

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

RPFC.No. 274 of 2010

ORDER DATED 25-05-2010 IN MC 30/2008 OF FAMILY COURT, KALPETTA
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REVISION PETITIONER(S)/PETITIONERS:

1. RABIYA, AGED 35 YEARS,
VELIKKATHUPARAMBIL HOUSE, KARIMPOOMMAL,
PANAMARAM, WAYANAD DIST.
2. FOUMIDHA, AGED 12 YEARS,(MINOR),
D/O. VELIKKATHUPRAMBIL SALIM -DO-
3. RASNA @ SEREENA, AGED 10 YEARS,(MINOR),
D/O. VELIKKATHUPRAMBIL SALIM -DO-DO-,
(PETITIONERS 2 AND 3 ARE MINORS,
REP. BY FIRST PETITIONER).

BY ADV. SMT.CELINE JOSEPH

RESPONDENT(S):

1. VELIKKATHUPARAMBIL SALIM, AGED 42 YEARS,
C/O. KONTHIODAN KHADEEJA, PARAKKUNI, PANAMARAM-670 721.
2. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

**R1 BY ADVS. SRI.B.S.SWATHY KUMAR
SMT.P.A.ANITHA
SMT.S.MEERA**

**THIS REV.PETITION (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
21-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

B. KEMAL PASHA, J.

.....
R.P.(FC) No.274 of 2015
.....

Dated this the 21st day of July, 2015

ORDER

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It is an unfortunate situation wherein a poor woman, who is the 1st petitioner herein, was given in marriage to the 1st respondent herein at the auspicious of a so-called Mahallu Committee of which RW1 was the Secretary. A piece of property in which the residential building, wherein the petitioners are residing, was allotted to her by her parents in the joint names of the 1st petitioner and the 1st respondent. Two children were born in the wedlock and presently, the children are aged 15 and 13 respectively.

2. The petitioners were thrown out and the 1st respondent went in search of other women. It seems that he has married another poor Muslim woman with whom he is presently residing. A child has been born in that relationship also.

3. It seems that RW1, who is the so-called Secretary of the Mahallu Committee, is also hand in gloves with the 1st respondent. The evidence clearly reveals that Ext.X1 document was cooked up by the 1st respondent with the active assistance and connivance of RW1. Ext.X1 was produced before the court below by RW1.

4. When the 1st respondent has abandoned the petitioners, they have approached the court below seeking maintenance. The court below has taken the view that the 1st petitioner is a divorced Muslim woman and, therefore, she is not entitled to separate maintenance. Unfortunately, the court below has approved Ext.X1 without going into the evidence properly. The court below has thrown out the claims of the 1st petitioner mercilessly and has ordered an amount of ₹300/- per month as maintenance to the two children, who are petitioners 2 and 3. It seems that the court below has not applied mind to the stark reality that two children, who were then aged 10 and 8 respectively, could

not pull on with an amount of ₹300/- per month. After refusing the claim of the 1st petitioner, the court below has ordered maintenance to be paid by the 1st respondent at the rate of ₹300/- per month.

5. It is based on Ext.X1 that the court below has treated the 1st petitioner as a divorced Muslim woman. In fact, it is evident from Ext.X1 as well as the evidence of RW1 that Ext.X1 is a concocted document which could have never created any divorce between the parties. At the same time, it is a fact that the 1st respondent has contended in the written statement that he has divorced the 1st petitioner by pronouncing Thalaq. When he has resorted to a specific contention to that effect, even by discarding Ext.X1, that can be treated as divorce. In such case, the 1st petitioner is entitled to get maintenance for the period of Idath, reasonable and fair provision and maintenance, an amount equal to 'mahar', etc.

6. From the evidence of RW1, it is evident that the

affidavit filed by RW1 before the court below in lieu of chief examination was prepared by the learned counsel appearing for the 1st respondent before the court below. Even though RW1 had approached the court below by styling himself as an independent witness for producing Ext.X1, his evidence in lieu of chief examination was prepared and attested by the learned counsel appearing for the 1st respondent. That itself speaks volumes against RW1. The further versions of RW1 in cross examination also clearly reveal that Ext.X1 is a concocted document. At first, he had made a version that Ext.X1 agreement was prepared in his presence. Later, he deviated from that version and stated that it was prepared and then only brought to him by one Poker.

7. In Ext.X1, different ink is used in the stamp paper and the other papers. As condition No.2 in Ext.X1, it is stated that the 1st petitioner does not want anything by way of money or gold ornaments from the 1st respondent. At the

same time, in page No.7, it is stated that an amount of ₹6,000/- by way of maintenance during the period of Idath and an amount of ₹15,000/- by way of reasonable and fair provision and maintenance thereby totalling an amount of ₹21,000/- was paid by the 1st respondent directly to the 1st petitioner. It has been stated that it was the so-called Mahallu Committee which had decided the said amounts to be paid by the 1st respondent. From the evidence, it is apparent that no such amount was paid to the 1st petitioner whereas, such false terms have been incorporated in Ext.X1 and produced before the court below by RW1. When the 1st petitioner is presently accepting her status as a divorced Muslim woman, she is entitled to forward all claims available to her under Section 3 of the Muslim Women's (Protection of Rights and Divorce) Act, 1986. It has to be treated that either the amount towards maintenance during the period of Idath or any amount towards reasonable and fair provision and maintenance or any amount equal to 'mahar' was not

paid by the 1st respondent to the 1st petitioner and no such amounts have been received by the 1st petitioner from the 1st respondent. It is found that the 1st petitioner is entitled to forward all her claims under Section 3 of the said Act before the appropriate forum as against the 1st respondent.

8. Regarding maintenance to be paid to petitioners 2 and 3, it seems that the 1st respondent is able bodied. Presently, he is maintaining another wife and child and in nearest future, he may again change his attitude and in all probability he may search other similar fertile avenues. The amount ordered as maintenance to petitioners 2 and 3 is totally inadequate. The 1st respondent shall pay an amount of ₹2,000/- each per month to petitioners 2 and 3 from the date of petition onwards. RW1 has admitted that after the execution of Ext.X1, the 1st respondent had paid maintenance to the minors for one month and thereafter, he had stopped the payment. The 1st respondent shall pay maintenance to petitioners 2 and 3 at the above rate without

fail.

In the result, this R.P.(FC) is allowed in part and the 1st respondent is ordered to pay maintenance to petitioners 2 and 3 an amount of ₹2,000/- each per month from the date of petition onwards. Needless to say, the 1st petitioner is entitled to forward all claims available to her under Section 3 of the Muslim Women's (Protection of Rights and Divorce) Act, 1986.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/21/07

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PA to Judge