

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

Crl.MC.No. 2121 of 2009 ()

(CRL.RP.NO. 91/2007 OF II ADDL.SESIONS COURT, KOZHIKODE)

*CRL.R.P.NO. IS CORRECTED AS 76/2007 OF II ADDL.SESIONS COURT,
KOZHIKODE AS PER ORDER DATED 28/7/09 IN CRL.M.A.NO.4195/2009

MC.NO. 12/2005 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-V, KOZHIKODE

PETITIONER/COUNTER PETITIONER/RESPONDENT :

ABBAS, S/O.MAMMU,
PALLAKKAL, CHALIYAM P.O,
KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/PETITIONER/COMPLAINANT :

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1. SOUDA K.V., D/O.KUNJIMON,
KAITHAVALAPPIL, ELLUMA KANDATHIL, CHALIYAM P.O.,
KOZHIKODE.
 2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY ADV. SRI.VINOD SINGH CHERIYAN
SRI.R.SUDHISH

R2 BY PUBLIC PROSECUTOR SRI.REJI JOSEPH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 22-07-2015, ALONG WITH CRL.R.P.NO.2377 OF 2009 AND CONNECTED
CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

sts

Crl.MC.No. 2121 of 2009

APPENDIX

PETITIONER'S ANNEXURES:

ANNEX A COPY OF THE JUDGMENT IN M.C.NO.12/2005 ON THE FILE OF
JUDICIAL FIRST CLASS MAGISTRATE COURT-V, KOZHIKODE DATED
21/8/2007

ANNEX B COPY OF THE JUDGMENT IN CRL.R.P.NO.91/2007 ON THE FILE OF
SESSIONS COURT, KOZHIKODE DATED 6/2/2009.

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

[CR]

B.KEMAL PASHA, J.

.....
CRL.M.C. Nos.2121 & 3913 of 2009 and
CRL.R.P. Nos.2377 of 2009 & 1649 of 2010
.....

Dated this the 22nd day of July, 2015

ORDER

Whether a divorced Muslim woman is entitled to recover the huge amount of medical expenses incurred by her, from her former husband, who has the ability to meet such a claim, is the main question to be decided here.

2. M.C.No.12 of 2005 of the Judicial First Class Magistrate's Court-V, Kozhikode was filed under Section 3 (2) of the Muslim Women (Protection of rights on Divorce) Act, 1986(hereinafter referred to as 'the Act') by a divorced Muslim woman seeking reasonable and fair provision and maintenance, maintenance during the period of *Iddat*, value of her gold ornaments etc., under Section 3(1) of the Act.

3. This is a case wherein the counter petitioner in the above said cases had pronounced *thalaq* on the petitioner allegedly on account of his ill will towards her. Even though in the counter, there was no specific contention from the part of the counter petitioner that such an extra judicial divorce was effected on account of her alleged adulterous life with the brother of the counter petitioner, in the evidence he has gone to the extent of saying that he had witnessed the adulterous life of the petitioner with his own brother at his house, on five occasions. According to him, on all those occasions the three children were also present in the very same room. On going through the evidence and the allegations made by the counter petitioner in the evidence, it seems that the said allegations are, *prima facie*, not believable. He has admitted that in the counter he has not mentioned specifically the adulterous life of the petitioner.

4. It seems that the learned Magistrate had allowed

a monthly maintenance of ₹3,000/- for three months for the *Iddat* period and further granted an amount of ₹3,000/- per month for a period of 10 years, as reasonable and fair provision and maintenance, by considering her age and the absence of even a remote possibility of a subsequent marriage alliance. It seems that the learned Magistrate had arrived at a figure of ₹3,60,000/- under that head. Over and above it, the learned Magistrate has allowed an amount of ₹45,000/- being the value of 10 sovereigns of gold ornaments allegedly taken away by the counter petitioner from the petitioner. When the amounts were added together, the learned Magistrate has mistakenly calculated it as ₹3,54,000/- instead of ₹4,05,000/-.

5. Both the parties have challenged the said order before the Sessions Court, Kozhikode. The learned II Additional Sessions Judge has found that the petitioner is entitled to an amount of ₹9,000/- by way of maintenance for the period of *Iddat*, at the rate of ₹3000/- per month, and

similarly she is entitled to an amount of ₹3,60,000/- by way of reasonable and fair provision and maintenance for the future period. The learned Additional Sessions Judge has found that there is no sufficient evidence to prove the claim for an amount of ₹45,000/-, which was ordered by the trial court and therefore, it was held that the petitioner is not entitled to claim the said amount of ₹45,000/-.

6. Challenging the denial of the claim for ₹45,000/-, the petitioner has filed Crl.R.P.No.1649 of 2010. Claiming inadequacy of the amounts under other heads, Crl.M.C.No.3913 of 2009 is also filed by the petitioner. Challenging the order, the counter petitioner has filed Crl.R.P No.2377/2009 as well as Crl.M.C. 2121/2009.

7. Heard the learned counsel for the petitioner Sri. Vinod Singh Cheriyan and the learned counsel for the first respondent Sri.P.V.Kunhikrishnan.

8. According to the learned counsel for the petitioner, the amount allowed by the courts below as

monthly maintenance is totally inadequate. Further, it is also argued that the petitioner had to spend an amount of ₹2,31,000/- for the expenses towards treatment for her renal disease and therefore, the counter petitioner has to pay the said amount also to the petitioner. It has been pointed out that the petitioner is in utter bankruptcy, since she had to borrow various amounts for her continued medical treatments.

9. *Per contra*, the learned counsel for the counter petitioner has argued that the amount calculated by the courts below as monthly maintenance is not liable to be interfered with. At the same time, according to him, both the courts below ought not have considered such a monthly maintenance for 10 years as reasonable and fair provision and maintenance for future period. It is further argued that as the claim for medical expenses has been forwarded for the first time in Crl.M.C.No.3913 of 2009 by the petitioner, this Court while exercising the jurisdiction under Section 482

Cr.P.C. is not excepted to pass an order on the same.

10. It is not in dispute that reasonable and fair provision and maintenance to be paid during the period of *Iddat* is not only with regard to the maintenance to be paid for the period of *Iddat*, but also it should be a reasonable and fair provision and maintenance to enable her to maintain herself for the future period also.

11. In CrI.M.C.No.3913 of 2009 the petitioner has produced the medical records of the petitioner which would *prima facie* reveal that she had to spend an amount of ₹2,31,000/- towards medical bills for her renal problems.

12. According to the learned counsel for the counter petitioner, the counter petitioner is entitled to challenge the veracity and correctness of the medical bills and therefore, the trial court should be the proper forum to enter a decision on it.

13. On hearing the learned counsel for the petitioner and the counter petitioner, and on a perusal of the records, it

seems that there is no sufficient evidence to arrive at a conclusion that the petitioner is entitled to an amount of ₹45,000/- as ordered by the learned Magistrate towards the cost of the gold ornaments allegedly taken away from her. In the absence of concrete evidence, there is absolutely nothing to upset the findings entered by the learned Additional Sessions Judge in the criminal revision regarding the said aspect. On going through the matter relating to the Crl.R.P. 2377 of 2009 and Crl.M.C. 2121 of 2009, I do not find any merits in the matter.

14. The main argument forwarded by the learned counsel for the counter petitioner is that both the courts below ought not to have allowed the maintenance to be paid for 10 years towards reasonable and fair provision and maintenance for future period.

15. Earlier there were some guidelines laid down by this Court through the decision in **Ahammed v. Aysha** [1990 (1) KLT 172] rendered by a learned Single Judge of this

Court that the amount payable as maintenance for a period of 5 years can be taken as reasonable and fair provision and maintenance for future period. After the said decision, much water has flown under the bridge. The social scenario of life has undergone a vast change. When the petitioner was aged only 28, she was thrown out from the matrimonial home with her three children. It has to be considered that there was no scope for a subsequent marriage. Therefore, in such cases, it is the duty of her former husband, who has effected an extra judicial divorce, to see that she is maintained in future properly. That is the reason why the legislature in its wisdom has incorporated the provision for reasonable and fair provision and maintenance for her needs. Therefore, any straight jacket formula cannot be evolved as to what should be the reasonable and fair provision and maintenance. That can be arrived at only through judicial indulgence.

16. Even if the petitioner is not claiming any particular

amount under the said head or even when a lesser amount is claimed by the petitioner under that head, the courts are not powerless to grant reasonable and fair provision and maintenance. When the terms “reasonable and fair” are incorporated in the said statutory provision, it is evident that it is for the court to decide as to what is “fair and reasonable” and not for the parties. This Court had on occasions to deal with the said question in ***Cehmbrath Arakkal Jamal v. Kunnummal Manseera***[2014(1) KLT 930].

17. The next question to be considered is whether the medical expenses incurred by the petitioner subsequent to the extra judicial divorce can be claimed from her former husband. It seems from Section 3(3) of the Act that the Magistrate has to pass an order directing her former husband to pay such “*reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced*

woman, the standard of life enjoyed by her during her marriage and the means of her former husband” Therefore, it is evident that in determining “reasonable and fair provision and maintenance” the court has to consider the needs of the divorced woman and fix an amount which it deems fit and proper. In such a case, the financial needs of the divorced woman has got importance in arriving at the quantum. In order to have a proper determination, the courts have to consider such needs of the divorced woman also. When the petitioner has been clamouring that she has been suffering from renal disease, for which she had to spend huge amounts, it cannot be said that those are not needs of a divorced woman. Therefore, in such case, if she is able to produce evidence to prove that she had spent much amounts for such medical treatments, no doubt she would be entitled to claim that amount from her former husband. It has come out that the counter petitioner is well off.

18. The learned counsel for the petitioner has pointed out that the petitioner had to spend an amount of ₹2,31,000/- towards her medical treatments for renal problems. Medical bills are also produced. The learned counsel for the counter petitioner has challenged the veracity of the said medical bills. In such case, at this stage when this Court is exercising its jurisdiction under Section 482 Cr.P.C. it is not fair and proper for this Court to decide the claim of the amount allegedly spent as treatment expenses. Such a question has to be decided by the trial court. As far as the other amounts are concerned, this Court is of the view that the same need not be interfered with. It is true that in the present social scenario it may not be possible for the petitioner to pull on with a meagre amount of ₹3,000/- per month as maintenance. At the same time, it has to be noted that the counter petitioner has to pay such amount for 10 years as lump sum. It has been pointed out that so far the counter petitioner has paid an amount of ₹

2,05,000/- only, out of the amount of ₹3,60,000/-. It is a hard reality that the said amount which the counter petitioner ought to have paid during the period of *iddat* has not been paid so far. In such a case, normally the courts have to charge interest also on such amount for delayed payment. At the same time, it seems that there is no such claim forwarded by the petitioner so far. Whatever it is, the counter petitioner is directed to pay the balance amount of ₹1,55,000/- within two months from today to the petitioner, failing which, the petitioner would be entitled to recover the said amount with interest at the rate of 12% per annum. Those questions are not open for further deliberation in the case.

19. The matter is remitted to the trial court for deciding whether the petitioner has spent any amounts towards her medical treatments. In case it is found that any amount has been spent by the petitioner for her medical treatment, after verifying the bills produced before this

Court, the trial court shall order payment of the said amount by the respondent, over and above, the amounts earlier granted. The records produced by the petitioner shall be transmitted to the trial court at the earliest. The trial court shall dispose of the matter, as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a copy of this judgment.

In the result, Crl.R.P.No.2377 of 2009 and Crl.M.C.No.2121 of 2009 are dismissed, and Crl.R.P. No.1649 of 2010 and Crl.M.C.No.3913 of 2009 are disposed of with the above directions.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge