2025:KER:78554

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 22ND DAY OF OCTOBER 2025 / 30TH ASWINA, 1947

RPFC NO. 155 OF 2015

AGAINST THE ORDER DATED 23.12.2014 IN MC NO.764 OF 2013 OF FAMILY COURT, TIRUR

REVISION PETITIONER/RESPONDENT:

[redacted]

BY ADV SHRI.K.K.MOHAMED RAVUF

RESPONDENTS/PETITIONERS:

1 [redacted]

2 [redacted]

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 22.10.2025, ALONG WITH OP(Crl.).424/2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:78554

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 22ND DAY OF OCTOBER 2025 / 30TH ASWINA, 1947

OP(CRL.) NO. 424 OF 2025

AGAINST THE ORDER DATED 24.05.2019 IN CRL.RP NO.5 OF 2017 IN M.C.NO.318 OF 2011 OF ADDITIONAL SESSIONS COURT - III, MANJERI ARISING OUT OF THE ORDER DATED 29.02.2016 IN MC NO.318 OF 2011 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, TIRUR

PETITIONER/REVISION PETITIONER/ RESPONDENT:

[redacted]

BY ADV SHRI.K.K.MOHAMED RAVUF

RESPONDENTS/1ST RESPONDENT AND STATE/PETITIONER:

1 [redacted]

2 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

BY ADVS.
SHRI.T.K.AJITH KUMAR

SMT.REMYA VARMA N.K
SMT.AISWARYA RAMESAN
SMT.VARNIBHA.T
SRI.E.C.BINEESH, SR.PP.

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 22.10.2025, ALONG WITH RPFC.155/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R."

J U D G M E N T

Both the original petition and the revision petition are connected, and I am disposing of them by a common judgment.

2. The revision petition arose out of an order passed by the Family Court, Tirur in a petition filed under Section 125 of Cr.P.C. and the original petition arose out of an order passed by the Judicial First Class Magistrate Court-I, Tirur (for short, 'the Magistrate Court') and confirmed by the Additional Sessions Court-III, Manjeri under Section 3(1) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short, 'the Muslim Women Protection Act, 1986').

3. The petitioner in both matters is the husband of respondent No.1 and father of respondent No.2 (in RP(FC) No.155 of 2015). The parties are Muslims and governed by Muslim Personal Law. The marriage and paternity are not in

dispute. It is also not in dispute that the petitioner divorced respondent No.1 on 13.04.2011 by pronouncing *talaq* and the respondent No.1 remarried on 07.08.2014. After the divorce, the respondent No.1 filed a petition under Section 3(1) of the Muslim Women Protection Act, 1986 before the Magistrate Court as M.C.No.318 of 2011 against the petitioner, claiming maintenance during the *iddat* period, reasonable and fair provision for future maintenance and for the return of gold ornaments. During the pendency of the said petition before the Magistrate Court, respondent No.1 filed M.C.No. 764 of 2013 against the petitioner before the Family Court, Tirur, claiming maintenance for herself and for the respondent No.2 (in RP(FC) No.155 of 2015) under Section 125 of Cr.P.C. The petition filed before the Family Court under Section 125 of Cr.P.C. and the petition filed before the Magistrate Court under Section 3(1) of the Muslim Women Protection Act, 1986 were parallelly proceeded with.

4. After trial, the Family Court disposed of M.C.No.764 of 2013 first, granting monthly maintenance at the rate of Rs. 3,000/- to the respondent No.1 and Rs. 2,000/- to the respondent No.2 (in RP(FC) No.155 of 2015) from the date of the petition. Since respondent No. 1 remarried, it was ordered that she is entitled to receive maintenance only up to the date of remarriage, i.e., August 7, 2014. Thereafter, the Magistrate Court disposed of M.C.No.318 of 2011, directing the petitioner to pay Rs. 24,000/- to the respondent No.1 towards her maintenance during *iddat* period and Rs. 3,18,133/- towards reasonable and fair provision and maintenance. The petitioner was also directed to return 7½ sovereigns of Mahar or pay Rs. 1,57,500/-, the value equivalent to the same. The petitioner challenged the order in M.C.No.318 of 2011 before the Additional Sessions Court-III, Manjeri (for short, 'the revisional court') in Crl.R.P.No. 5 of 2017. The revisional court allowed the revision in part and

modified the order passed by the Magistrate Court. The petitioner was directed to pay a sum of Rs. 15,000/- towards maintenance during *iddat* period to the respondent No.1 and Rs. 2,00,000/- towards reasonable and fair provision and maintenance. The relief of an amount equivalent to *Mahar* granted by the Magistrate Court was set aside. O.P.(Crl.) No. 424 of 2025 has been preferred by the petitioner challenging the order passed by the Magistrate Court as well as the revisional court under Section 3(1) of the Muslim Women Protection Act, 1986. RP(FC) No. 155 of 2015 has been preferred, challenging the order passed by the Family Court, Tirur under Section 125 of Cr.P.C.

5. I have heard Sri. Mohamed Ravuf K.K., the learned counsel for the petitioner and Sri.T.K.Ajith Kumar, the learned counsel for the respondent No.1.

6. As already stated, marriage, paternity, and the pronouncement of *talaq* are not in dispute. Under the pristine

Shariah Law and under the Muslim Personal Law as administered in India, on divorce, a Muslim husband is legally and morally bound to provide reasonable and fair provision for future maintenance to the divorced wife. Reasonable and fair provision is meant to enable the divorced wife to take care of herself for the rest of her life or until she remarries. The quantum of reasonable and fair provision for maintenance should be fixed, taking into account the status of the parties, the age of the divorced woman at the time of marriage and at the time of divorce, standard of life of the divorced woman enjoyed during the marriage, prospects of her remarriage, the period during which they lived together, the expenses and liabilities that the husband and wife were forced to endure because of the marriage and divorce, inflation, the capacity of the former husband and also other attendant circumstances. These are not exhaustive. The amount so fixed must be enough to take care of the future

needs of the divorced women in the prevailing socio-economic scenario (See **Musthafa v. Safiya**, 2025 KLT OnLine 2126).

7. The liability of the husband to pay the reasonable and fair provision for future maintenance arises as soon as the divorce is effected. In this case, the divorce was effected on 13.04.2011 by the pronouncement of *talaq*. The respondent No.1 admittedly remarried on 07.08.2014. The petitioner failed to discharge his obligation under Section 3(1) of the Muslim Women Protection Act, 1986 by paying maintenance during *iddat* period and a reasonable and fair provision for future maintenance when he pronounced *talaq*. It was under those circumstances; the respondent No.1 was compelled to approach the Magistrate Court with a petition under Section 3(1) of the Muslim Women Protection Act, 1986.

8. The learned counsel for the petitioner submitted

that an application for maintenance under Section 125 of Cr.P.C. is not maintainable by a divorced Muslim woman, especially when she already invoked the jurisdiction of a Magistrate Court under Section 3(1) of the Muslim Women Protection Act, 1986. The learned counsel further submitted that a divorced Muslim woman is entitled to reasonable and fair provision for future maintenance under Section 3(1) of the Muslim Women Protection Act, 1986 till the date of her remarriage only, and as such, the impugned order passed by the Magistrate Court in M.C.No.318 of 2011 after the remarriage of the divorced woman is not legally sustainable. The learned counsel for the respondent No.1 supported the findings in the impugned orders.

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 S.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. S.127(3)(b) of Cr.P.C. clearly shows that an order passed under S.125 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 S.125 can be passed even in respect of a divorced Muslim wife. A two-Judge Bench of the Apex Court in **Shabana Bano v. Imran Khan** (AIR 2010 SC 305) has considered this question and took the view that a petition

under S.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 S.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 **Kunhimohammed v. Ayishakutty** (2010 (2) KLT 71). It was held that the divorced Muslim wife's right to claim maintenance under S.125 Cr.P.C. does not stand extinguished by the enactment of the Muslim Women Protection Act, 1986. Her right under S.125 Cr.P.C. shall stand extinguished only when the payment under S.3 is actually made and the Court grants absolution under S.127(3)(b) of the Code. Till then, or till she remains a divorced Muslim wife, she will be entitled to claim maintenance from her divorced husband. Death,

remarriage or actual payment of the amount payable under S.3 of the Act alone shall extinguish her right under S.125 Cr.P.C. to claim maintenance. 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 S.125 of the Cr.P.C. do not get extinguished on account of the larger rights conferred under S.3 of the Act. It was observed that if the divorced Muslim woman chooses to claim amounts under S.3 of the Act, only on such payments being actually made either voluntarily or in response to an order of the Court, does S.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** [2024 KLT OnLine 1813 (SC)] 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. The option lies with the Muslim divorced women to seek a remedy under either of the two laws or both laws. This is because the Muslim Women Protection Act, 1986 is not in derogation of Section 125 of the Cr.P.C but in addition to the said provision. Thus, the law is settled that a divorced Muslim woman can seek maintenance under S.125 of Cr.P.C. until she remarries or obtains relief under S.3 of the Muslim Women Protection Act, 1986. An order passed under S.125 of Cr.P.C. shall continue to remain in force until the amount payable under S.3 of the Muslim Women Protection Act, 1986 is paid. Here, the order under Section 3(1) of the Muslim Women Protection Act, 1986 was passed by the Magistrate on 29.02.2016. Even today, the said amount has not been paid. However, the maintenance was awarded till the date of remarriage of the wife, i.e., 07.08.2014. Admittedly, on that day, the order under Section 3(1) of the Muslim Women Protection Act, 1986 was not passed. Hence, I

see no merit in the first contention of the learned counsel for the petitioner that an application for maintenance under Section 125 of Cr.P.C. by a divorced Muslim woman is not maintainable.

As stated earlier, the husband's liability to pay reasonable and fair provision for future maintenance and the wife's right to receive it accrue as on the date of the divorce. The fact that the petition filed by the wife under Section 3 (1) of the Muslim Women Protection Act, 1986 was prolonged even after her remarriage cannot be a ground to deny the benefit she accrued as on the date of divorce. Furthermore, the fair provision for future maintenance was determined by both the Magistrate Court and the revisional court, considering the respondent No.1's remarriage. The revisional court fixed the monthly maintenance at Rs. 15,000/- and, calculating that amount until the date of remarriage, arrived at Rs. 2,00,000/-. Therefore, I find no merit in the second

contention of the learned counsel for the petitioner as well.

The quantum of maintenance granted to the respondent No.1 by the Family Court, the quantum of maintenance during *iddat* period, and the reasonable and fair provision granted by the revisional court appear to be very reasonable. I see no reason to interfere with the impugned orders. The original petition, as well as the revision petition, is accordingly dismissed.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

APA

APPENDIX OF OP(CRL.) 424/2025

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE ORDER DATED 23-12-2014 IN M.C. NO. 764 OF 2013**
EXHIBIT P2	**THE TRUE COPY OF THE ORDER IN M.C. NO. 318/2011 OF THE JFCM COURT, TIRUR DATED 29-02-2016**
EXHIBIT P3	**TRUE COPY OF THE ORDER DATED 24- 05-2019 IN CRL. REV. PETITION NO. 5/2017 OF THE ADDL. SESSIONS COURT III, MANJERI**