



2024/KER/53408

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 2<sup>ND</sup> DAY OF JULY 2024 / 11TH ASHADHA, 1946

CRL.MC NO. 8481 OF 2022

IN MC NO.46 OF 2019 OF JUDICIAL MAGISTRATE OF FIRST CLASS,  
KUNNAMKULAM

PETITIONER/RESPONDENT:

SAHESH RAFEEQUE,  
AGED 43 YEARS, S/O. AYMANDAGATH ABDUL RAFEEQUE,  
'SERENE', AYMANDAGATH HOUSE, THANA, KANNUR TALUK,  
KANNUR DISTRICT, PRESENTLY RESIDING AT KANOO HOUSING  
COMPOUND VILLA NO # 1, GREEN BELT DISTRICT  
AL KHOBAR - 34433 KINGDOM OF SAUDI ARABIA, PIN-670012

BY ADVS.  
K.SHIBILI NAHA  
A.LOWSY  
NIVEA K.G.

RESPONDENT/PETITIONER:

NURAL INSHIRA BINTI ABDUL KAREEM,  
AGED 33 YEARS, D/O. ABDUL KAREEM BIN MAIDIN,  
PERUMPULLY HOUSE, KARIKKAD, THRISSUR - 680519  
(RESIDING AT NO.6, JALAN LURAH 8/2A,  
40000 SHAH ALAM, SELANGOR, MALAYSIA)  
HOLDER OF MALAYSIAN PASSPORT NO. A52467022  
WITHIN THE LIMITS \* KAYAMKULAM POLICE STATION),  
PIN - 680519

- \* NAME OF THE POLICE STATION SEEN UNDER THE RESPONDENT  
ARRAY CORRECTED TO KUNNAMKULAM AS PER ORDER IN  
CRL.M.A.NO.2/2022 IN CRL.M.C.NO.8481/2022 DATED  
20.12.2022.

BY ADVS.  
ARUN BOSE.D ABD  
K.VISWAN(K/416/1993)  
SOORAJ S(K/001404/2018)

SRI.M.P.PRASANTH, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
02.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



**'C.R.'**

**ORDER**

**Dated this the 2<sup>nd</sup> day of July, 2024**

The petitioner herein is the respondent in M.C. No.46/2019 on the files of the Judicial First Class Magistrate Court, Kunnamkulam. This petition has been filed to quash Annexure A petition/complaint pending as M.C. No.46/2019 on the files of Judicial First Class Magistrate Court, Kunnamkulam.

2. Heard the learned counsel for the petitioner, the learned Public Prosecutor and the learned counsel appearing for the respondent/original complainant in detail.

3. The parties herein will be referred to as petitioner and respondent with reference to their status in the original complaint.

4. The learned counsel for the respondent/petitioner herein mainly impugns the maintainability of the petition filed



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by the petitioner before the Judicial First Class Magistrate Court, Kunnamkulam stating that the petitioner is a Malaysian citizen with Malaysian Passport No.A52467022 and is permanently settled in Malaysia as per the address shown in the M.C. According to the learned counsel for the respondent, the marriage took place in Malaysia and divorce also effected in Malaysia. According to the learned counsel for the respondent, a petition under Section 3 of the Muslim Women (Protection Of Rights On Divorce) Act, 1986 ('MWPRD Act' for short hereinafter) can be filed only before a Magistrate where the divorced women resides. Since the petitioner in the M.C. is not a resident within the jurisdiction of the Magistrate Court, Kunnamkulam, the M.C. is not at all maintainable and the same deserves quashment.

5. Opposing the quashment sought for, the learned counsel for the petitioner/complainant submitted that the residence shown in the complaint is within the jurisdiction of



Kunnamkulam Police Station and therefore, the petitioner is to be treated as a resident within the jurisdiction of the Magistrate Court, Kunnamkulam, for maintaining a complaint under Section 3 of the MWPRD Act.

6. On perusal of Section 2(c) of the Muslim Women (Protection Of Rights On Divorce) Act, the term 'Magistrate' means a "Magistrate of the First class exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the divorced woman resides."

7. Now the short questions that fall for consideration in the present case are;

- 1) Who is competent to file a complaint/petition under Section 3 (2) of the MWPRD Act?
- 2) What is meant by the term "resides" within the sweep of Section 2(c) of MWPRD Act? and
- 3) Whether the petitioner herein is to be treated as 'divorced wife residing' within the jurisdiction of the Magistrate Court,



Kunnamkulam under Section 2(c) of the MWPRD Act to claim relief under Section 3 of the MWPRD Act?

8. In this connection, the learned counsel for the respondent placed a decision of the Apex Court in **Bhagwan Dass and another v. Kamal Abrol and others** [AIR 2005 SC 2583] with reference to paragraph Nos.9, 11 and 12. In paragraph Nos.9 and 12 of the said decision, the Apex Court observed as under:-

"9. The decision of the Privy Council was quoted with approval and followed by the Supreme Court in the case of **Sri Sri Sri Kishore Chandra Singh v. Babu Ganesh Prasad Bhagat and, Ors.**, [AIR 1954 SC 316]. The Supreme Court later on in the decision **Mst. Jagir Kaur and another v. Jaswant Singh**, [AIR 1963 SC 150], has defined the word 'resides' in the following manner:

"a person resides in a place if through choice make it his abode permanently or even temporarily."

In the same decision the Supreme Court pointed out that the question of residence is a mixed



question of law and fact. Hence this being the mixed question of law and fact has to be decided keeping in mind the facts and circumstances of each case. The meaning of the word 'residence' would in ultimate analysis depend upon the context and the purpose of a particular statute. In another, decision of the Supreme Court in the case of **Jeewanti Pandey v. Kishan Chandra Pandey**, [AIR 1982 SC 3] while construing Section 19(ii) of the Hindu Marriage Act, 1955 the Supreme Court said (Para 12):

"In ordinary sense 'residence' is more or less of a permanent character. The expression 'resides' means to make an abode for a considerable time; to dwell permanently or for a length of time to have a fixed home or abode. Where there is such fixed home or such home at one place, his legal and actual residence is the same and cannot be said to reside at any other place where he had gone on a casual or temporary visit. But if he has not established home, his actual and physical habitation is the place where he actually or personally resides."



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XXXX XXXX XXXX

12. From the aforesaid analysis it is apparent that the word 'residence' is generally understood as referring to a person in connection with the place where he lives, and may be defined as one who resides in a place or one who dwells in a place for a considerable period of time as distinguished from one who merely works in a certain locality or comes casually for a visit and the place of work or the place of casual visit are different from the place of 'residence'. There are two classifications of the meaning of the word 'residence'. First is in the form of permanent and temporary residence and the second classification is based on de facto and de jure residence. The de facto concept of residence can also be understood clearly by the meaning of the word 'residence' as given in the Black Law Dictionary, 8th Edition. It is given that the word 'residence' means bodily presence as an inhabitant in a given place. Thus de facto residence is also to be understood as the place where one regularly resides as different to the places where he is connected to by mere ancestral connections or



political connections or connection by marriage.”

9. Reading the above decision, the term ‘residence’ is generally understood as referring to a person in connection with the place where he lives, and may be defined as one who resides in a place or one who dwells in a place for a considerable period of time as distinguished from one who merely works in a certain locality or comes casually for a visit and the place of work or the place of casual visit are different from the place of ‘residence’. The term ‘residence’ literally means the fact of living in a particular place.

10. In this case, as per the records available, the petitioner is a citizen of Malaysia. The marriage took place in Malaysia and divorce also took place in Malaysia as per Annexures D and E, as submitted by the learned counsel for the respondent. Since the MWPRD Act provides that a petition/complaint under Section 3(2) of MWPRD Act seeking reliefs available under Section 3(1)(a) to (d) of MWPRD Act at





the instance of the divorced wife is maintainable only within the jurisdiction of the Magistrate, where the divorced wife resides, such a wife alone is competent to file a complaint/petition under Section 3(2) of the MWPRD Act. In view of the above discussion, the petitioner herein, a citizen and native of Malaysia, residing in Malaysia, who married and divorced in Malaysia, would not come under the definition of a 'divorced women resides' within the jurisdiction of the Magistrate Court, Kunnamkulam. Therefore, the petition filed by the petitioner before the Magistrate Court, Kunnamkulam found to be not maintainable. Therefore quashment sought for on the said ground is liable to be allowed.

Therefore, this Crl.M.C stands allowed. Consequently, the further proceedings in M.C. No.46/2019 on the files of the Judicial First Class Magistrate Court, Kunnamkulam stand quashed.

Sd/-  
**A. BADHARUDEEN**  
**JUDGE**



APPENDIX OF CRL.MC 8481/2022

PETITIONER'S ANNEXURES

- Annexure A CERTIFIED COPY OF THE PETITION FILED BY THE RESPONDENT TAKEN ON FILE AS M.C.NO. 46 OF 2019
- Annexure B TRUE COPY OF THE RELEVANT PAGES OF THE RESPONDENT'S PASSPORT ISSUED AT SHAH ALAM, MALAYSIA
- Annexure C TRUE COPY OF THE MARRIAGE CERTIFICATED DATED 18.04.2018 ISSUED BY THE MARRIAGE REGISTRAR MALAYSIA
- Annexure D TRUE COPY OF THE CERTIFICATE OF DIVORCE DATED 04.12.2019 ISSUED BY THE CHIEF REGISTRAR MARRIAGE DIVORCE AND RECONCILIATION FOR MUSLIMS, STATE OF SELANGOR, MALAYSIA
- Annexure E THE ENGLISH TRANSLATION OF THE ORDER DATED 04.12.2019 ISSUED BY THE SHAH ALAM LOWER SYARIAH COURT, SELANGOR