

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 18TH DAY OF NOVEMBER 2022 / 27TH KARTHIKA, 1944

CRL.MC NO. 347 OF 2019

AGAINST THE ORDER IN CRL.RP 17/2017 OF I ADDITIONAL SESSIONS
COURT, ERNAKULAM

PETITIONER/RESPONDENT IN CRLRP:

SUHADATH.K.K
AGED 33 YEARS
D/O.K.M.KUNJUMHAMMED, KACHANKUZHY HOUSE,
MALAYIDAMTHURUTH.P.O, ERNAKULAM-683561.

BY ADV A.RAJASIMHAN

RESPONDENTS/REVISION PETITIONER AND ANOTHER:

- 1 SHIHAB.K.B
AGED 38 YEARS
S/O.K.P.BEERAN, KOLLAMPARAMBIL HOUSE,
PALLILANKARA, H.M.T.COLONY.P.O,
KALAMASSERY, ERNAKULAM-683104.
- 2 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.

BY ADV SRI.T.M.ABDUL LATHEEF
SRI.SANGEETHA RAJ, PUBLIC PROSECUTOR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 16.11.2022, THE COURT ON 18.11.2022 PASSED THE FOLLOWING:

O R D E R

Dated this the 18th day of November, 2022

This Crl.M.C. has been filed challenging the order passed by the 1st Additional Sessions Court, Ernakulam (for short, 'the court below') in Crl R.P. No. 17/2017 dated 17th November, 2018.

2. The petitioner herein was the legally wedded wife of the 1st respondent. The parties are Muslims. Their marriage was solemnized on 15/6/2008. A male child was born out of the wedlock. Admittedly, the 1st respondent divorced the petitioner by pronouncing *talaq* on 15/12/2013. The petitioner filed a petition at the court below u/s 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short, the Act of 1986) as MC No.17/2015 claiming ₹1 crore towards reasonable and fair provision for the future, ₹1,50,000/- towards maintenance for *iddat* period, for return of 70 grams of gold given as mahr, and for return of ₹1,41,680/- as the value of 56 grams of gold allegedly given to her by her parents and took away by the 1st respondent. Admittedly the 1st respondent was employed at Doha, Qatar. The

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petitioner along with the child were also staying with him. The petitioner alleged in the petition that the respondent was drawing a monthly salary of ₹2,00,000/-. However, the said case set up by the petitioner was disputed by the 1st respondent contending that he was drawing only a salary of ₹60,000/-.

3. The parties went on trial. The petitioner was examined as PW1 and Exts.P1 to P6 were marked. The father of the 1st respondent was examined as DW1. He was also the power of attorney holder of the 1st respondent. Exts.D1 to D7 were marked on the side of the respondents. After a detailed analysis of the evidence adduced, the learned Magistrate found that the petitioner has succeeded in proving that the 1st respondent was drawing a monthly income of ₹2,00,000/-. The learned Magistrate further found that the petitioner and her son require at least ₹33,000/- per month for their livelihood. Reckoning the said amount for a period of 8 years, the learned Magistrate granted an amount of ₹31,68,000/- as fair and reasonable provision and maintenance u/s 3 of the Act of 1986. The 1st respondent challenged the said order before the Sessions Court, Ernakulam in

CrI.R.P.No.17/2017. The learned Additional Sessions Judge set aside the order passed by the learned Magistrate and remanded the case to the learned Magistrate for fresh consideration. Before the Sessions Court, the 1st respondent herein produced a salary certificate allegedly issued by his employer. The remand was essentially to give an opportunity to the 1st respondent to prove the said salary certificate and thus to prove his actual income. The order of remand passed by the Sessions Court is under challenge in this CrI.M.C.

4. I have heard Sri.Rajasimhan, the learned counsel for the petitioner, Sri.T.M.Abdul Latheef, the learned counsel for the 1st respondent and Sri.Sangeetha Raj, the learned Public Prosecutor.

5. It is trite that the court while fixing the reasonable and fair provision of maintenance to be paid to a divorced woman shall keep in view the status of parties, capacity of the former husband to pay maintenance and also other attendant circumstances. The amount so fixed must be enough to take care of the future needs of a woman in the prevailing socio-economic

scenario. (See ***Seenath v. Iqbal & another*** [2009 (2) KHC 1009] and ***Aboobacker C.K. v. Rahiyanath & another*** [2008 (3) KHC 492]). It has come out in evidence that the petitioner is a well qualified lady. She possesses M.Sc Degree in Chemistry, M.Tech in Industrial Catalysis and B.Ed in Physical Science. She was enrolled as a junior research fellow at CUSAT and also selected for a project work at Baba Atomic Research Centre, Mumbai during 2008-2009. It has further come out in evidence that her father is a reputed B class contractor of Public Works Department and brother and sisters are well settled. The 1st respondent was working as a lab technician in Red Crescent Workers' Health Centre, Sanayya, Doha. His father is a construction contractor and a political leader. It has come out in evidence that both the petitioner and the 1st respondent are hailing from very financially well settled families and their standard of living was very high. It has also come out in evidence that the petitioner along with her child had stayed at Doha along with the 1st respondent. The petitioner specifically alleged in the petition that the 1st respondent was working as the lab technician at Red Crescent Workers'

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Health Centre, Doha and drawing a salary of ₹2,00,000/-. She gave oral evidence also to that effect. She specifically deposed that in May, 2012, the 1st respondent had shown the salary certificate to her which he had brought home to apply for family status visa. In cross-examination, she specifically stated that the salary certificate contained the signature of the authorized person of the Red Crescent Workers' Health Centre. The learned Magistrate relied on the said evidence of PW1. It must be noted that as against the positive evidence of the petitioner, no rebuttal evidence was given by the 1st respondent. The 1st respondent even did not enter into the box. Instead, his father and power of attorney holder who had no direct knowledge about his job and income gave evidence. No salary certificate was produced. Thus, based on the materials on record, the learned Magistrate concluded that the case of the petitioner that the 1st respondent was drawing a salary of ₹2,00,000/- was only to be accepted and the said amount was reckoned for quantifying the amount towards fair and reasonable compensation u/s 3 of the Act of 1986. The learned Magistrate also found that the

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petitioner and her child require at least ₹33,000/- per month for their livelihood. The said amount was arrived at taking into account the day to day expenditure required for the petitioner and the child for food, clothing, shelter etc. The said amount was arrived by the learned Magistrate on a rational basis. The petitioner is very young. The court below while quantifying the reasonable and fair provision for future maintenance has taken 8 years as the multiplier. It appears to be absolutely reasonable. This Court in **Ahammed v. Aysha** [1990 KHC 41] applied the principle of 5 years purchase value for fixing the quantum payable under the head “reasonable and fair provision of maintenance”. However, thereafter, in **Kunhi Mohammed v. A.P.Sajitha & Another** [2013 KHC 786], this Court held that 5 years multiplier was fixed in **Ahammed's case** (supra) as early as in 1990 and it was high time to increase the multiplier by the passage of time. Accordingly, ten years purchase value was adopted. The said finding was arrived at observing that fall of money value has to be taken into consideration while fixing the reasonable and fair provision of maintenance. The learned

Magistrate has taken only eight years multiplier in this case.

6. The learned Magistrate has given a well reasoned order and fixed ₹31,68,000/- as fair and reasonable compensation. However, the Additional Sessions Court in revision, without any reasoning, found that ₹33,000/- was arrived at by the learned Magistrate without any logical basis and that the monthly income of the 1st respondent was fixed without any cogent evidence. The learned Additional Sessions Judge was persuaded by a salary certificate produced by the 1st respondent in the Sessions Court which would show that the salary of the 1st respondent is only 6,150 Qatar Riyals (₹70,000/-).

7. It is settled that the revisional jurisdiction u/s 397 of Cr.P.C was to confer power upon superior criminal courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment. It has been consistently held by the Apex Court that the jurisdiction of the High Court in revision is severely restricted and it cannot embark upon re-appreciation of evidence. In **Shlok**

Bhardwaj v. Runika Bhardwaj and Others [(2015) 2 SCC 721], the Apex Court held that the scope of revisional jurisdiction of the High Court does not extend to re-appreciation of evidence.

8. As stated already, positive evidence was given by the petitioner to prove the income of the 1st respondent. No contra evidence was adduced by the 1st respondent. He did not even enter into the box. He did not produce any salary certificate in spite of sufficient opportunity. At a belated stage, he produced a salary certificate before the Sessions Court and sought a remand. The Sessions Court found that there is no logical basis for fixing ₹33,000/- as the monthly expenditure of the petitioner and also fixing ₹2,00,000/- as the income of the 1st respondent. The learned Magistrate after analysing the evidence on record in its correct perspective came to the conclusion that the petitioner and her child require ₹33,000/- for their livelihood and 1st respondent earns ₹2,00,000/- per month. The learned Additional Sessions Judge while exercising the power u/s 397 of Cr.P.C ought not have upset the said finding of fact. I am of the view that the learned Additional Sessions Judge exceeded its jurisdiction in re-

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appreciating the evidence on record. Hence, the impugned order of the Additional Sessions Court is vitiated by illegality. It is, accordingly, set aside. The order of the learned Magistrate is restored.

Cr1.M.C stands allowed as above.

Sd/-

DR. KAUSER EDAPPAGATH
JUDGE

Rp

APPENDIX OF CRL.MC 347/2019

PETITIONER ANNEXURES

- ANNEXURE A1 CERTIFIED COPY OF THE ORDER OF THE 1ST
ADDL.SESIONS JUDGE,ERNAKULAM IN CRLRP
NO.17/2017 DATED 17-11-2018
- ANNEXURE A2 CERTIFIED COPY OF THE ORDER OF THE 1ST
ADDL.SESIONS JUDGE,ERNAKULAM IN CRLRP
NO.17/2017 DATED 17-11-2018.
- ANNEXURE A3 TRUE COPY OF THE MC NO.17/2015 FILED BY
THE PETITIONER BEFORE JFCM,KALAMASSERY.
- ANNEXURE A4 TRUE COPY OF THE OBJECTION FILED BY THE
1ST RESPONDENT IN MC NO.17/2015 IN
JFCM,KALAMASSERY.
- ANNEXURE A5 TRUE COPY OF THE CRLRP NO.17/2017 FILED
BY THE 1ST RESPONDENT BEFORE THE
SESSIONS COURT,ERNAKULAM
- ANNEXURE A6 TRUE COPY OF THE LETTER DATED 5-9-2012

RESPONDENT'S EXHIBITS

- ANNEXURE R-1 (A) TRUE COPY OF THE ORDER DATED 23.6.2017
PASSED BY THIS HONOURABLE COURT IN RPFC
NO.468/2016
- ANNEXURE R-1 (B) TRUE COPY OF THE ORDER DATED 5.2.2027
PASSED BY THE JUDICIAL I CLASS
MAGISTRATE COURT-II, ALUVA IN CMP
2968/13 IN MC 65/2013.

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- ANNEXURE R-1 (C) TRUE COPY OF THE MARRIAGE CERTIFICATE OF THE PETITIONER'S 2ND MARRIAGE WITH REGISTRATION NO.150/2017 DATED 20/10/2017
- ANNEXURE R-1 (D) TRUE COPY OF THE PROCEEDINGS IN CP 1131/17 OF THE JUDICIAL 1 CLASS MAGISTRATE COURT, KALAMASSERY.
- ANNEXURE R-1 (E) TRUE COPY OF THE ORDER DATED 31.8.2016 PASSED BY THE FAMILY COURT, ERNAKULAM IN OP NO.1662/20213 AND MC NO.102/20214
- ANNEXURE R-1 (F) TRUE COPY OF THE ORDER DATED 23.6.2017 PASSED BY THIS HONOURABLE COURT RPFC NO.468/2016