



2025:KER:26113

Crl.M.C.No.3474/2019

-1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

FRIDAY, THE 28TH DAY OF MARCH 2025 / 7TH CHAITHRA, 1947

CRL.MC NO. 3474 OF 2019

AGAINST THE ORDER IN CRRP NO.17 OF 2014 OF ADDITIONAL
DISTRICT COURT & SESSIONS COURT - III, THALASSERY

PETITIONER/PETITIONER/RESPONDENT:

ASHIK HUSSAIN M.K. ,
AGED 45 YEARS,
S/O.C.P.HUSSAIN, NIDHAL,KURUVA ROAD,
THAYYIL P.O. , KANNUR DISTRICT-670 003.

BY ADV C.LEENA

RESPONDENT/RESPONDENT/PETITIONER

K.SAHIDA,
AGED 39 YEARS,
D/O.ABDULKHADER, HOUSEWIFE,
SAJIDA MANZIL, P.O.MUNDAYAD,
KANNUR DISTRICT-670 594.

BY ADVS. SRI.K.ASHIS
SHRI.AKHILESH A.K.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
26.03.2025, THE COURT ON 28.03.2025 PASSED THE FOLLOWING:

**ORDER**

The respondent in M.C.No.90/2012 on the files of the Judicial First Class Magistrate Court-II, Kannur, having been aggrieved by the concurrent findings of the learned Magistrate in the aforesaid M.C and the Additional Sessions Court, Thalassery in Crl.R.P.No.17/2014, as per the relevant provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986, directing the payment of an amount of Rs.6,00,000/- towards reasonable and fair provision for maintenance to the petitioner in the said M.C, has filed this petition under Section 482 of the Code of Criminal Procedure, 1973, with a prayer to set aside the orders of the courts below.

2. Though notice was duly issued to the first respondent, it is returned with the endorsement 'unclaimed'. The service of notice on the first respondent was declared as complete as per the order passed by this court in Crl.M.A.No.1/2025.

3. Heard the learned counsel for the petitioner.

4. The learned counsel for the petitioner would assail the orders passed by the courts below stating the reason that the findings thereunder are based on a wrong concept that the respondent is



entitled for an amount equivalent to the maintenance @ Rs.5,000/- per month for a period of ten years. It is argued that the relevant parameters to be dealt with while fixing the reasonable and fair provision for maintenance, were not considered by the courts below.

5. The orders passed by the courts below contain clear indication that two children born in the wedlock between the petitioner and the respondent are being taken care of by the petitioner himself. The Trial Court has observed in the impugned order that the scope of second marriage for the respondent (petitioner in the M.C) cannot be ruled out since she is fairly good looking and aged only 32 years. It is pointed out by the learned counsel for the petitioner that the respondent had already remarried and leading marital life with her present husband, free from the burden of looking after the children born in her wedlock with the petitioner herein. According to the learned counsel for the petitioner, the respondent had not denied the remarriage, though the revisional court refused to call for the records relating to the aforesaid remarriage as requested by the petitioner. Thus, it is pointed out that the amount of Rs.6,00,000/- fixed as



reasonable and fair provision for maintenance by the courts below is exorbitant.

6. The remarriage of the claimant is not having much significance in fixing the quantum of amount to which she is entitled as reasonable and fair provision for maintenance. The duration of marital life with the former husband, emotional trauma suffered by the petitioner as a result of the rupture of marriage, quality of life which the petitioner had been enjoying, the necessity to have adequate financial support for the petitioner to lead a decent life etc., are some of the criteria to be looked into while deciding the quantum of amount to be awarded as reasonable and fair provision for maintenance.

7. As far as the present case is concerned, the courts below have not paid serious attention on the fact that, unlike many other issues of identical nature, the petitioner has been taking care of the children born in his wedlock with the respondent. The additional financial burden which the petitioner has to incur in connection with the bringing up of the children, providing them quality education and arranging marriage at the appropriate time, has not been considered by the courts below, while fixing the amount which he is liable to pay



as reasonable and fair provision for maintenance to the respondent. In that view of the matter, the verdicts rendered by the courts below are liable to be interfered in this proceedings to meet the ends of justice. Having regard to the facts and circumstances of the case, and the relevant parameters to be looked into for fixing the quantum of the amount as reasonable and fair provision for maintenance, and also the extra financial burden which the petitioner has to incur for the care and protection of the children, I am of the view that the amount due to the respondent under the above head has to be fixed by reckoning the monthly maintenance at the rate of Rs.5,000/- for a period of seven years. Thus, the amount due to the respondent when quantified by applying the above criteria would come to Rs.4,20,000/-. The orders passed by the Trial Court and Appellate Court are, thus, liable to be modified in the above regard.

In the result, the petition stands allowed in part as follows:

- (i) The amount to which the respondent is entitled as reasonable and fair provision for maintenance is fixed as Rs.4,20,000/- (Rupees four lakh twenty thousand only).



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(ii)The petitioner shall deposit the aforesaid amount due to the respondent, before the Trial Court within a period of 30 days from today.

(iii)It is made clear that if the petitioner had already paid or deposited any amount under the above head, he needs to deposit only the balance amount in accordance with the aforesaid direction.

(sd/-)

G. GIRISH, JUDGE

jsr/DST



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APPENDIX

PETITIONER ANNEXURES

ANNEXURE A	PHOTOCOPY OF THE ORDER DATED 07.05.2014 IN M.C.NO.90/2012 OF JUDICIAL FIRST CLASS MAGISTRATE NO.II, KANNUR.
ANNEXURE B	CERTIFIED COPY OF ORDER DATED 09.08.2018 OF ADDL.DISTRICT JUDGE III THALASSERY IN CRIMINAL REVISION PETITION NO.17/2014.