

Annexure A1	**TRUE COPY OF THE COUNSELLING CALL LETTER OF DEPARTMENT OF HOSPITAL ADMINISTRATION OF YENEPOYA (DEEMED TO BE UNIVERSITY)**
Annexure A2	**TRUE COPY OF THE STUDENT ID CARD OF 2ND APPLICANT**

APPENDIX OF RPFC 501/2023

PETITIONER ANNEXURES

ANNEXURE 9	**VIDEO NO.1 SHOWS THE RESPONDENT TRAVELLING IN TRAIN FROM KOLLAM TO TRIVANDRUM CENTRAL ON 30.11.2024 SUBMTTTED IN PEN DRIVE.**
ANNEXURE 10	**VIDE ONO.2 SHOWS THE RESPONDENT TRAVELLING IN TRAIN FROM KOLLAM TO TRIVANDRUM CENTRAL ON 30.11.2024 MAKING VIDEO CALLS TO HER BOY FRIEND WITH WHOM SHE HAD A LOVE AFFAIR WHICH IS CONTINUING EVEN AFTER MARRIAGE SUBMITTED IN PEN DRIVE.**
Annexure 11	**TRUE COPY OF THE OWNERSHIP DETAILS FROM HONDA PLEASURE SCOOTER OWNED BY SHENEY P VEHICLE NUMBER KL 20 D 6252**
ANNEXURE A12	**TRUE COPY OF THE IMAGE OF THE BOY FRIEND RAJESH MOOTHAYI AND SCREEN SHOT OF HIS TALKS WITH WIFE FOR EASY IDENTIFICATION OF THE PERSON.**