



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 3RD DAY OF DECEMBER 2025 / 12TH AGRAHAYANA,

1947

RPFC NO. 92 OF 2018

AGAINST THE ORDER/JUDGMENT DATED 27.07.2012 IN MC

NO.351 OF 2010 OF FAMILY COURT, PALAKKAD

REVISION PETITIONERS/PETITIONERS:

- 1 SHEREefa MUNVARA,
D/O ASHRAF, MUSLIYAR, VADEKKETHIL VEEDU, THOTTARA,
KARIMPUZHA P.O., PALAKKAD.

- 2 FATHIMA FIDA
AGED 3 YEARS, (MINOR),
REPRESENTED BY THE 1ST PETITIONER (MOTHER),
VADEKKETHIL VEEDU, THOTTARA, KARIMPUZHA P.O.,
PALAKKAD.

BY ADVS.
SHRI.G.SREEKUMAR (CHELUR)
SRI.K.RAVI (PARIYARATH)

RESPONDENT/RESPONDENT:

MUHAMMED KABEER
AGED 25 YEARS
S/O KOYAMMU,
CHAKKALAKUNNAN HOUSE, VADASSERIPPURAM, KODAKKAD,
BHEEMANAD (P.O), MANNARKKAD.

BY ADV SHRI.C.M.KAMMAPPu

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 03.12.2025, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

**“C.R.”****ORDER**

The order of the Family Court declining the prayer for maintenance by a divorced Muslim woman under Section 125 of Cr.P.C on the ground that the husband has discharged his obligation under personal law is the main challenge in this revision petition.

2. The 1st petitioner was the wife of the respondent. Their marriage was solemnised on 31.01.2010 as per the Muslim customary rites. The 2nd petitioner is the daughter born in the said wedlock. The respondent divorced the 1st petitioner on 03.07.2010 by pronouncing *talaq*. The 1st petitioner, represented by her father, and the respondent entered Ext.D1 agreement on the same day, stipulating the post-divorce rights. In the said agreement, it was recited that 1st petitioner received a sum of Rs.1,00,000/- towards *matah* and Rs.25,000/- towards maintenance during the *iddat*



period from the respondent. It was also recited that the 1st petitioner shall not claim any future maintenance from the respondent.

3. After the execution of Ext. D1 agreement, the petitioners filed M.C.No.351/2010 before the Family Court, Palakkad, invoking Section 125 of Cr.P.C against the respondent, claiming maintenance at the rate of Rs.6,000/- and Rs.3,500/- respectively. The respondent resisted the claim of the 1st petitioner for maintenance mainly on the ground that she, being a divorced Muslim woman, is not entitled to invoke Section 125 of Cr.P.C., especially when he discharged his obligation under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short, the Muslim Women Protection Act, 1986), as evident from the terms of Ext.D1 agreement. The Family Court accepted the said contention and disallowed the claim of the 1st petitioner for maintenance. However, the Family Court granted



maintenance at the rate of Rs.750/-per month to the 2nd petitioner. This revision petition has been filed by the petitioners, aggrieved by the rejection of the claim of the 1st petitioner for maintenance and the quantum of maintenance awarded to the 2nd petitioner.

4. I have heard Sri. Ravi K.(Pariyarth), the learned counsel for the petitioners and Sri.C.M.Kammappu, the learned counsel for the respondent.

5. The learned counsel for the petitioners submitted that Ext.D1 agreement was *void ab initio* since the 1st petitioner was a minor at the time of its execution. The learned counsel further submitted that one of the terms of Ext.D1 agreement that the 1st petitioner shall not claim maintenance in future is against public policy and thus unenforceable. The learned counsel also submitted that even in a case where the husband has fulfilled his obligation under



personal law, an application under Section 125 of Cr.P.C. would be maintainable if it is proved that the amount paid under the personal law is inadequate for the future maintenance of the wife. So far as the maintenance amount granted to the 2nd petitioner, it is submitted that it is too meagre.

6. On the other hand, the learned counsel for the respondent supported the findings in the impugned order. It is submitted that the respondent had discharged his entire obligation under Section 3 of the Muslim Women Protection Act, 1986 by paying reasonable and fair provision, future maintenance as well as the maintenance during the *iddat* period and thus the claim of the 1st petitioner for maintenance under Section 125 of Cr.P.C. is not sustainable. So far as the maintenance granted to the 2nd petitioner is concerned, it is submitted that considering the requirement of the 2nd petitioner and the means of the respondent, the



quantum of maintenance granted by the Family Court is absolutely reasonable.

7. The marriage and paternity are not in dispute. Though the 1st petitioner has challenged the pronouncement of *talaq* by the respondent, the Family Court, on appreciation of evidence, found that there is a valid *talaq*. I see no reason to interfere with the said factual finding in this revision petition. That apart, the 1st petitioner, during evidence categorically admitted that she was divorced by the respondent by pronouncing *talaq*. The 1st petitioner has also raised a contention that Ext.D1 agreement was *void ab initio* since one of the parties to that contract was a minor at the time of execution of the same. The 1st petitioner was indeed a minor aged 17 years at the time of her marriage, as well as at the time of the execution of Ext.D1 agreement. However, she was represented by her father in Ext. D1 agreement, who was also a signatory therein. Under the



Muslim Personal Law, a marriage with a minor Muslim woman is valid provided she has attained puberty. When a minor Muslim woman who has attained puberty contracts a marriage, she is legally represented by her '*wali*' (guardian) in the marriage. The father, if alive, should act as guardian. Thus, when divorce takes place, and an agreement is entered into between the wife and the husband stipulating the post-divorce rights, the father of the wife, who was still a minor, is entitled to represent her in the said agreement. Therefore, the contention of the 1st petitioner that Ext.D1 agreement was void *ab initio* since the 1st petitioner was a minor cannot be sustained.

8. The recital in Ext. D1 agreement would show that the respondent paid a sum of Rs. 35,000/- as maintenance towards the *iddat* period, and a sum of Rs.1,00,000/- as *matah* to the 1st petitioner towards the full and final settlement of the benefits entitled by her



under the provisions of the Muslim Women Protection Act, 1986. *Iddat* period is the waiting period that a Muslim woman must observe after a marriage ends, whether by divorce or the death of her husband. The period of *iddat* consists of three menstrual cycles or three lunar months. In the case of pregnant women, the *iddat* period would extend up to the time of delivery. Interpreting the word '*matah*' found in verse 241 of the Holy *Quran*, the Supreme Court in ***Mohd. Ahmed Khan v. Shah Bano Begum and Others*** [(1985) 2 SCC 556] held that it means provision or maintenance to be paid by the husband to the wife at the time of divorce. The contention of the respondent before the Family Court was that the 1st petitioner cannot claim maintenance under Section 125 of Cr.P.C. after the receipt of the maintenance during the *iddat* period and the reasonable and fair provision for maintenance entitled by her under Section 3 of the Muslim Women Protection Act, 1986.



The trial court, relying on the judgment of the Division Bench of this Court in ***Kunhimohammed v. Ayishakutty*** (2010 (2) KLT 71), took the view that the 1st petitioner is not entitled to claim maintenance under Section 125 of Cr.P.C. It was held in the said decision that a divorced Muslim wife is not entitled to claim maintenance from her husband under Section 125 of Cr.P.C. when the husband discharged his obligation under the personal law.

9. The Muslim Women Protection Act, 1986, is a piece of legislation that deals with the civil rights of Muslim women that they can claim from their husbands at the time of divorce. It aims to provide a legal framework for the protection of the rights of divorced Muslim women and ensure that they receive fair and reasonable provision and maintenance, and other entitlements on their divorce. There is nothing in the Muslim Women Protection Act, 1986, that indicates that



the right of the Muslim divorced wife, which they had under Section 125 of Cr.P.C. before the enactment of the Muslim Women Protection Act, 1986, will stand superseded or extinguished by the enactment of the Muslim Women Protection Act, 1986. Section 127(3)(b) of Cr.P.C. clearly shows that an order passed under Section 125 of Cr.P.C. will continue to remain in force even after divorce until the amount payable under the customary or personal law applicable to the parties is paid either before or after the order. That clearly shows that an order under Section 125 of Cr.P.C. can be passed even in respect of a divorced Muslim wife. A two-Judge Bench of the Supreme Court in ***Shabana Bano v. Imran Khan*** (AIR 2010 SC 305) has considered this question and took the view that a petition under Section 125 of Cr.P.C. by a divorced Muslim wife will be maintainable notwithstanding the enactment of the Muslim Women Protection Act, 1986. In para 30 of the



judgment, it was specifically held that even if a Muslim woman has been divorced, she would be entitled to claim maintenance from her husband under Section 125 of the Cr.P.C. after the expiry of the period of *iddat*, also, as long as she does not remarry. The principle has been seconded by the Division Bench of this Court in ***Kunhimoohammed*** (supra). It was held that the divorced Muslim wife's right to claim maintenance under Section 125 of Cr.P.C. does not stand extinguished by the enactment of the Muslim Women Protection Act, 1986. Her right under Section 125 of Cr.P.C. shall stand extinguished only when the payment under Section 3 is actually made, and the Court grants absolution under Section 127(3)(b) of Cr.P.C. Till then, or till she remains a divorced Muslim wife, she will be entitled to claim maintenance from her divorced husband. This was once again reiterated in the judgment of the Division Bench of this Court in ***Sajani v. Kalam Pasha*** (2021 (5) KLT



564), holding that the rights of the divorced woman under Section 125 of the Cr.P.C. do not get extinguished on account of the larger rights conferred under Section 3 of the Muslim Women Protection Act, 1986. It was observed that if the divorced Muslim woman chooses to claim amounts under Section 3 of the Muslim Women Protection Act, 1986, only on such payments being actually made either voluntarily or in response to an order of the Court, does Section 127(3)(b) of the Cr.P.C. get attracted to extinguish the liability of the husband under the Cr.P.C. Recently, the Supreme Court in ***Mohd. Abdul Samad v. State of Telangana*** (AIR 2024 SC 3665) held that if Muslim women are married and divorced under Muslim law, then Section 125 of the Cr.P.C as well as the provisions of the Muslim Women Protection Act, 1986 are applicable. Thus, the law is settled that, notwithstanding the enactment of the Muslim Women Protection Act, 1986, a divorced Muslim



woman can seek maintenance under Section 125 of Cr.P.C. until she remarries or obtains relief under Section 3 of the Muslim Women Protection Act, 1986. But the crucial question is, can such a woman maintain an application for maintenance under Section 125 of Cr.P.C (Section 144 of BNS) after the receipt of the benefits entitled to her under the Muslim Women Protection Act, 1986?

10. *Holy Quran*, the foremost source of Muslim law, imposes an obligation on the Muslim husband to make provision for or to provide maintenance to the divorced wife. The verse (*Ayat*) 241 of the *Holy Quran* reads: "And for the divorced woman (also) a provision (should be made) with fairness (in addition to dower): (this is) a duty (incumbent) on the reverent". The Muslim Women Protection Act, 1986, is, thus, a declaratory law codifying and recognising preexisting rules of Muslim law regarding rights and obligations of



divorced persons. The Parliament, while enacting the law based on the above *Quranic* verse, seems to have intended that the divorced woman gets sufficient means of livelihood after the divorce, and, therefore, the word 'provision' indicates that something is provided in advance for meeting her needs. In other words, at the time of divorce, the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision is thus meant to enable the divorced wife to take care of herself for the rest of her life. It cannot be an illusory amount or a pittance, just to pull on her life (see **Danial Latifi v. Union of India**, (2001) 7 SCC 740). In **Fuzlunbi v. K.Khader Vali and Another** [(1980) 4 SCC 125], the Supreme Court observed that the payment of an amount, customary or other, contemplated by Section 127(3)(b) of Cr.P.C must inset the present worth of the monthly



maintenance allowances the divorcee may need until death or remarriage overtake her. In ***Bai Tahira v. Ali Hussain Fidaalli Chothia*** [(1979) 2 SCC 316], it was held that Section 127(3)(b) of Cr.P.C did not totally exempt a husband from providing maintenance to a destitute ex-wife if the amount he paid to her under the personal law was not sufficient to support her.

11. The question whether the fulfilment of a divorced Muslim woman's rights, particularly maintenance under Section 3 of the Muslim Women Protection Act, 1986, accepted by her without demur, would bar her from filing an application under Section 125 of Cr.P.C. specifically came up for consideration before the Supreme Court in ***Mohd. Abdul Samad*** (supra) and answered in the negative. It is relevant to extract paragraphs 35 and 37 of the judgment, which read thus.

"35. In a case where a husband has fulfilled his obligations under Section 3 of the 1986 Act or as



provided by customary or personal law so followed, and the divorced Muslim woman subsequently prefers to invoke Section 125 of CrPC 1973 on the ground of inability to maintain herself, in such a factual matrix, undeniably, the right to move under this provision is open in favour of a divorced Muslim woman. When a husband opposes resort to Section 125 Cr.P.C. 1973, he has to establish that, (a) initial obligations under the customary and/or personal statutory enactments as detailed earlier stands fulfilled by him, and (b) that the wife, in the light of this, is able to maintain herself. However, if the husband fails to sustain the said objection(s) raised during the proceedings initiated under Section 125 of Cr.P.C 1973, and an order is accordingly passed, it would not be inherently barred or liable to be cancelled through an application under Section 127(3)(b) of Cr.P.C 1973. Nevertheless, other appropriate remedies as provided under the Cr.P.C 1973 or any other law to that effect, shall always be open to be exercised by such a husband to seek setting aside or appropriate modification of an order so passed under Section 125 of CrPC 1973."

"37. From the aforementioned, we are inclined to conclude that equivalent rights of maintenance ascertained under both, the secular provision of



Section 125 of Cr.P.C 1973, and the personal law provision of Section 3 of the 1986 Act, parallelly exist in their distinct domains and jurisprudence. Thereby, leading to their harmonious construction and continued existence of the right to seek maintenance for a divorced Muslim woman under the provisions of Cr.P.C 1973 despite the enactment of the 1986 Act."(SIC)

12. Thus, the right of a Muslim divorced woman to invoke the secular statutory provision of Section 125 of Cr.P.C. (Section 144 of BNSS) is not entirely barred, even if her former husband discharges his obligations under the provisions of the Muslim Women Protection Act, 1986. When a Muslim divorced woman files an application under Section 125 of Cr.P.C.(Section 144 of BNSS), even after receiving the amount entitled to her under Section 3 of the Muslim Women Protection Act, 1986 or under customary or personal law, it is the duty of the Family Court to examine whether she was still able to support herself. Merely because an agreement



has been entered into between the divorced husband and wife stating that the latter has received from the former the entire entitlement under Section 3 of the Muslim Women Protection Act, 1986, the Family Court cannot automatically dismiss the application under Section 125 of Cr.P.C. as not maintainable.

13. A reading of the impugned order would show that the Family Court did not consider whether the reasonable and fair provision and future maintenance amount fixed in Ext.D1 agreement was adequate or not. Nor did it consider whether the 1st petitioner was able to maintain herself despite the receipt of the amount as per Ext. D1. It appears *prima facie* that Rs.1,00,000/- fixed as *matah* in the said agreement is insufficient and inadequate. It is pertinent to note that the maintenance for the *iddat* period was quantified as Rs.35,000/-. A divorced Muslim woman has to observe three months *iddat* period. Thus, the maintenance quantified for the



iddat period was at the rate of Rs.15,000/- per month. However, the maintenance fixed for the rest of her entire life was only Rs.1,00,000/. The petitioner was aged only 17 years at the time of execution of Ext.D1 agreement. The amount to be quantified under Section 3 of the Muslim Women Protection Act, 1986 must be enough to take care of the needs of the divorced woman for the rest of her life or till her remarriage. Hence, Rs.1,00,000/- fixed in Ext.D1 agreement cannot be said to be adequate. Considering the requirement of the 2nd petitioner and the ability and means of the respondent, the monthly maintenance of Rs. 750/- awarded to the 2nd petitioner appears to be inadequate.

14. For the aforementioned reasons, I hold that the impugned order declining the maintenance to the 1st petitioner cannot be sustained. So also, the quantum of maintenance granted to the 2nd petitioner needs to be modified. Hence, the matter requires reconsideration by



the Family Court. Accordingly, the impugned order stands set aside. M.C. No.351/2010 is remanded to the Family Court for fresh disposal. The Family Court shall reconsider the claim of the 1st petitioner for maintenance in the light of the observations made in this order. The Family Court shall also quantify the monthly maintenance to be awarded to the 2nd petitioner in accordance with the law. An opportunity shall be given to both parties to adduce further evidence, if any. Since the maintenance case is of the year 2010, the Family Court shall dispose of the same within a period of six months from the date of receipt of a copy of this order.

RP(FC) is disposed of as above.

Sd/-

DR. KAUSER EDAPPAGATH
JUDGE

SLR/NP