



2024:KER:83626

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 7TH DAY OF NOVEMBER 2024/16TH KARTHIKA, 1946

CRL.REV.PET NO. 268 OF 2020

AGAINST THE ORDER/JUDGMENT DATED 26.10.2019 IN CRA NO.28
OF 2019 OF ADDITIONAL SESSIONS COURT - IV, KOLLAM ARISING
OUT OF THE ORDER/JUDGMENT DATED 18.01.2019 IN MC NO.121
OF 2012 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, KOLLAM

REVISION PETITIONER/RESPONDENT/PETITIONER:

SHANI

AGED 41 YEARS, D/O.KUNJU BEEVI, PATERI VEEDU,
PALACE WAD, THEVALLY, KOLLAM NOW RESIDING AT
SS VILLA, NETHAJI NAGAR HOUSE NO.58,
KUREEPUZHA EAST, KOLLAM WEST VILLAGE,
KAVANAD.P.O, KOLLAM-691003.

BY ADVS.

K.K.JOHN

SRI.ASISH K.JOHN



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RESPONDENTS/APPELLANT/RESPONDENT & STATE:

- 1 **MUHAMMED KUNJU**
 S/O.KOCHU KUNJU, KADAPPAI THEKKATHIL HOUSE,
 CHANKUVADAKKATHIL, PALAKKAL MURI, THEVALAKKARA
 VILLAGE, KARUNAGAPPALLY, THEVALAKKARA.P.O.,
 KOLLAM DIST.-690524.

- 2 **STATE OF KERALA**
 REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
 KEALA, ERNAKULAM, KOCHI-682031.

R1 BY ADV SRI.B.MOHANLAL

R2 SRI. C.N. PRABHAKARAN-SR.PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
FINAL HEARING ON 07.11.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

**"C.R."****P.G. AJITHKUMAR, J.**

Crl.Rev.Pet.No.268 of 2020

Dated this the 7th day of November, 2024**ORDER**

The petitioner filed M.C.No.121 of 2012 before the Judicial Magistrate of the First Class-II, Kollam claiming reliefs provided under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short "the Act"). The learned Magistrate as per the order dated 18.01.2019 allowed the M.C. and ordered the respondent to pay maintenance during the period of Iddat and also fair provision and maintenance. The respondent filed an appeal as Crl.Appeal No.28 of 2019 before the Sessions Court, Kollam assailing the said order. The Additional Sessions Judge-IV, Kollam after hearing the parties to the appeal, reversed the order of the learned Magistrate and consequently dismissed M.C.No.121 of 2012. The said judgment is under challenge in this revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (Code).



2. Heard the learned counsel for the petitioner, the learned counsel for the 1st respondent and the learned Public Prosecutor.

3. When an application is filed under Section 3(2) of the Act, the learned Magistrate is expected to consider and pass an order as provided under Section 3(3) of the Act. There is no provision in the Statute enabling the party aggrieved by that order to prefer an appeal. No provision in the Act enables reading into it the provisions concerning appeals in the Code also. In the absence of a provision in the Act for filing appeals against orders under Section 3(3), provisions governing appeals in the Code can be resorted to only if there is legislation by incorporation in the Act, either express or implied, of the provisions governing appeal under the Code. There is no such incorporation to the Act. Only provision that empowers a Magistrate dealing with a petition under Section 3(2) of the Act to bring in procedure in the Code is Rule 4 in the Muslim Women (Protection of Rights on Divorce) Rules, 1986. Rule 4 provides to follow the procedure



in the Code in the matter of recording evidence, and not in relation to any other aspects. In the light of the said provisions the position of law is that no appeal to the Sessions Court is possible against an order under Section 3(3) of the Act.

4. In **Ganga Bai v. Vijay Kumar [AIR 1974 SC 1126]** the Apex Court while considering the scope of appeal in civil cases it was held that appeal is a statutory right and is maintainable only when some statute provides the remedy of appeal. That proposition is applicable equally to criminal matters also (See: **Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka and others [(2019) 2 SCC 752]**). Insofar as the criminal cases are concerned Section 372 of the Code statutorily prescribes also that no appeal shall lie from any judgment or order of a Criminal Court except as provided for by the Code or by any other law for the time being in force.



5. In the circumstances, the learned Sessions Judge committed an error in entertaining and deciding Crl.Appeal No.28 of 2019. It was without jurisdiction. When such a remedy is not provided in law, the judgment in the appeal is a non-est and can only be ignored.

6. The result is that the order of the learned Magistrate in M.C.No.121 of 2012 remains valid. Of course, when the respondent filed an appeal and the appellate court entertained the same, it can certainly be said that the respondent prosecuted the matter with bona fides. Therefore, the respondent, if he desires to challenge the order of the learned Magistrate in an appropriate proceeding, he may claim the benefit of Section 14 of the Limitation Act, 1963.

Resultantly, the revision petition is dismissed. Considering the request of the learned counsel for the respondent, enforcement of the order dated 18.01.2019 in M.C.No.121 of 2012 is kept in abeyance for a period of two weeks.

Sd/-

P.G. AJITHKUMAR, JUDGE