

Yahiya Vs. Souja

Yahiya Vs. Souja

SooperKanoon Citation : sooperkanoon.com/1163505

Court : Kerala

Decided On : Aug-27-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Yahiya

Respondent : Souja

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD WEDNESDAY, THE 27TH DAY OF AUGUST 2014 5TH BHADRA, 1936 CrI.MC.No. 1655 of 2010 () ----- CRL.RP262009 of I ADDITIONAL SESSIONS COURT, KOZHIKODE MC152008 of JUDICIAL FIRST CLASS MAGISTRATE COURT, KOYILANDY PETITIONER(S)/REVISION PETITIONER/COUNTER PETITIONER: ----- YAHIIYA, S/O.MOHAMMEDKUTTY, NADUKANDIPARAMBIL HOUSE, ELATHUR AMSOM DESOM OF KOZHIKODE TALUK, REP.BY POWER OF ATTORNEY HOLDER N.P.MOHAMMEDKUTTY, S/O.BAVE, NADUKANDIPARAMBIL HOUSE, ELATHUR. BY ADV. SRI.M.SHAJU PURUSHOTHAMAN RESPONDENT(S)/RESPONDENTS/PETITIONER: ----- 1. SOUJA, D/O.ABU, AGED 27 'AL IRAFAD', NEAR PETROL PUMP, KOYILANDY AMSOM DESOM KOYILANDY TALUK, P.O.KOYILANDY.

2. STATE, REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R2, BY PUBLIC PROSECUTOR SHRI JUSTIN JACOB R1 BY ADV.SRI.R.BINDU (SASTHAMANGALAM) THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 27-08-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC NO.1655/2010 APPENDIX PETITIONER'S EXHIBITS: ANNEXURE A COPY OF

ORDER

IN MA152008 DATED 23.12.2008 PASSED BY THE JFCM, KOYILANDY ANNEXURE B CC OF

ORDER

IN CRL.RP262009 DATED 17.3.2010 PASSED BY THE SESSIONS COURT, KOZHIKODE RESPONDENTS' EXHIBITS: NIL //TRUE COPY// A.HARIPRASAD, J.

----- CrI.M.C. No.1655 of 2010
----- Dated this the 27th day of August, 2014.

ORDER

Petition filed under Section 482 of the Code of Criminal Procedure (in short, "Cr.P.C.").

2. Petitioner challenges the revisional order passed by the learned Sessions Judge, Kozhikode under Section 397 Cr.P.C. Petitioner is the counter petitioner in M.C.No.15 of 2008 on the file of the Judicial First Class Magistrate Court, Koyilandy, filed by the 1st respondent/divorced wife under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (in short, "the Act"). Averments in the petition are as follows: The petitioner married the 1st respondent on 12.10.2001. The mahar fixed was five sovereigns. They have a child in the wedlock. Petitioner divorced the respondent on 14.11.2007, according to the respondent, without assigning any reason. The 1st respondent claimed maintenance in the original proceedings at the rate of `5,000/- per month and value of 11 sovereigns and future maintenance of `9,00,000/-.

3. The petitioner refuted the claims in the original proceedings. He urged that he had reasons for divorcing the respondent. The mahar fixed was only `1,000/- and not five sovereigns as claimed by the 1st Crl.MC No.521/2012 2 respondent. Petitioner is not having any income fetching avocation. He himself is depending on his parents. Amounts claimed in the petition is exorbitant.

4. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent.

5. Annexure-A is the order passed by the learned Magistrate in the maintenance case. It is seen that two witnesses were examined on the side of the 1st respondent and the father of the petitioner testified on his side. Learned Magistrate in his order considered the evidence threadbare and held that the petitioner was working abroad as a driver and he was having an income of `70,000/- per month. On the basis of the evidence the court below directed the petitioner to pay `1,500/- for each month as maintenance during iddat period. Further, he was directed to pay `89,250/- being the value of 10 = sovereigns of gold ornaments and a further sum of `4,250/- being the value of = sovereigns of gold ring. Besides, the 1st respondent was found entitled to get `3,00,000/- towards fair and reasonable provision for future maintenance. Hence, a total sum of `3,98,000/- was directed to be paid by the petitioner to the 1st respondent.

6. Petitioner took up the matter in revision before the learned Sessions Judge. After considering the entire evidence and legal position, the court below dismissed the revision finding that there is no illegality or Crl.MC No.521/2012 3 impropriety in the order passed by the learned Magistrate.

7. Learned counsel for the petitioner contended that the court below assessed the quantum based on erroneous premises. According to him, the petitioner is not having that much income to provide the maintenance amount awarded by the court below. Per contra, learned counsel for the 1st respondent submitted that the courts below have considered the evidence and stated valid reasons for fixing the income of the petitioner as well as the quantum of compensation. On going through the impugned orders, I find no illegality or impropriety in arriving at the quantum of compensation payable to the 1st respondent. It is also submitted by

the learned counsel for the 1st respondent submitted that in spite of allowing the maintenance petition on 23.12.2008, no amount has been paid so far by the petitioner. Placing reliance on Chand Muhammed v. Zeenath (2011 (4) KLT671, learned counsel for the 1st respondent contended that the respondent is entitled to get interest for compensation amount which was unlawfully withheld till this date. It is settled that interest is the compensation for delayed payment. Considering the argument advanced on behalf of the petitioner in that case, a learned Single Judge of this Court held in the above case thus: "11. The last argument advanced by the learned counsel for the petitioner is that there is no provision in the Act to award interest on the amount payable by the divorced husband. The learned Crl.MC No.521/2012 4 counsel would further argue that claiming interest is against his personal law. I cannot accede to that submission.

12. The amount payable towards reasonable and fair provision and maintenance is to be paid within iddat period. Admittedly, the amount was not paid within that time. Even thereafter the amount was not paid. The divorced wife is entitled to get that amount during the iddat period itself. At least it should have been paid immediately on the date the iddat period expired. That was also not done. Hence she was unjustly denied the amounts payable on that day. The former husband, by retaining that amount with himself has unlawfully gained and has denied the divorced wife to receive that amount within the time prescribed. If so, the former husband has to compensate the wife for non-payment of the amount within the prescribed time. Even if the statute does not make any specific provision for payment of interest, the power of the court to grant interest can be referred to by the provisions of the Interest Act, 1978. Since the amount was payable within the iddat period, if it is not paid during the iddat period certainly the said amount should carry interest because that amount which the divorced wife was entitled to get was unjustly denied. The former husband cannot dodge the payment and at the same time deny the interest payable on the said amount. As stated above, it is actually the compensation for her for being denied the use of the Crl.MC No.521/2012 5 money during the period within which it should have been paid. In this connection the decision in Thazhathe Purayil Sarabi v. Union of India (2009 (4) KLT370(SC) = AIR 2009 SC3098 can be profitably referred to here. Though it was considered in a claim petition filed under the Railway Claims Tribunal Act, the

principal enunciated in that decision, according to me, is applicable to this case as well. There also it was pointed that there was no provision for payment of interest. It was held by the Apex Court: "Even though there is no provision in either of the Acts for payment of interest on the awarded sum, there is no denying the fact that the right to claim compensation accrued on the date of the incident, although, compensation has been held in Rathi Menon's case (supra) is to be computed from the date of the Award of the Claims Tribunal. In cases where the statute does not make any specific provision for payment of interest on any awarded sum, the power of the Courts to grant interest can also be referred to from the provisions of the Interest Act, 1978 and the Code of Civil Procedure Act, 1978 and the Code of Civil Procedure." It was also held: "As we have indicated hereinbefore, when there is no specific provision for grant of interest on any amount due, the Court and even Tribunals have been held to be entitled to award interest in their discretion, under the provisions of S.3 of the Interest Act and S.34 of CrI.MC No.521/2012 6 the Civil Procedure Code." It was further held in paragraph 23 of the judgment cited supra: "As we have indicated earlier, payment of interest is basically compensation for being denied the use of the money during the period which the same could have been made available to the claimants". I respectfully agree with the observation of the learned Single Judge. I find that the 1st respondent is also entitled to get interest. For the reasons stated above, I find that the petition is without any merit. In the result, the petition is disposed of with a direction that the 1st respondent/original petitioner is entitled to recover the amount awarded by the learned Magistrate in N.C.No.15 of 2008 with 9% interest from the date of petition. All pending interlocutory applications will stand dismissed. A. HARIPRASAD, JUDGE. cks

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com