

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

Crl.Rev.Pet.No. 235 of 2015 ()

(AGAINST THE ORDER IN CRL.RP.NO. 62/2014 OF SPECIAL ADDL.SESIONS COURT
(MARADU CASES) KOZHIKODE DATED 27-10-2014)

(MC.NO. 244/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, VADAKARA
DATED 27-03-2014)

REVISION PETITIONER/RESPONDENT NO.1 IN CRIMINAL R.P/PETITIONER M.C:

AMINAH BINTI IBRAHIM,D/O. IBRAHIM, AGED 36 YEARS,
RESIDING AT 2786 TAMAN DINGIN, JLN APAS,
BATTU, 191000 - TAWAU, SABAH STATE,EAST MALAYSIA,
REPRESENTED BY POWER OF ATTORNEY HOLDER K.P.FAISAL,
S/O. KUNHAMMED, AGED 46 YEARS, K.P.HOUSE,P.O.KUTTIADY,
KUTTIADY AMSOM & DESOM OF VATAKARA TALUK,
KOZHIKODE DISTRICT, PIN - 673 508.

BY ADVS.SRI.K.M.FIROZ
SRI.ABDULLA MANAPRATH
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENT(S)/PETITIONER IN CRIMINAL R.P/COUNTER PETITONER IN M.C AND
STATE:

1. DR. ISMAYIL C.V.T., AGED 40 YEARS,
S/O. MAHAMOOD HAJI, CHOYICHEENTE VALAPPIL THAZHE,
P.O.PUTHUPPANAM, VATAKARA TALUK, KOZHIKODE DISTRICT,
KERALA - 673 105.

2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031

R2 BY PUBLIC PROSECUTOR SRI.JIBU P. THOMAS

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 30-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

sts

B.KEMAL PASHA, J.

Crl.R.P.No.235 of 2015

Dated this the 30th day of March 2015

ORDER

A divorced Muslim wife had approached the Judicial First Class Magistrate's Court, Vadakara through M.C. No.244 of 2012 for the reliefs available to her, under Section 3 of the Muslim Women (Protection on Divorce) Act 1986. As the complainant/petitioner was working abroad, she could not appear before the court below; instead of her personal appearance, she had chosen to appoint a power holder through the execution of a power of attorney. It seems that the learned Magistrate had accepted the power of attorney and also the evidence adduced by the power of attorney holder and allowed the M.C. in part. The matter was taken up in revision to the Sessions court, Kozhikode, through

Crl.R.P. No.62 of 2014. It seems that instead of remitting the matter for fresh disposal in accordance with law, the learned Additional Sessions Judge has chosen to allow the Crl.R.P. and to set aside the order in the M.C. and to dismiss the petition itself. The petitioner before the Judicial First Class Magistrate's Court, Vatakara in the M.C., has come up in the revision.

2. Heard the learned counsel for the petitioner. There is no appearance for the 1st respondent, even though notice has been served. On going through the order passed by the learned Additional Sessions Judge in Crl.R.P., it seems that the decision taken is totally perverse and it has resulted in substantial miscarriage of justice. The learned Additional Sessions Judge has taken the view that as the petitioner was not examined before the court below in person, the petition itself could be dismissed. In a proper sense, the court below ought to have chosen to set aside the

order passed by the learned Magistrate and remit the matter to the trial court for the fresh disposal in accordance with law. Matters being so, order dated 27.10.2014 passed by the learned Additional Sessions Judge, Kozhikode in Crl.R.P. No.62/2014 is liable to be set aside. It seems that the learned Magistrate has committed an error in relying on the evidence of the power of attorney holder, as one which could substitute the evidence of the petitioner herself. The petitioner ought to have tendered evidence before the learned Magistrate in the M.C. The order passed by the learned Magistrate is also liable to be set aside and the matter has to be remitted to the Judicial First Class Magistrate's Court, Vadakara for fresh disposal in accordance with law.

In the result, this Crl.R.P. is allowed. The order in Crl.R.P. No.62/2014 dated 27.10.2014, passed by the learned Additional Sessions Judge, Kozhikode and the order in M.C. No.244 of 2012

passed by the Judicial First Class Magistrate's Court, Vatakara are set aside and the matter is remitted to the Judicial First Class Magistrate's Court, Vatakara for fresh disposal in accordance with law. The parties shall appear before the Judicial First Class Magistrate's Court, Vatakara on 20.4.2015.

Sd/-
B.KEMAL PASHA,
JUDGE

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PA to Judge