



:1:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 5TH DAY OF DECEMBER 2025 / 14TH AGRAHAYANA, 1947

RPFC NO. 343 OF 2024

AGAINST THE ORDER DATED 04.07.2024 IN MC NO.270 OF 2022
OF FAMILY COURT, MALAPPURAM

REVISION PETITIONER/RESPONDENT:

[REDACTED]

673641

BY ADVS.
SRI.C.DINESH
SRI.K.RAMAKUMAR (SR.)

RESPONDENT/PETITIONER:

[REDACTED]

BY ADVS.
SRI.P.SAMSUDIN
SHRI.JASNEED JAMAL
SMT.LIRA A.B.
SMT.DEVIKA E.D.
SHRI.ABIN RASHID

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 10.11.2025, THE COURT ON 05.12.2025 DELIVERED
THE FOLLOWING:



:2:

“C.R.”

O R D E R

This revision petition has been filed challenging the order passed by the Family Court, Malappuram, in MC No.270/2022 dated 4/7/2024.

2. The parties are Muslims governed by the Muslim Personal Law. The petitioner married the respondent on 9/5/1983 in accordance with Muslim customary rites. In the said wedlock, a girl child named [REDACTED] as born. The marriage lasted only for three years. On 20/9/1986, the petitioner divorced the respondent by pronouncing *talaq*. On the next day itself, i.e. on 21/9/1986, the petitioner contracted a second marriage with [REDACTED]. Four children were born in the said wedlock. On 4/4/1991, the respondent married [REDACTED]. According to the respondent, the marriage lasted only for one year. However, the dissolution of the marriage between the respondent and [REDACTED] is disputed by the petitioner. The second wife of the petitioner, Mrs. Asmabi, expired on 6/11/2020. According to the petitioner, after her death, he contracted a third marriage with [REDACTED]a. The respondent filed a maintenance case against the petitioner, claiming maintenance invoking Section 125 of Cr.P.C. before the Family Court as MC No.270/2022, alleging that she remarried the



:3:

petitioner on 27/4/2012 in accordance with the Muslim customary rites.

3. The petitioner resisted the maintenance case, mainly contending that there was no second marriage between him and the respondent as alleged. The petitioner has also denied the case of the respondent that her marriage with her second husband, Mr. [REDACTED], was dissolved. According to the petitioner, since there was no marriage between him and the respondent on 27/4/2012 as alleged, he is not liable to provide maintenance to the respondent. However, the Family Court, after appreciation of evidence, repelled the said contention of the petitioner and granted maintenance to the respondent at the rate of ₹6,000/- per month from the date of the petition as per the impugned order.

4. I have heard Sri.K.Ramakumar, the learned Senior Counsel appearing for the petitioner and Sri. P.Samsudin, the learned counsel for the respondent.

5. The learned Senior Counsel for the petitioner submitted that the respondent has miserably failed to prove the dissolution of her second marriage with Mr. [REDACTED] and the alleged remarriage with the petitioner, and hence the Family Court went wrong in awarding maintenance to her. On the other hand, the learned counsel for the respondent submitted that the evidence adduced by the respondent is sufficient to prove the dissolution of



:4:

her second marriage as well as the solemnisation of her remarriage with the petitioner. The learned counsel further submitted that proceedings under Section 125 of Cr.P.C, being summary in nature, strict proof of marriage is not necessary. The learned counsel also submitted that if there is evidence to prove long cohabitation, maintenance under Section 125 could be ordered even without strict proof of marriage. Reliance was placed on *Chanmuniya v. Virendra Kumar Singh Kushwaha and Another*¹ and *Kamala and Others v. M.R.Mohan Kumar*².

6. Both admit their first marriage and its dissolution by the pronouncement of *talaq*. However, their alleged remarriage on 27/4/2012 is in dispute. The entire controversy revolves around the question of the legal validity and proof of remarriage between the petitioner and the respondent.

7. The marriage under Muslim law is a religious rite and a solemn pact between a man and a woman, soliciting each other's life-companionship, but it is in the form of a civil contract. The essentials of a Muslim marriage include free consent, competency and the proposal (*ijab*) and acceptance (*qubul*) occurring in the same meeting. Additionally, the presence of at least two male or one male and two female Muslim witnesses is required under Sunni law. The husband must also pay or agree to pay a dower (*mahr*) to

¹ (2011) 1 SCC 141

² (2019) 11 SC 491



:5:

the wife. Though the Muslim law does not require a ceremonial solemnisation of marriage, in India, a Muslim marriage takes place ceremonially in the form of a *Nikah*, which in law means a direct or indirect exchange of proposal and acceptance between the parties in the presence of witnesses, followed by recital of verses and extracts from the *Quran*³ and *Hadith*⁴ relating to the importance of marriage and providing guidance for a happy married life.

8. Muslim law recognizes out-of-court divorce initiated by both husband (*talaq*) and wife (*khula*), as well as divorce by mutual consent (*mubarat*) and divorce through court by the wife (Dissolution of Muslim Marriages Act, 1939). A divorced woman can remarry after the expiration of the legal *iddat* period⁵ if it is legally required. However, a divorced woman cannot freely remarry the same man who divorced her by *talaq*. Remarriage between a divorced man and woman under Muslim law is only permissible if the woman marries another man and then divorces him—this is known as the doctrine of *Halala* or *Nikah Halala*. *Nikah Halala* is an accepted Islamic practice, where a woman who has been irrevocably divorced by her husband through *talaq* mode must marry another man and then divorce him before she can remarry her first husband. The term comes from the Arabic word '*halal*', meaning 'permissible' or 'lawful', reflecting the intent to make the

³ Revealed religious text of Islam and primary source of Muslim law

⁴ Sayings, actions and approval of Prophet Muhammed and primary source of Muslim law.

⁵ The waiting period that a Muslim woman must observe after a marriage ends, whether by divorce or death of her husband. The length of the *iddat* period varies depending on the circumstances such as whether the marriage ended by divorce or death, and if the marriage was consummated.



:6:
woman permissible again for her first husband. This practice is based on an interpretation of the *Quranic* verse⁶, which states that a man cannot remarry his ex-wife after a final, irrevocable divorce until she has married and been divorced by another man. To prevent the misuse of this rule to unlawfully circumvent the legal ban on remarriage to a divorced wife through *talaq*, the law insists that the second marriage must have been consummated and not entered into with the prior intention of dissolving it to remarry the first husband. The Privy Council has held that the second marriage of a divorced woman must not be sham; it must have actually occurred⁷. Therefore, for a remarriage of a divorced Muslim woman with her ex-husband to be valid, the intervening marriage, its consummation, and legal dissolution are necessary.

9. Coming to the merits of the case, the intervening marriage by the respondent with Mr.Moideen Koya was not disclosed in the petition for maintenance. However, in the chief affidavit of the respondent, she stated that after divorcing the petitioner, she married Mr. [REDACTED] on 4/4/1991. At any rate, the petitioner has admitted the said marriage. Ext.D1 certificate also proves that. But the petitioner has specifically denied the case of the respondent that she divorced Mr. [REDACTED] within one year of the marriage. As stated already, an intervening marriage,

⁶ Surah Al-Baqarah, Verse 230

⁷ Saiyid Rashid Ahmad and Another v. Mt.Anisa Khatun and Others, AIR 1932 PC 25



:7:
its consummation and dissolution in a lawful manner, are prerequisites for a divorced Muslim wife to remarry her first husband. Hence, unless and until the respondent proves the dissolution of her marriage with her second husband Mr. [REDACTED], her alleged second marriage with the petitioner cannot have any legal validity.

10. As stated already, the respondent has not pleaded at all about her second marriage with Mr. [REDACTED] and its dissolution in the petition for maintenance. Apart from the vague statement of the respondent in her chief affidavit that she divorced Mr. [REDACTED] within one year of marriage, there is no proof to prove the same. In cross-examination, when a specific question was put, she could not say the date or year of divorce. She has no case that Mr. [REDACTED] pronounced *talaq* in her presence, or it was communicated to her directly. According to her, her father and uncle approached Mr. [REDACTED] and obtained *talaq*. She further stated that she cannot say whether the factum of the pronouncement of *talaq* was intimated to the mosque. On the side of the respondent, her brother was examined as PW2, and daughter was examined as PW3. PW2 did not say anything about the dissolution of the respondent's marriage with Mr. [REDACTED] in his chief affidavit. In the cross-examination, he stated that when the respondent divorced Mr. [REDACTED], he was a minor. PW3 was



:8:
also a minor when the respondent allegedly divorced Mr. [REDACTED]. She did not depose anything about the dissolution of the marriage between the respondent and Mr. [REDACTED]. Thus, the evidence adduced by the respondent is insufficient to prove the dissolution of the marriage between the respondent and Mr. [REDACTED]. One of the basic conditions for the validity of a marriage in Muslim Law is that the woman must not have a living and legally recognised husband. If a woman whose marriage to a living man subsists under the Muslim Law marries a man, her second marriage will be *batil* (void) under Muslim law. Thus, in the absence of proof of the dissolution of the marriage of the respondent with Mr. [REDACTED], her remarriage with the petitioner would be void even if it stands proved. It would be hit by the doctrine of *halala* as well.

11. The petitioner has also specifically disputed his second marriage alleged to have been solemnised with the respondent on 27/4/2012. According to him, no such marriage had taken place. When the petitioner denies marriage, the burden is upon the respondent to prove the same. To prove the respondent's remarriage with the petitioner on 27/4/2012, the respondent relied on her own evidence as well as the evidence of PWs 2 and 3.

12. Under Muslim Law, at the time of *nikah*, the bride can be represented by her *wali* (guardian). Normally, the father of the



:9:

bride would be *wali* and, in his absence, a brother can act as *wali*. According to PW2, he acted as *wali* of the respondent and performed *nikah* with the petitioner. PWs 1 to 3 deposed that *nikah* was performed at their residence in the presence of the *khatib*⁸ and two witnesses. The presence of two adult male witnesses or one male witness and two women witnesses is mandatory for a Muslim marriage. However, neither of these witnesses who were allegedly present at the time of *nikah* was examined. It is true that under Muslim law, the marriage contract is not required to be reduced to writing, and the factum of *nikah* need not necessarily be entered in the register maintained at the mosque. However, preparation of a marriage contract (*nikah namah*) and entering the details of marriage in the register maintained at the local mosque is a common practice. PW1 stated that both witnesses had signed in the register. However, that register was not summoned. The *khatib* was also not examined. Therefore, even though PWs 1 to 3 spoke about the marriage, in the absence of evidence of the witnesses and the *khatib* who performed the *nikah*, it cannot be said that the marriage has been satisfactorily proved.

13. The learned counsel for the respondent submitted that the evidence of PWs 1 to 3 would prove that the petitioner and the respondent were living as husband and wife since the date of their

8 A religious cleric who officiate nikah ceremony



:10:

second marriage in 2012 and living together of a man and woman as husband and wife for a considerable period of life would raise presumption of valid marriage between them and such presumption would entitle the woman to maintenance under Section 125 of Cr.P.C.

14. True, it is settled that the law presumes in favour of marriage and against concubinage. It is equally settled that when a man and woman have cohabited continuously for a long number of years and when a man and woman are proved to have lived together as husband and wife, the law will presume, unless the contrary is proved, that they are living together in consequence of a valid marriage and not in the state of concubinage⁹. However, such a presumption is rebuttable. It is equally settled that the presumption of lawful marriage would arise where there was prolonged and continued cohabitation as husband and wife and where there was no insurmountable obstacle to marriage, such as a prohibited relationship between the parties, the woman being an undivorced wife of a husband who was alive and the like¹⁰.

15. The issue whether a man and a woman who have lived together for an extended period should be considered husband and wife for Section 125 of the Cr.P.C., even if their marriage was not validly performed, has been discussed in detail by the Supreme

⁹ Chanmuniya (supra) and Kamala (supra)

¹⁰ Mohd.Amin and Others v. Vakil Ahmad and Others AIR 1952 SC 358



:11:

Court in several decisions. In *Vimala (K) v. Veeraswamy (K)*¹¹, a three-judge Bench of the Supreme Court interpreting Section 125 of Cr.P.C. held that a woman without the legal status of a wife can fall within the section's scope. However, it noted that a second wife, whose marriage is void due to the survival of the first marriage, is not a legally wedded wife and is therefore not entitled to maintenance under Section 125 of Cr.P.C. The Supreme Court in *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Another*¹² and *Savitaben Somabhai Bhatiya v. State of Gujarat and Others*¹³ took the view that 'wife' in Section 125 of Cr.P.C. refers only to a legally married wife. It was held that the marriage of a woman in accordance with Hindu rites with a man having a living spouse is a complete nullity in the eyes of law, and she is not entitled to the benefits of Section 125 of Cr.P.C. Therefore, to raise the presumption of a valid marriage for Section 125 of Cr.P.C. based on cohabitation, the couple must be qualified to marry and not be within the prohibited degrees of marriage. In this case, as already stated, in the absence of the dissolution of the respondent's second marriage with Mr. [REDACTED], she remains disqualified from marrying the petitioner. Consequently, the long cohabitation of the petitioner and respondent does not entitle the latter to claim maintenance under Section 125 of Cr.P.C.

¹¹ (1991) 2 SCC 375

¹² AIR 1988 SC 644

¹³ (2005) 3 SCC 636



:12:

16. The upshot of the above discussion is that the evidence adduced by the respondent is insufficient to prove the dissolution of her second marriage with Mr. [REDACTED] and remarriage with the petitioner. It appears that, since the proceedings under Section 125 of Cr.P.C. being summary in nature, unlike other matrimonial proceedings, the respondent did not adduce sufficient evidence to prove her case. However, considering the entire facts and circumstances of the case, and also considering the fact that the finding in the MC proceedings shall have a bearing on the status of the respondent as the wife of the petitioner, I am of the view that an opportunity has to be given to the respondent to adduce further evidence, if any, to prove the dissolution of her second marriage as well as the remarriage. For these reasons, the impugned order is set aside, and MC No.270/2022 is remanded to the Family Court, Malappuram, for fresh disposal. The Family Court shall dispose of the case in accordance with law after giving opportunity to both sides to adduce further evidence within a period of three months from the date of receipt of a copy of this order.

RP(FC) is disposed of as above.

sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp