

**Haroon Vs. Sainabha**

**Haroon Vs. Sainabha**

**SooperKanoon Citation :** [sooperkanoon.com/725376](http://sooperkanoon.com/725376)

**Court :** Kerala

**Decided On :** Jun-02-1992

**Reported in :** 1992CriLJ3275; II(1992)DMC293

**Judge :** Pareed Pillay, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 125(4), 125(5), 127 and 128

**Appeal No. :** Crl. M.C. No. 1324 of 1991

**Appellant :** Haroon

**Respondent :** Sainabha

**Advocate for Def. :** M.V. Mathew, Adv.,; K.C. Peter, Adv. and;Addl. Public Prosecutor

**Advocate for Pet/Ap. :** P.V. Narayanan Nambiar, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Pareed Pillay, J.**

1. First respondent filed M.C. 27 of 1980 before the Judicial Magistrate of the First Class, Ambalapuzha claiming maintenance for her and her son (second

respondent). Maintenance was granted and the petitioner was directed to pay monthly allowance of Rs. 100/- each to respondents 1 and 2. Contention of the petitioner is that on 9-11-1982 the matter was settled out of Court and the first respondent executed an agreement in favour of the petitioner and a lump sum of Rs. 2,500/- was received by her from him. It is submitted that in view of the agreement whereby all the disputes regarding maintenance were permanently settled and all legal proceedings closed, first respondent cannot make any claim for maintenance from the petitioner. Such a contention was raised when respondents 1 and 2 filed application under S. 128 Cr.P.C. to execute the order of maintenance granted by the Court.

1. Learned Counsel for the petitioner contended that the very fact that Crl. M.P. 2769 of 1991 was filed under Section 128 Cr.P.C. on 29-6-1991 i.e. approximately 9 years after the date of agreement is by itself sufficient to hold that the first respondent had voluntarily relinquished all her rights in view of the lump sum payment as per the agreement dated 9-11-1982. Learned Counsel for the respondents 1 and 2 pointed out that merely because Crl. M.P. 2769 of 1991 was filed long after the agreement it is not possible to come to a conclusion that the right to claim maintenance recognised by the Court below no longer exists. Counsel pointed out that the maintenance awarded under Section 125 will continue to remain in force unless and until it is cancelled or varied and so long as that has not been done petitioner cannot advance a case on the strength of the agreement entered into between the petitioner and the first respondent particularly in view of the fact that it is opposed to public policy. There is considerable force in the above contention.

2. As the statutory obligation is here on the part of the petitioner to maintain his wife and minor son who are unable to maintain themselves he cannot be permitted to contract out of such an obligation. If he is allowed to do so, it would certainly defeat a legal right recognised by the Court under Section 125 of the Cr.P.C. The agreement propounded by the petitioner cannot annihilate the statutory right of respondents 1 and 2 in claiming maintenance under Section 125 Cr.P.C. The agreement is certainly opposed to public policy. Obviously the Court cannot enforce an illegal agreement. A waiver or derogation of a statutory right cannot be

recognised by the Court as it affects Public Policy and as it is against the very statutory obligation imposed on a husband to maintain his wife and children who are unable to maintain themselves.

3. In *Bhupinder Singh v. Daljit Kaur* (1979 Cr.L.J. 198) the Supreme Court had occasion to consider as to whether a compromise out of Court is a valid defence in the execution of maintenance awarded under Section 125 Cr.P.C. The Supreme Court held that if an order for maintenance has been made against a person it would operate until it is vacated or altered in terms of the provisions of the Code itself. Section 125(4) provides that no wife shall be entitled to receive an allowance from her husband under the Section if she is living in adultery or if without any sufficient reason she refuses to live with her husband or if they are living separately by mutual consent. Sub-Section(5) enables the Magistrate to cancel the order of maintenance on proof that any wife in whose favour an order has been made is living in adultery or that without sufficient reason she refuses to live with her husband. Section 127 provides for certain contingencies whereby the Court can cancel the order of maintenance. As the original order of maintenance has not been modified or cancelled by a higher Court or is varied or vacated in terms of Section 125(4) or (5) or Section 127, its validity cannot be questioned on the strength of the agreement; entered into between the petitioner and the first respondent. The learned Magistrate was justified in ignoring the agreement and directing the petitioner to make the payment of maintenance to respondents 1 and 2.

4. Learned Counsel for the petitioner submitted that the first respondent has recently married and so in view of the subsequent developments she is not entitled to claim maintenance. He stated that a petition is pending before the Court below in that regard. That is a matter to be considered by the Court below.

5. There is no merit in the Criminal Miscellaneous Case and hence it is dismissed.