

RPFC NO. 207 OF 2020



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2025:KER:21060

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 12<sup>TH</sup> DAY OF MARCH 2025 / 21ST PHALGUNA, 1946

RPFC NO. 207 OF 2020

AGAINST THE ORDER DATED 12.03.2019 IN MC NO.354 OF

2017 OF FAMILY COURT, THRISSUR

REVISION PETITIONER/RESPONDENT:

BY ADVS.  
K.MEERA  
SRI.BOBY MATHEW

RESPONDENT/PETITIONER:



BY ADVS.  
AJMAL V.A  
A.C.ARFANA (K/273/2014)  
FATHIMA V.A. (K/001274/2018)

THIS REV. PETITION(FAMILY COURT) HAVING BEEN FINALLY  
HEARD ON 12.03.2025, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



**“C.R.”**

**ORDER**

A husband who suffered an order under Section 125 of Cr.P.C to provide maintenance to his wife despite her living apart for no justifiable reason is before me in this Revision Petition

2. The petitioner was the husband of the respondent. The respondent filed the maintenance case against the petitioner before the Family Court, Thrissur as M.C.No.354 of 2017 claiming maintenance. The Family Court tried M.C.No.354 of 2017 along with two petitions for guardianship filed by both sides as G.O.(P) Nos.1621 of 2016 & 1334 of 2017 and passed a common order. M.C.No.354 of 2017 was allowed, and the petitioner was directed to pay monthly maintenance at the rate of Rs.25,000/- to the respondent. The said order is under challenge in this revision petition.

3. I have heard Smt.K.Meera, the learned counsel for the petitioner and Sri.Ajmal V.A., the learned counsel for the



respondent.

4. It is not in dispute that the petitioner and the respondent were legally wedded husband and wife. The marriage was solemnized on 07.01.2008. A girl child was born in the wedlock on 03.04.2013. Matrimonial disputes arose between the parties in the year 2015, which led to the initiation of several litigations between them. Both parties filed petitions for custody of the child. The petitioner also filed an original petition for divorce against the respondent as O.P.No.1618 of 2016 before the Family Court and the divorce was granted as per the order dated 21.04.2017.

5. The learned counsel appearing for the petitioner submitted that there is sufficient evidence to show that the respondent left the company of the petitioner without any sufficient reason on 16.11.2015 and hence, the respondent is not entitled to maintenance under Section 125(4). On the other hand, the learned counsel for the respondent submitted that the



respondent left the company of the petitioner and has been living separately on account of the ill-treatment by the petitioner, and hence, she can still claim maintenance.

6. As stated already, M.C.No.354 of 2017 has been tried along with G.O.(P) Nos.1621 of 2016 & 1334 of 2017. As per the common order, the guardianship of the child was given to the petitioner. A reading of the common order would show that the petitioner specifically contended that the respondent left the matrimonial home without any reason on 16.11.2015, abandoning their 2½-year-old child there and never returned thereafter. The respondent has admitted that she left the matrimonial home on that day. But her contention is that she was forced to leave the matrimonial home and started to live separately due to the ill-treatment of the petitioner. The parties let in evidence regarding these rival contentions. The Family Court, after considering the evidence on record, concluded that the respondent left the matrimonial home leaving the child there



without any reason. In paragraph 27 of the common order, there is a finding that even though the respondent has raised a contention that she left the petitioner due to ill-treatment, there is no evidence of any ill-treatment and there was not even a complaint by the respondent against the petitioner before any police. In paragraph 31 of the common order, there is a specific finding that the respondent left the matrimonial home with the definite intention to teach a lesson to the petitioner, and absolutely, there is no evidence to show that she was ill-treated by the petitioner as alleged by the respondent. Thus, there is clear evidence on record to show that the respondent has been living separately since 16.11.2015 without any sufficient reason. That apart, O.P.No.1618 of 2016, filed by the petitioner seeking divorce on the grounds of desertion and cruelty, was allowed on those grounds.

7. The primary object of marriage, while varying across cultures and beliefs, often encompasses forming a legal and



social unit providing companionship and emotional support apart from procreation and raising of children. Marriage brings with it specific rights and liabilities for both husband and wife. Marriage involves a commitment to live together and fulfil the responsibilities inherent in the marital relationship. The primary duty of parties in marriage is to live together and fulfil their marital obligations. The right to each other's society, comfort and affection, often referred to as 'consortium' is a fundamental aspect of marriage. Withdrawal from society of the other would mean withdrawal from marital obligation by either spouse.

8. A husband is legally and morally bound to provide maintenance to his wife. The right of the wife to be maintained by the husband stems from the corresponding obligation to perform marital duty. Section 125 (1) (a) of Cr.PC (Section 144 (1) (a) of BNSS) provides maintenance to the wife who is unable to maintain herself. However, 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 (Section 144 (4) of BNSS). A wife who chooses to live separately without sufficient reason is disentitled to maintenance under Section 125(4) of Cr.PC (Section 144 (4) of BNSS). 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, she may still claim maintenance despite living apart. In cases where the wife refuses to live with the husband without any just cause and there is no evidence of ill-treatment by the husband, the wife is not entitled to maintenance.

As stated already, there is clear evidence on record to show that the respondent has been living separately since 16.11.2015 without any sufficient reason and there is no evidence to show that she was ill-treated by the petitioner as alleged. Hence, the respondent is disentitled to claim maintenance under sub-section (4) of Section 125 of Cr.PC (Section 144 (4) of BNSS). For these reasons, the impugned order cannot be sustained.





Accordingly, it is set aside. M.C. No.354 of 2017 of Family Court, Thrissur stands dismissed. This revision petition is allowed.

Sd/-

**DR.KAUSER EDAPPAGATH, JUDGE**

AS