

Abdul Nasar vs Fathima

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Court : Kerala

Decided On : Jul-30-2020

Judge : Honourable Mr.Justice T.V.Anilkumar

Appeal No. : Crl.MC/4039/2012

Appellant : Abdul Nasar

Respondent : Fathima

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR
THURSDAY, THE 30TH DAY OF JULY 2020 / 8TH SRAVANA, 1942
AGAINST THE ORDER/JUDGMENT IN CRRP 44/2012 DATED 07-11-
2012 OF II ADDITIONAL DISTRICT COURT & SESSIONS
COURT,PALAKKAD AGAINST THE ORDER/JUDGMENT IN MC
231/2009 DATED 28-04-2012 OF JUDICIAL MAGISTRATE OF FIRST
CLASS ,ALATHUR PETITIONER/REVISION
PETITIONER/RESPONDENT: ABDUL NASAR, AGED 30 YEARS, S/O.
M. A. MEERAN, PALLIPARAMBU, KATTUSSERY, ALATHUR,
PALAKKAD DISTRICT. BY ADV. SRI. V. A. JOHNSON
VARIKKAPPALLIL RESPONDENTS/RESPONDENTS/PETITIONER

AND STATE:

1 FATHIMA D/O. M. A. ISMAIL, MANKARA VEEDU, MANAPPADAM, ALATHUR, PALAKKAD DISTRICT - 678 541. 2 STATE REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031. R1 - SRI. BABY MATHEW SRI. E. C BINEESH, G.P THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30.07.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:BDUL NASAR, AGED 30 YEARS,

ORDER

Dated this the 30th day of July 2020 The petitioner in this Crl.M.C filed under Section 482 of the Cr.P.C challenging the concurrent orders awarding reliefs under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short 'the Act') on the file of Judicial First Class Magistrate, Alathur in M. C No.231/2009 as illegal, improper and irregular.

2. The 1st respondent is the former wife of the

petitioner. As per order dated 28.04.2012, the learned Magistrate ordered the petitioner to pay a sum of Rs.1,800/- per month during the period of Iddat for three months and awarded an amount of Rs.2,16,000/- being reasonable and fair provision and maintenance under Section 3(1)(b) of the Act. Interest at the rate of 9% was also awarded on the aggregate amount.

3. Though the impugned order was challenged in Criminal Revision Petition No.44/2012 before the II Additional Sessions Judge, Palakkad, it was dismissed by

order dated 07.11.2012. The learned Sessions Judge also

found no good reason to interfere with the finding as regards the liability of the petitioner or about the quantum of amount fixed by the learned Magistrate. The concurrent orders of the courts below are challenged in this revision.

4. The marriage between the parties was

solemnised on 01.01.2001 and two children were admittedly born out of the wedlock. The 1st respondent was divorced by talaq on 13.09.2008. Beside the reliefs sought by the 1st respondent under Section 3(1) (a) and (b) of the Act, she sought to recover the value of gold ornaments allegedly owned by her and children as well as value of utensils given to her by parents. She contended that she has no means or source of any income and the respondent refused to maintain her all the time throughout. It was alleged that the respondent owned a provision store and therefore had enough source of means to maintain her and children.

5. The respondent contended that he is a physically disabled person and therefore he was not able to work or earn. He denied having any provision store and contended to be depending for his livelihood on his brother. He relied on Ext.D3 disability certificate to prove that he was suffering from 50% of permanent disability.

6. The learned Magistrate on consideration of entire

evidence held that despite petitioner being disabled by 50%, he was not prevented from earning. It was pointed out that he owned a two wheeler also and the disability was only in respect of speech and hearing. After having found the petitioner has sufficient source to maintain the first respondent and children the learned Magistrate granted reliefs as per the impugned order dated 28.04.2012.

7. The revisional court after reappreciating the evidence endorsed the view and refused to interfere with the quantum of amount fixed by the learned Magistrate.

8. The contention raised by the learned counsel for

the petitioner before me is that the both courts below failed to appreciate the interested testimony of PW1 which consisted of so many inconsistencies and infirmities. It was also contended that the 1st respondent failed to prove the means of the petitioner who, going by Ext.D3 disability

certificate itself, was permanently disabled by 50% and was prevented from earning anything out of physical exertion. It was contended that the quantum of amount fixed is also excessive and exorbitant. One of the contentions taken in the memorandum is that since the petitioner is maintaining his minor children in M.C. No.848/2007 of Family Court, Malappuram, the order directing payment of huge amount without taking into account the quantum in M.C No.848/2007 was quite and reasonable.

9. I heard the learned counsel for the petitioner and the 1st respondent.

10. I went through the testimonies given by DW1,

the doctor as well as DW3, who is the husband of the petitioner. Looking at Ext.D3 disability certificate, it is clear that petitioner is suffering from 50% of physical disability. But it is worth noticing that the disability affected him only as regards his speech as well as hearing. DW1, the doctor who proved Ext.D3 said that the disability, however, does not affect the earning capacity of the petitioner. It has come out from the cross examination of DW3 himself that he owns

a two wheeler also. The testimony of PW1, the 1 st respondent in the revision petition is that petitioner owns a provision store and earns from that business. On reappraisal of evidence, I do not find any reason to reject the concurrent finding entered into by both the courts below to the effect that the petitioner has sufficient means to pay the quantum of amount fixed as per the impugned orders.

11. The argument that petitioner is made liable for

payment of maintenance in M.C. No.848/2007 is no reason, according to me, to reduce the amount fixed by the courts' below inasmuch as it is an independent liability which the minor children have right to enforce against the petitioner.

12. Both the courts below have relied on a few case

laws which delineate the guidelines to be followed by courts for fixing reliefs under Section 3(1)(a) & (b) of the Act and applying multiplier 10 in the case of 1 st respondent, reasonable and fair provisional maintenance was fixed by the courts below. I do not find any valid reason to interfere with the concurrent finding of the courts' below. I am satisfied that the impugned orders have been passed in

accordance with facts, evidence and principles of law. In view of the above discussion, the Crl. M.C is only liable to be dismissed. In the result, this Crl. M.C is dismissed. Sd/- T.V.ANILKUMAR JUDGE SPR APPENDIX PETITIONER'S/S EXHIBITS ANNEXURE A TRUE COPY OF THE ORDER IN M. C. NO.231/2009 OF JUDICIAL FIRST CLASS MAGISTRATE, ALATHUR, DATED 28.04.2012. ANNEXURE B TRUE COPY OF THE ORDER IN CRL. R.P. NO.44/2012 OF THE COURT OF THE II ADDITIONAL SESSIONS JUDGE PALAKKAD, DATED 07.11.2012. RESPONDENT'S/S EXHIBITS: NIL.

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