IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 12TH DAY OF NOVEMBER 2025/21ST KARTHIKA, 1947

RPFC NO. 476 OF 2017

AGAINST THE ORDER DATED 09.08.2017 IN MC NO.45 OF 2017 OF FAMILY COURT, THALASSERY

REVISION PETITIONER/RESPONDENT:

BY ADV SRI.R.SURENDRAN

RESPONDENTS/PETITIONERS 2 & 3:

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SMT.K.K.CHANDRALEKHA
SRI.K.C.SANTHOSHKUMAR

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR HEARING ON 12.11.2025, ALONG WITH RPFC.409/2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 12TH DAY OF NOVEMBER 2025/21ST KARTHIKA, 1947

RPFC NO. 409 OF 2017

AGAINST THE ORDER DATED 09.08.2017 IN MC NO.45 OF 2017 OF FAMILY COURT, THALASSERY

REVISION PETITIONERS/PETITIONERS:

1

SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA

RESPONDENT/COUNTER PETITIONER:

BY ADV SRI.R.SURENDRAN

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR HEARING ON 12.11.2025, ALONG WITH RPFC.476/2017, THE COURT ON THE SAME DAY 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, Thalassery, in M.C. No.45/2017 dated 09.08.2017.

2. The first petitioner in the maintenance case before the Family Court is the legally wedded wife (for short ‘the wife’) of the respondent (for short ‘the husband’). Two children were born out of the wedlock. They are petitioners 2 and 3 before the Family Court. The wife and children filed the maintenance case against the husband, claiming maintenance at the rate of Rs. 15,000/- and Rs. 10,000/- each, respectively. The Family Court, after trial, rejected the claim of the wife for maintenance and granted monthly maintenance at the rate of Rs. 6,000/- each to the children. The wife filed RP(FC) No.409/2017, challenging the rejection of her claim for maintenance as well as the quantum of maintenance awarded to the children, and the husband filed RP(FC) No.476/2017, challenging the quantum of maintenance awarded to the children.

3. I have heard Sri.R. Surendran, the learned counsel for the husband, as well as Sri.K.C. Santhosh Kumar, the learned counsel for the wife and children.

4. The learned counsel for the wife and children submitted that the Family Court went wrong in declining maintenance to the wife. According to the counsel, the finding of the Family Court that the wife can maintain herself is factually incorrect and contrary to the evidence. The learned counsel further submitted that, considering the means of the husband and the requirements of the children, the monthly maintenance of Rs 6,000/- each awarded to the children is low. On the other hand, the learned counsel for the husband submitted that it has come out in evidence that the wife is a tailor by profession and she earns income out of the said profession for her livelihood, and hence the Family Court has rightly rejected her claim for maintenance. The learned counsel further submitted that, going by Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956, both the parents are liable to maintain the children, and hence the wife is also liable to contribute towards the

maintenance of the children. According to the learned counsel, if that is considered, the monthly maintenance granted to the children is on the higher side.

5. The marital relationship and the paternity of the two children are not in dispute. It is also not disputed that the husband and the wife are living separately, and the children are living with the wife. The maintenance to the wife was denied by the Family Court on two grounds: (i) the wife is a tailor by profession and has sufficient means to maintain herself, and (ii) the wife left the company of the husband without any valid reason and hence she is not entitled to claim maintenance.

6. 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. The object of the provision being one to achieve social justice for the marginalised 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. As per

Section 125 of Cr.P.C. (Section 144 of BNSS), the husband who has means is liable to provide maintenance to the wife who is unable to maintain herself. However, it is settled by way of a catena of decisions that '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 v. Neha and Another [(2021) 2 SCC 324]**, 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 **Sunita Kachwaha and Others 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 her husband. The Supreme Court repelled the contention and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance. The difference between 'capable of earning' and 'actual earning' has been highlighted clearly by the Supreme Court 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. 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 (**Jayaprakash E.P. v. Sheney P. [2025 (1) KLT 815]**).

7. Coming to the facts of the case, the definite case of the wife is that she does not have any job or source of income. However, the husband has contended that the wife is running a tailoring shop and earns income. It has come out in evidence that in the marriage certificate, the occupation of the wife was shown as ‘tailor’. It has also come out in evidence that the wife is a member of the All-Kerala Tailors’ Association, and she is regularly paying the subscription for the said membership. Relying on these pieces of evidence, the Family Court concluded that the wife is a tailor and earns her livelihood. The mere fact that in the marriage certificate, the occupation of the wife is shown as tailor, and she has taken membership in the tailors’ association, would not mean that she is actually doing

tailoring work and able to maintain herself. There is absolutely no evidence on record to show that the wife is actually employed as a tailor and earns income out of it for her livelihood. To a specific question, the wife has answered that her brother, who is abroad, is running a tailoring shop, and she used to visit the said shop occasionally. Even if it is admitted that she visits the tailoring shop of her brother in his absence and does tailoring work, that is not a ground to deny maintenance to her. 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. For these reasons, 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.

8. The right of the wife to claim maintenance from her husband who has sufficient means is not absolute. It is subject to sub-section (4) of Section 125 of Cr.P.C. [Section

144(4) of BNSS]. A wife who chooses to live separately without sufficient reason is disentitled to get maintenance under Section 125(4) of Cr.P.C. It is crucial to assess whether the wife's decision to live separately is based on valid grounds. If valid grounds, such as cruelty or desertion, exist, the wife is still entitled to get maintenance.

9. As stated already, the parties have admitted that the wife is living separately from the husband. According to the wife, there is sufficient cause for residing separately from her husband. She gave evidence that the husband exercised cruelty on her; ultimately, he took her to her parental house on 19.09.2014 and thereafter never came to take her back. The Family Court found that, apart from the oral testimony of the wife, there is nothing on record to show that the husband exercised cruelty on her, left her at her house and did not take her back thereafter. The Family Court further found that even though the wife had contended that the husband had assaulted her and she was treated at a hospital, no medical records were produced. I went through the entire evidence of the wife. She had clearly deposed the various

instances of cruelty exercised on her by the husband at different stages of her life. To highlight a few instances, she deposed that the husband used to come to the house after consuming alcohol, and he used to talk on the phone for pretty long periods. When questioned, he used to physically and mentally torture her. She further deposed that the husband did not allow her to share his bed, and she was forced to go to another room and sleep on the floor. She admitted that the said evidence was not supported by pleadings. However, there are so many other instances as well, deposed by the wife to show that her husband exercised cruelty on her. She had even deposed that from March 2009 onwards, they did not have any sexual intercourse. This positive evidence given by the wife was not successfully challenged in the cross-examination. I am of the view that these instances are sufficient to justify the wife living separately from her husband. Thus, both the grounds found by the Family Court to deny maintenance to the wife cannot be sustained.

10. It is not in dispute that the husband is a tailor by

profession. According to the wife, he runs his own tailoring shop and earns a substantial income. However, according to the husband, he is employed as a tailor in a tailoring shop and earns only Rs. 750/- per day. The husband has produced Ext.D1 salary certificate issued by his employer to prove his income. As rightly held by the Family Court, it has not been proved legally by examining the employer. The husband is aged 46 years. He is an able-bodied person. He does not have a case that he has physical disability to do any job and earn income. In **Rajnesh** (supra), the Supreme Court has held that the husband cannot take up a contention that he is unemployed or has no source of income and thus cannot maintain his wife and children, so long as he is found to be an able-bodied person.

11. The maintenance claimed by the children is Rs 10,000/-each. The Family Court has awarded Rs 6,000/-each. Considering the requirements of the children and the means of the husband, the said maintenance awarded by the Family Court appears to be reasonable. The wife is aged 39 years. I have already found that the husband is liable to maintain the

wife. Considering the entire facts and circumstances of the case, I fix the quantum of maintenance for the wife at Rs. 8,000/- per month.

For the reasons stated above, RP(FC) No.476/2017 fails, and the same is dismissed. RP(FC) No.409/2017 is allowed in part, and the husband is directed to give maintenance to the wife at the rate of Rs. 8,000/- per month from the date of the petition over and above the maintenance granted to the children by the Family Court.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

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