

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

RPFC.No. 54 of 2015 ()

AGAINST THE JUDGMENT AND DECREE IN MC 3/2011 of FAMILY COURT,
THALASSERY DATED 24-01-2012

REVISION PETITIONER/RESPONDENT:

THUNDIYIL NAZEER, AGED 33 YEARS
S/O.K.K KADAR, EMPLOYED IN GULF, RESIDING AT PARIMALAM
P.O CHAMPAD THALASSERY TALUK, KANNUR DISTRICT.

BY ADV. SRI.K.P.HAREENDRAN

RESPONDENT/PETITIONER:

PARAMBATH VYSIAMBATH MAJINA, AGED 28 YEARS
D/O.MAHAMOOD, NO OCCUPATION RESIDING AT
MAJIGAR GRAMATHI, CHOKLI, THALASSERY TALUK,
KANNUR DISTRICT - 686 576.

R1 BY ADV. SRI.R.SURENDRAN

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 10-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

R.P.(F.C)No.54 of 2015

Dated 10th March, 2015

ORDER

This revision petition is filed against the order dated 24.1.2012 in M.C.No.3 of 2011 of Family Court, Thalassery. The respondent herein moved M.C.No.3 of 2011 under Section 125 of the Code of Criminal Procedure seeking maintenance from the revision petitioner herein. That maintenance case was tried along with O.P.No.3 of 2011. The respondent herein got herself examined as PW1 and got marked Exts.A1 to A5 to substantiate her claim for maintenance. On the side of the revision petitioner he was examined as RW1 and M/s.Ashraf and A.P.Abdul Kader were respectively examined as RW2 and RW3 and Exts.B1 and B2 were also got marked. On evaluation of the evidence on record the Family Court found that the revision petitioner is liable to maintain the respondent herein and based on such finding the Family Court proceeded to fix the quantum of maintenance. Taking into account the various aspects the Family Court fixed ₹ 2,000/- as the monthly maintenance. This revision petition is filed against the said judgment in M.C.No.3 of 2011 passed by the Family Court.

2. I have heard the learned counsel for the revision petitioner and also the learned counsel appearing for the respondent.

3. Essentially, the revision petitioner resisted the claim of the respondent for maintenance contending that the respondent has already moved a petition for compensation under Section 3 of Muslim Women (Protection of Rights on Divorce) Act 1986 (for short 'the Act 1986') and hence, she is not entitled to move for maintenance under Section 125 Cr.P.C. In fact, it is to substantiate the said contention that Ext.B1 was produced before the Family Court. The revision petitioner has also taken up a contention that the respondent has married again and in fact, she got married one Siraj who is the brother of RW2. The Family Court considered the maintainability of the claim under Section 125 Cr.P.C. in the light of the decision of this Court in **Kunhimuhammad v. Ayishakkutty (2010 (2) KLT 71)** and also taking into account the objection raised by the revision petitioner herein. In the said decision a Division Bench of this Court held that divorced Muslim wife's right to claim maintenance under Section 125 Cr.P.C. is not extinguished by enactment of Muslim Women (Protection of Rights on Divorce) Act. It

was further held that stipulations in those enactments can harmoniously co-exist with the provision for maintenance under Section 125, Cr.P.C. Virtually, it was held that when a petition under Section 3 of the Act 1986 was already discharged then a petition claiming maintenance under Section 125 Cr.P.C. would not lie. A scanning of the evidence in this case and also the position of law as mentioned above would reveal that though Ext.B1 petition was moved under Section 3 of the Act 1986 no order was passed by the Court of Judicial First Class Magistrate, Thalassery thereon prior to the passing of the order by the Family Court under Section 125 Cr.P.C. The question is whether the amount payable under Section 3 of the Act 1986 was paid by the revision petitioner prior to the passing of the order under Section 125 Cr.P.C. ? There is no case for the revision petitioner that at the time of passing of order under Section 125 Cr.P.C. by the Family Court an order under Section 3 of the Act 1986 was passed by the Court of Judicial First Class Magistrate, Thalassery and that the amount to be paid thereunder was already paid. In such circumstances, the Family Court relying on the decision in **Kunhimuhammad's** case (supra) held that the liability under Section 125 Cr.P.C. could be extinguished only when the amount payable under the Personal Law was paid. Since that is not the situation in this case

borne out from the evidence on record the petition moved by the respondent under Section 125 Cr.P.C. was held as maintainable. Since the revision petitioner failed to adduce any evidence to show that the respondent is able to maintain herself or has incurred any disqualification to claim maintenance by virtue of the provisions under Section 125(4), Cr.P.C. the revision petitioner was held liable to maintain the respondent. The revision petitioner has failed to establish the fact that the respondent had married again. True that the revision petitioner attempted to establish the said fact. The Family Court found that going by the contention of the revision petitioner herein/respondent therein the marriage of the respondent herein with one Siraj was taken place on 23.11.2010. Ext.A5 is the certified copy of the marriage certificate issued from Anvarul Islam Palli Madrassa Committee, Pandhakal Para produced by the respondent in M.C.No.139 of 2009 before the Court of Judicial First Class Magistrate, Thalassery. The Family Court found that even going by the contentions there is no consistent version by the revision petitioner with respect to the date of marriage of the respondent. Coupled with the said fact the Family Court found that Ext.A5 was allegedly issued by one Usman and he was not examined. So also it was found that the revision petitioner had not got examined the

Secretary of Anvarul Islam Palli Madrassa, Panthakkal Para. The oral testimony of RW3 was also taken into account for the purpose of disbelieving the version of the revision petitioner. The Family Court considered the evidence of RWs 1 and 2. They deposed that the marriage of PW1 with Siraj was conducted on 23.11.2010. Virtually, Ext.A5 was produced by the respondent before the Family Court to show that the case of the revision petitioner before the Court of Judicial First Class Magistrate, Thalassery was that the marriage of the respondent with Siraj was conducted on 18.1.2011. It was in the said circumstances that the Family Court observed that even with respect to the date of alleged marriage of PW1 with Siraj the revision petitioner got no consistent case. The Family Court took note of the failure on the part of the revision petitioner in taking steps to summon Usman as also Secretary of Madrassa. Having considered the evidence adduced to establish the fact that the marriage of PW1 with Siraj was conducted the Family Court found that they are not sufficient to establish the factum of the remarriage of the respondent herein. The learned counsel appearing for the revision petitioner contended that the subsequent developments would reveal that such a re-marriage was in fact, conducted. I am not persuaded to accept the said contention as no such documents were

produced before this Court and in fact, there is absolute absence of any evidence to show that any such documents were produced before the Family Court. Therefore, the question is whether with the evidence on record, the Family Court was justified in arriving at the conclusion that the respondent therein had failed to establish the factum of marriage of PW1 with Siraj. I am of the view that the Family Court cannot be said to be faulted in arriving at such a conclusion with the evidence on record. In other words, the Family Court has taken only a plausible view with the weight of evidence on record. As noticed hereinbefore, the revision petitioner has also failed to adduce any evidence to establish that the respondent is able to maintain herself or that she has incurred any disqualification in terms of the provisions under Section 125(4) Cr.P.C. In such circumstances, I do not find any reason to hold that the Family court went wrong in holding that the revision petitioner is liable to maintain the respondent.

4. Now, what survives for consideration is whether the fixation of monthly maintenance by the Family Court invites any interference in exercise of the revisional jurisdiction. Taking into account the cost of living by no stretch of the imagination it can be said that the

amount thus fixed by the Family Court is exorbitant warranting interference in exercise of the revisional jurisdiction. The amount fixed is only ₹ 2000/-. In the said circumstances, I do not find any reason to interfere with the amount fixed by the Family Court as monthly maintenance payable to the respondent by the revision petitioner. At the same time, it is evident that the Family Court has passed an order in O.P.No.3 of 2011 holding that the respondent is liable to pay past maintenance from 18.6.2006 to 18.6.2009 and in the order passed in the M.C. the revision petitioner was directed to pay ₹ 2000/- per month to the respondent as maintenance from the date of filing of the M.C. The judgment itself would reveal that the M.C. was filed on 24.1.2009. Thus, it is obvious that there is an overlapping of the period. As noticed hereinbefore, the revision petitioner herein was directed to pay past maintenance from 18.6.2006 to 18.6.2009 and at the same, as per the order in the M.C. he was directed to pay maintenance from the date of filing of the M.C. that is, from 24.1.2009. Thus, the period of overlapping is from 24.1.2009 to 18.6.2009. In the said circumstances, even while confirming the order passed by the Family Court in the M.C. holding the revision petitioner liable to pay maintenance to the respondent at the rate of ₹ 2000/- it requires modification. Taking into

account the said aspect and while retaining the order in M.C. holding the revision petitioner liable to pay maintenance at the rate of ₹ 2000/- he is directed to pay maintenance at that rate only from 19.6.2009.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS