

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 6TH DAY OF JANUARY 2014/16TH POUSHA, 1935

Crl.Rev.Pet.No. 92 of 2014 ()

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AGAINST THE ORDER/JUDGMENT IN MC 66/2013 of J.M.F.C.-II, TRIVANDRUM DATED
06-12-2013**

REVISION PETITIONER/PETITIONER:

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BEENA,
D/O THOMAS, TC 46/570 (3) MANIKKAMVILAKAM
POONTHURA P.O, THIRUVANANTHAPURAM**

**BY ADVS.SRI.R.T.PRADEEP
SRI.P.BIJIMON**

RESPONDENTS/RESPONDENT & STATE:

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1. B. MOHAMMED KHAN @ B.M. KHAN,
S/O BAVA SAHIB, CHAIRMAN AND CHIEF PROMOTER
PALM SHORES HOTELS PVT LTD, LIGHT HOUSE ROAD
VIZHINJAM P.O, THIRUVANANTHAPURAM - 695 121.**

**2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, KOCHI 31**

**R1 BY ADV. SRI.G.SUDHEER
R2 BY PUBLIC PROSECUTOR SRI.N.SURESH**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
06-01-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VPV

K.RAMAKRISHNAN, J

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CrI.R.P.No.92 OF 2014
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Dated this the 6th day of January, 2015

O R D E R

Petitioner in M.C.No.66/2013 on the file of Judicial First Class Magistrate Court-II, Thiruvananthapuram is the revision petitioner herein.

2. The revision petitioner herein filed the petition under section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The case of the revision petitioner in the petition was that she was born and brought up as a Christian and she had married earlier and it was dissolved and in that wedlock, there is a female child. While so, she had connection with the respondent and they decided to marry each other and so she converted to Islam and their marriage was solemnised on 17.02.2011 as per custom. At the time of marriage, respondent had agreed to give 10 sovereigns of gold ornaments as Mahr and Rs.20 lakhs as pocket money. But he had not kept up his promise. At the time of marriage, her parents had given 51 sovereigns of gold ornaments and after marriage, they were living together as husband and wife in different rented houses. She was provided with Rs.8000/- towards rent and Rs.7500/- for the salary of the domestic servant apart from providing

amounts for maintenance. After six months of marriage, he started to harass her and it became miserable to live with him. He had misappropriated all her gold ornaments and sold the same and used for his personal use. He was a drunkard and chain smoker and he compelled her to have unnatural sex. When it was objected by her, he pronounced Talaq on 28.03.2013 and it was received by her 30.03.2013. Even after Talaq, he did not provide proper maintenance. He did not pay various amounts due to her. He is having owns assets worth Rs.200 Crores. He owns a star hotel by name Palm Shore Hotel (Pvt) Limited at Vizhinjam. He is also having Palm Land Restaurant near Medical College, Thiruvananthapuram, two vegetable shops at Anayara, 38 cents of land at Kazhakuttom and 200 acres of garden land at Boothapandi in Tamil Nadu. He is having huge deposits worth more than millions of rupees in 7 Banks. He is getting crores of rupees as licence fee in respect of his Palm Shore Hotel (Pvt) Ltd., Vizhinjam. He had executed a Will in respect of 5.59 Ares of property in lieu of pocket money of Rs.20 lakhs agreed to be paid on 20.02.2011. Thereafter, he had sold the property and misappropriated the amount. She was compelled to sell a car belonging to her for Rs.1,29,000/- and the sale proceeds were utilised by the respondent for his purpose. She had sent a notice demanding

to pay dower of 10 sovereigns of gold ornaments or its value of Rs.2 lakhs agreed to be paid as Mahr and Rs.20 lakhs being the pocket money promised at the time of marriage and Rs.1,50,000/- being maintenance for 3 months during the period of Iddath at the rate of Rs.50,000/- per month and also Rs.1 lakh per mensum for future maintenance and return 51 sovereigns of gold ornaments or its value of Rs.10,20,000/- and Rs.1,29,000/- being the sale proceeds of the car misappropriated by him and Rs.5 Crore being a reasonable and fair provision of maintenance. But he sent a reply with false allegations and he did not pay the amount or return the gold ornaments. So she was compelled to file the petition seeking the above reliefs.

3. Respondent filed counter contended as follows:-

He submitted that he was compelled to marry the petitioner. She was an employee in one of the business institution of the respondent and the petitioner married the respondent solely with an eye of his assets. At the time of marriage, petitioner was actually given 10 sovereigns of gold ornaments by the respondent and in the first month of the marriage itself, the petitioner obtained Rs.86,000/- from the respondent for the repair and maintenance of her house at Ernakulam. She obtained various amounts from him. Though

the petitioner converted herself to Islam, she never practised Islam. The car was sold by the petitioner even before her marriage with the respondent. He had not utilised any money belonging to her. The application was filed even before the Talaq came into effect and so it is not sustainable. She used to lead a wanton life which led to the pronouncement of Talaq. She never observed Iddat. Even after the Talaq letter, he made payments during the period of Iddat. She used to consume liquor. The Will has not come into effect. It was not written in lieu of any amount. No amount was promised as pocket money to the petitioner. The ten sovereigns of gold ornaments was given at the time of marriage as Mahr and that is still in the possession of the petitioner. The concept of pocket money to the bride is unheard in Muslim custom of marriage. She is not entitled to get any amount. So he prayed for dismissal of the application.

4. PWs 1 to 6 were examined and Exts.P1 to P21 were marked on the side of the revision petitioner. Respondent was examined as DW1 and Exts..D1 and D2 were marked on his side.

5. After considering the evidence on record, the court below found that the petitioner is not entitled to get Mahr as without obtaining the Mahr, the marriage could not be

consummated and it is void and so it cannot be believed that the Mahr was not paid before the consummation of the marriage. Further, the court below also rejected the prayer for return of 51 sovereigns of gold ornaments alleged to have been misappropriated and the amount of Rs.20 lakhs as agreed to be given as pocket money at the time of marriage and the value of the car of Rs.1,29,000/- and also did not allow any amount towards maintenance during the period of Iddat as even according to the petitioner, he was paid maintenance @ Rs.22,000/- per month during the period of Iddat. After considering the status of parties, the court below had fixed Rs.4 lakhs as fair and reasonable provision for maintenance and awarded that amount alone and other claims were rejected. Aggrieved by the same, the present revision has been filed by the revision petitioner - petitioner before the court below.

6. Heard both sides.

7. The counsel for the revision petitioner submitted that the evidence of PWs 1, 2 and 4 will go to show that at the time of marriage 10 sovereigns of gold ornaments and Rs.20 lakhs as pocket money were agreed to be given as Dower (Mahr) and that was not paid and it was admitted by the respondent that it was a prompt dower which is payable on demand by the wife. Since there is no evidence to show that it

was paid either at the time of marriage or after dissolution of the marriage, she is entitled to get the same from the respondent. The reasons given by the court below for rejecting the same is not proper. Further, the reasons given by the court below for rejecting the prayer for Rs.20 lakhs as pocket money, value of the gold ornaments of 51 sovereigns and value of the car of Rs.1,29,000/- etc are not sustainable in law. Court below had not appreciated the evidence properly. It was admitted by DW1 that during the period of Iddat, she was given Rs.22,000/- per month which is evidenced by Exts.P5, P6 and P7 and his capacity to pay the amount proved by producing Exts.P8 to P11 and also it was proved by the petitioner that he was having good income and the case of the respondent regarding his income was not accepted by the court below. So, under the circumstances, the amount of Rs.4 lakhs awarded by the court below is unsustainable by law and it is meagre. So, he prayed for allowing the revision.

8. On the other hand, the counsel for the respondent argued that the evidence adduced by the revision petitioner will go to show that she was an employee under the respondent and getting only Rs.6000/- per month as salary and considering her pitiable condition and also thinking that she would be helpful to him during his old age, due to sympathy, he had

married her. Though she converted to Islam for that purpose, she did not profess Islam faith and continued to live as a Christian and she had married him only having eye on his wealth. Further, the amount awarded by the court below is perfectly justifiable considering her age and also considering the fact that it is a second marriage. Further, the amount of Rs.22,000/- given during the period of Iddat was not in fact maintenance payable during the period of Iddat but she wanted some more amount for discharging her liability and taking pity on her, the amount has been paid though he is not liable to pay so much amount. So, considering these aspects, the court below was perfectly justified in rejecting other claims and the amount awarded is just and proper and she is not entitled to get any enhanced amount.

9. It is an admitted fact that the revision petitioner was a Christian prior to the present marriage and it was her second marriage. She had a Christian husband earlier and after the dissolution of that marriage, she was working as an employee in one of the concerns of the respondent on monthly salary of Rs.6000/-. She is also having PW2 daughter in the earlier marriage and she was living with her at that time. It is also in away admitted that for the purpose of marrying the respondent, she was converted to Islam and their marriage was

solemnised as per Muslim custom and their marital life lost only for a short period and as per Ext.P12 Talaq letter, the marriage was dissolved by pronouncing Talaq on 28.03.2013 and it was received by the revision petitioner on 31.03.2013. So it has come into effect from 31.03.2013. Thereafter, she became the divorced wife of the respondent. The revision petitioner had no case that the maintenance was not paid during the period of Iddat. Her case was that Rs.22,000/- was paid per month during the Iddat period as maintenance for which she had relied on Ext.P5 statement of accounts in which it was mentioned that amounts were sent at the rate of Rs.22,000/- during the month of April and May and Exts.P6 and P7 copy of the cheques sent towards maintenance during the period of Iddat in the month of June. But, thereafter no amounts were paid. According to DW1, the respondent herein, the amounts includes some amount paid by him to enable her to discharge her liability and the entire amount was not intended as amount payable during Iddat. So, court below was perfectly justified in coming to the conclusion that she is not entitled to get maintenance during the period of Iddat as reasonable maintenance has been paid during the period of Iddat.

10. As regards the Mahr is concerned, it was an admitted fact that it was a prompt dower and not a deferred

dower. In the case of prompt dower, it is settled law that it will be payable at the time of marriage or on demand or at the time of dissolution of marriage. The observation made by the court below for denying the relief for Mahr is that since the marriage was consummated and they lived as husband and wife, it can only be presumed that the Mahr was paid and it was not due and without payment of dower, the marriage will be void and so it can only be presumed that the dower was paid and it was not due especially it was admitted by the parties that it was prompt dower and not deferred dower which appears to be not sustainable in law.

11. In the decision reported in **Mahadeo Lal Jwala Prasad V. Mt. Bibi Maniran [A.I.R.1933 Patna 281]** the Patna High Court held that a dower the payment of which may be postponed until demanded by the wife would be classed as prompt dower. In the decision reported in **Mt.Maimuna Begam V. Sharafat Ullah Khan [A.I.R.1931 Allahabad 403]**, it has been observed that in a suit for dower, the court should fix the proportion to be treated as prompt dower having regard to the status of the family, the amount of dower and custom, if any prevailing in the plaintiff's family. Further, in the decision reported in **Nasir-ud-din Shah V. Mt.Amatul Mughni Begum [A.I.R.(35) 1948 Lahore 135]**, Full Bench

of the Lahore High Court has held that when it is not stated in the Kabin nama, whether the payment of the dower is to be prompt or deferred, the custom or usage of the wife's family or of the locality is in the first instance to determine what portion of the unspecified dower is to be prompt and what deferred and in the absence of proof of any custom, a presumption may be raised that one half of the amount stipulated was prompt and the other half deferred, but this presumption can be rebutted by either party and the proportion may be increased or reduced in accordance with the circumstances of each individual case. In considering those circumstances, the status of the wife and the amount of the dower must be taken into consideration.

12. Further, in the decision reported in **Nawab Mirza Mohammed Sadiq Ali Khan and Others V. Nawab Fakr Jahan Begam and another [A.I.R.1932 Privy Council 13]**, the Privy Council has held that various amounts paid by the husband to the wife during the subsistence of marriage should not be presumed to have been paid in lieu of dower if it is not proved that the dower agreed was paid at the time of marriage either as a prompt dower or deferred dower. Further, in the decision reported in **Mst.Manihar Bibi V Rakha Singh and Others [A.I.R.1954 MANIPUR 1 (Vol.41, C.N.1)]**, it has been held that there is no authority for the view that the

deferred dower agreed to be paid on death or divorce becomes prompt if demanded by the wife during the continuance of the marriage. In the decision reported in **Bibi Rehana Khatun V. Iqtidar Uddin Hasan [A.I.R.(30) 1943 Allahabad 184]**, the Allahabad High Court has held that prompt dower may be realised by the wife at any time before or after consummation. Proof of connubial intercourse between the parties is not necessary for the payment. Further, in the decision reported in **Smt.Rabia Khatoon V.Mohd.Mukhtar Ahmad [A.I.R.1966 Allahabad 548]**, it has been observed that in a suit filed by the husband for restitution of conjugal rights, wife can take a defence on the ground of non payment of prompt dower but that right will be lost after consummation of marriage. Once, consummation marriage is performed then she can enforce the same by separate action and she is not entitled to deny restitution of conjugal rights on that ground.

13. In the decision reported in **Mt.Pukhraj Begum and others V.Hidayat Ali Shah and others [A.I.R.1938 Peshwar 72]**, it has been observed that a wife can claim prompt dower before consummation marriage. In the decision reported in **Mohammed Taqi Ahmad Khan V. Farmoodi Begum [A.I.R.1941 Allahabad 181]**, it has been held that under the mohamedan law, the essential matters to be

considered in determining the amount of prompt dower are the status of the woman and the amount of dower which was fixed. But the court is entitled to look into other circumstances in the case and if the amount of dower happens to be duly excessive and high, court can take judicial notice of the fact that the amounts of dower are often fixed at a notoriously high figure beyond the means of the husband with a view to act as a check to divorce or with a view to keep up the family custom and for the sake of dignity rather than with any intention of exacting payment.

14. In the decision reported in **Smt.Nasra Begum V. Rijwan Ali, [A.I.R.1980 ALLAHABAD 118]**, it has been observed that no doubt under the Mahomedan Law, Mahr or dower means money or property which the wife is entitled to receive from the husband in consideration of the marriage. However, the expression 'consideration' is not to be understood in the same sense in which it is used in the Contract Act. It is further observed that it is not correct to say that the right to claim prompt dower does not precede cohabitation and comes into existence along with it. The wife is refused to live with her husband and admit him to sexual intercourse so long as the prompt dower is not paid to her.

15. Though PW1 and PW2 had a case that at the time of

marriage 10 sovereigns of gold ornaments and Rs.20 lakhs pocket money has been agreed to be given as Mahr even in the presence of the Kazi, in Ext.P2 marriage register, it was only mentioned that 10 sovereigns of gold ornaments was fixed as dower. The amount of Rs.20 lakhs as pocket money has not been mentioned. It is true that Ext.P3 Will was executed by the respondent in respect of certain extent of property in favour of PW1 but that was later sold by him. The evidence of PWs 1 and 2 cannot be believed for proving the fact that an amount of Rs.20 lakhs was agreed to be paid as pocket money at the time of marriage as PW6 Kazi had stated that no such agreement was entered into between the parties and the wife or the daughter were not present at the time of Nikah. Further Kazi had admitted that no Mahr was paid in his presence. But he had stated that PW1 had submitted that she had agreed for the Mahr mentioned. So, it is clear from this that only 10 sovereigns of gold ornaments was agreed to be given as dower. It was admitted in Ext.P14 reply notice that it was a prompt dower and it was given after the Nikah in the form of Thali which was denied by the revision petitioner. Further since it is prompt dower, it can be payable only on demand or at the time of divorce by the wife. Merely because she had consummated the marriage cannot be said that the prompt dower was paid as

agreed upon as observed by the court below in view of the dictums laid down in the decisions cited and discussed above. Though, the court below was justified in coming to the conclusion that there is no evidence to prove that Rs.20 lakhs was agreed as pocket money as part of dower and rightly rejected that claim, but the court below was not justified in rejecting the claim for prompt dower which was agreed to be given at the time of marriage as mentioned in Ext.P2 namely, 10 sovereigns of gold ornaments. So, the revision petitioner is entitled to get either 10 sovereigns of gold ornaments or its value of Rs.2 lakhs claimed by her in the petition as the value of gold ornaments has to be ascertained as on the date of making the claim. So, she is entitled to get Rs.2 lakhs or 10 sovereigns of gold ornaments as prompt Mahr which was agreed to be given at the time of marriage which the respondent is liable to pay.

16. As regards the value of gold ornaments of 51 sovereigns and also value of car of Rs.1,29,000/- the court below had correctly come to the conclusion that there is no acceptable evidence adduced on the side of the revision petitioner to prove that those ornaments and the amount obtained by selling the car were given to the respondent and it was misappropriated by him and as such rightly rejected the

claims on that aspect and those findings do not call for any interference.

17. As regards the reasonable and fair provision is concerned, in the decisions reported in **Abdul Rahman V. Hairunnesa and Another [2011(2) KHC 516]**, **Seenath V Iqbal and Another [2009 (2) KHC 1009]**, **Danial Latifi V.Union of India [2001 KHC 776]**, **Khyrunneesa V Alavi [2001 KHC 3]** and **Hussain Punathil V. Fathima and another [ILR 2013(1) Kerala.975]**, it has been observed that the amount must be fixed considering the status of the parties, period during which they have lived together, possibility of remarriage, their age and their status etc. In this case, it is an admitted fact that this is the second marriage of the revision petitioner and the respondent was aged more than 60 years at the time of marriage. The revision petitioner was also aged more than 40 years at the time of the marriage. There was a wide age gap between the respondent and the revision petitioner. Further it was also an admitted that the revision petitioner was an employee under the respondent in his concern for a monthly income of Rs.6000/- at the time of this marriage. That shows that the family status of the revision petitioner at the time of marriage. Merely because an amount of Rs.22,000/- was paid during the period of Iddat that can not be treated as

the maintenance amount as claimed by the revision petitioner which is required for her living after divorce. It is true that while they were living together, he had arranged a rented house for Rs.8000/- and a servant maid was provided paying Rs.7500/- but that doesn't mean that that must continue even after her divorce. What is required to be given as fair and reasonable provision is the amount required for her to live a decent life till her remarriage or death and for the purpose of fixing the amount, the status enjoyed during subsistence of marriage also can be taken in to consideration. Further the marriage was subsisted only for a period of two years. So, considering these aspects, this court feels that taking a monthly maintenance of Rs.12,000/- per month and taking 5 as multiplier, she will be entitled to an amount of Rs.7,20,000/- as fair and reasonable provision instead of Rs.4 lakhs fixed by the court below and that can be awarded under that head. So, the revision petitioner is entitled to get Rs.7,20,000/- as fair and reasonable provision. So this court awards that amount under that head and the amount awarded under the head fair and reasonable provision has to be modified to the above extent. So, the rejection of claim for pocket money of Rs.20 lakhs, value of the gold ornaments of 51 sovereigns said to have been misappropriated and the amount of Rs.1,29,000/- being the value of the car said

to have been misappropriated by the respondent are hereby confirmed. The rejection of the claim for Mahr is set aside and the fair and reasonable provision has been enhanced as stated above. The order of the court below is modified as follows:-

1. The respondent is liable to pay 10 sovereigns or Rs.2 lakhs being its value being the prompt dower agreed to be paid which has not been paid to the revision petitioner.

2. The revision petitioner is entitled to get Rs.7,20,000/- as fair and reasonable provisions instead of Rs.4 lakhs fixed by the court below.

3. Regarding all other claims, the order of the lower court is confirmed.

With the above modification of the order passed by the court below, the revision petition is allowed in part and disposed of accordingly. Office is directed to communicate this order to the concerned court immediately.

K.RAMAKRISHNAN, JUDGE