

Yoosaf Vs. Shamla

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Court : Kerala

Decided On : Aug-19-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Yoosaf

Respondent : Shamla

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID TUESDAY, THE 19TH DAY OF AUGUST 2014 28TH SRAVANA, 1936 RPFC.No. 237 of 2014 () ----- AGAINST THE

JUDGMENT

IN MC552013 of FAMILY COURT, MUVATTUPUZHA REVISION PETITIONER(S)/RESPONDENT: ----- YOOSAF, AGED 33 YEARS S/O PAREETH, THADATHIKUNNEL HOUSE, KOTAPURAM JN RANDAR KARA, ANICAD, COMPANYPADDY MUVATTUPUZHA. BY ADVS.SRI.ALEXANDER JOSEPH SRI.P.M.SANEER RESPONDENT/PETITIONER: ----- SHAMLA,, AGED 31 YEARS D/O.MUHAMMED MOIDEEN, KUZHUPPANATHU HOUSE MUDAVOOR.P.O, PUNNEPPADY, MULAVOOR VILLAGE MUVATTUPUZHYA TALUK-686669. R1 BY ADV. SRI.RAJIV NAMBISAN THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION

ON1908-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
P.UBAID, J.

~~~~~ R.P (FC) No.237 of 2014 ~~~~~ Dated this the 19th August,  
2014

## ORDER

The respondent herein is the divorced wife of the revision petitioner. In fact, she would not admit divorce. A case of divorce was pleaded by the husband in the proceedings brought under Section 125 of Cr.P.C for maintenance. She was married by him in 2001 and she was driven out from the matrimonial home on 5.5.2011. Alleging cruelty and desertion, she brought claim under Section 125 of Cr.P.C before the Family Court, Muvattupuzha as M.C No.55 of 2013. The husband entered appearance and resisted the claim on the ground that he has already divorced his wife by pronouncement of Talaq, and that she will have to find her remedies under the Muslim Women (Protection of Rights on Divorce) Act, 1986. Maintenance claim was tried along with two other petitions brought by the wife before the Family Court. On trial, the Family Court found that even as divorced wife, she is entitled to claim maintenance under Section 125 of Cr.P.C R.P (FC) No.237 of 2014 2 when the reliefs under the Muslim Women (Protection of Rights on Divorce) Act are not paid. Accordingly, the Family Court passed orders in M.C No.55 of 2013 on 8.5.2014 directing the revision petitioner to pay maintenance to his wife at the rate of 2000/- per month. The said order is under challenge in this revision.

2. Notice on admission was given to the respondent. On hearing the learned counsel, and on a perusal of the impugned order, I find no ground or reason to admit the revision to files. According to the revision petitioner, the respondent is his divorced wife and he would resist the claim under Section 125 of Cr.P.C on the ground that she will have to find her remedies under the Special Law providing remedies to her as a divorced wife. It is well settled that even a divorced muslim woman can claim maintenance under Section 125 of Cr.P.C, till remedies available to her are provided under the Muslim Women (Protection of Rights on Divorce) Act. It is submitted that remarriage cannot be thought of in this case

because the revision petitioner has married another lady. When the R.P (FC) No.237 of 2014 3 husband himself says that he has divorced his wife, there is no necessity to probe into the question whether the wife has justifiable reason to claim maintenance. The very fact that she is a divorced lady entitles her to claim maintenance under Section 125 of Cr.P.C, till the remedies provided under the Special Law are availed by her, and such provision and maintenance are made and paid by the husband. It is true that she has not so far brought claim. Of course, she can opt, and till she claims under the Special Law, the husband will have to pay maintenance under Section 125 of Cr.P.C.

3. Regarding the quantum of maintenance awarded by the trial court, I find no reason for interference because the amount awarded is only what she requires in the present circumstances. It is submitted that the revision petitioner is an Autorickshaw driver. The learned counsel submits that he has some disabilities also. There is no satisfactory evidence to prove that he is in any manner disabled. Even as an Autorickshaw driver, the revision petitioner can earn sufficiently for his livelihood, and he can very well pay 2000/- per month to the wife. In the present circumstances, R.P (FC) No.237 of 2014 4 2000/- per month cannot be said to be unreasonable or excessive. I find no reason for interference in the quantum of maintenance awarded by the trial court. In the result, this revision petition is dismissed in limine, without being admitted to files. However, it is made clear that when claim is made and brought under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act by the respondent, and if reliefs by way of maintenance and provision are granted, the maintenance already paid by the husband under Section 125 of Cr.P.C after divorce will have to be adjusted towards the amount due under the Special Law. Sd/- P.UBAID JUDGE ma /True copy/ P.S to Judge