Parties' Standard Of Living 'Very High': Kerala HC Upholds ₹31.6 Lakh Compensation U/S 3 Muslim Women (Protection Of Rights On Divorce) Act

2022 LiveLaw (Ker) 606

IN THE HIGH COURT OF KERALA AT ERNAKULAM
DR. KAUSER EDAPPAGATH; J.
CRL.MC NO. 347 OF 2019; 18 November 2022
SUHADATH K.K. *versus* **SHIHAB K.B.**

AGAINST THE ORDER IN CRL.RP 17/2017 OF I ADDITIONAL SESSIONS COURT, ERNAKULAM

Petitioner / Respondent by Adv A. Rajasimhan; Respondents / Revision Petitioner by Adv T.M. Abdul Latheef, Sangeetha Raj, Public Prosecutor.

O R D E R

This Crl.M.C. has been filed challenging the order passed by the I[st] Additional Sessions Court, Ernakulam (for short, 'the court below') in Crl R.P. No. 17/2017 dated 17[th] November, 2018.

2. The petitioner herein was the legally wedded wife of the 1[st] respondent. The parties are Muslims. Their marriage was solemnized on 15/6/2008. A male child was born out of the wedlock. Admittedly, the 1[st] respondent divorced the petitioner by pronouncing *talaq* on 15/12/2013. The petitioner filed a petition at the court below u/s 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short, the Act of 1986) as MC No.17/2015 claiming `1 crore towards reasonable and fair provision for the future, `1,50,000/- towards maintenance for *iddat* period, for return of 70 grams of gold given as mahr, and for return of `1,41,680/- as the value of 56 grams of gold allegedly given to her by her parents and took away by the 1[st] respondent. Admittedly the 1[st] respondent was employed at Doha, Qatar. The petitioner along with the child were also staying with him. The petitioner alleged in the petition that the respondent was drawing a monthly salary of `2,00,000/-. However, the said case set up by the petitioner was disputed by the 1[st] respondent contending that he was drawing only a salary of `60,000/-.

3. The parties went on trial. The petitioner was examined as PW1 and Exts.P1 to P6 were marked. The father of the 1[st] respondent was examined as DW1. He was also the power of attorney holder of the 1[st] respondent. Exts.D1 to D7 were marked on the side of the respondents. After a detailed analysis of the evidence adduced, the learned Magistrate found that the petitioner has succeeded in proving that the 1[st] respondent was drawing a monthly income of `2,00,000/-. The learned Magistrate further found that the petitioner and her son require at least `33,000/- per month for their livelihood. Reckoning the said amount for a period of 8 years, the learned Magistrate granted an amount of `31,68,000/- as fair and reasonable provision and maintenance u/s 3 of the Act of 1986. The 1[st] respondent challenged the said order before the Sessions Court, Ernakulam in Crl.R.P.No.17/2017. The learned Additional Sessions Judge set aside the order passed by the learned Magistrate and remanded the case to the learned Magistrate for fresh consideration. Before the Sessions Court, the 1[st] respondent herein produced a salary certificate allegedly issued by his employer. The remand was essentially to give an opportunity to the 1[st] respondent to prove the said salary certificate and thus to prove his actual income. The order of remand passed by the Sessions Court is under challenge in this Crl.M.C.

4. I have heard Sri.Rajasimhan, the learned counsel for the petitioner, Sri.T.M.Abdul Latheef, the learned counsel for the 1[st] respondent and Sri.Sangeetha Raj, the learned Public Prosecutor.

5. It is trite that the court while fixing the reasonable and fair provision of maintenance to be paid to a divorced woman shall keep in view the status of parties, capacity of the former husband to pay maintenance and also other attendant circumstances. The amount so fixed must be enough to take care of the future needs of a woman in the prevailing socio-economic scenario. (See ***Seenath v. Iqbal & another*** [2009 (2) KHC 1009] and ***Aboobacker C.K. v. Rahiyanath & another*** [2008 (3) KHC 492]). It has come out in evidence that the petitioner is a well qualified lady. She possesses M.Sc Degree in Chemistry, M.Tech in Industrial Catalysis and B.Ed in Physical Science. She was enrolled as a junior research fellow at CUSAT and also selected for a project work at Baba Atomic Research Centre, Mumbai during 2008-2009. It has further come out in evidence that her father is a reputed B class contractor of Public Works Department and brother and sisters are well settled. The 1st respondent was working as a lab technician in Red Crescent Workers' Health Centre, Sanayya, Doha. His father is a construction contractor and a political leader. It has come out in evidence that both the petitioner and the 1st respondent are hailing from very financially well settled families and their standard of living was very high. It has also come out in evidence that the petitioner along with her child had stayed at Doha along with the 1st respondent. The petitioner specifically alleged in the petition that the 1st respondent was working as the lab technician at Red Crescent Workers' Health Centre, Doha and drawing a salary of `2,00,000/-. She gave oral evidence also to that effect. She specifically deposed that in May, 2012, the 1st respondent had shown the salary certificate to her which he had brought home to apply for family status visa. In cross-examination, she specifically stated that the salary certificate contained the signature of the authorized person of the Red Crescent Workers' Health Centre. The learned Magistrate relied on the said evidence of PW1. It must be noted that as against the positive evidence of the petitioner, no rebuttal evidence was given by the 1st respondent. The 1st respondent even did not enter into the box. Instead, his father and power of attorney holder who had no direct knowledge about his job and income gave evidence. No salary certificate was produced. Thus, based on the materials on record, the learned Magistrate concluded that the case of the petitioner that the 1st respondent was drawing a salary of `2,00,000/- was only to be accepted and the said amount was reckoned for quantifying the amount towards fair and reasonable compensation u/s 3 of the Act of 1986. The learned Magistrate also found that the petitioner and her child require at least `33,000/- per month for their livelihood. The said amount was arrived at taking into account the day to day expenditure required for the petitioner and the child for food, clothing, shelter etc. The said amount was arrived by the learned Magistrate on a rational basis. The petitioner is very young. The court below while quantifying the reasonable and fair provision for future maintenance has taken 8 years as the multiplier. It appears to be absolutely reasonable. This Court in ***Ahammed v. Aysha*** [1990 KHC 41] applied the principle of 5 years purchase value for fixing the quantum payable under the head “reasonable and fair provision of maintenance”. However, thereafter, in ***Kunhi Mohammed v. A.P.Sajitha & Another*** [2013 KHC 786], this Court held that 5 years multiplier was fixed in ***Ahammed's case*** (supra) as early as in 1990 and it was high time to increase the multiplier by the passage of time. Accordingly, ten years purchase value was adopted. The said finding was arrived at observing that fall of money value has to be taken into consideration while fixing the reasonable and fair provision of maintenance. The learned Magistrate has taken only eight years multiplier in this case.

6. The learned Magistrate has given a well reasoned order and fixed `31,68,000/- as fair and reasonable compensation. However, the Additional Sessions Court in revision, without any reasoning, found that `33,000/- was arrived at by the learned Magistrate

without any logical basis and that the monthly income of the 1st respondent was fixed without any cogent evidence. The learned Additional Sessions Judge was persuaded by a salary certificate produced by the 1st respondent in the Sessions Court which would show that the salary of the 1st respondent is only 6,150 Qatar Riyals (`70,000/-).

7. It is settled that the revisional jurisdiction u/s 397 of Cr.P.C was to confer power upon superior criminal courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment. It has been consistently held by the Apex Court that the jurisdiction of the High Court in revision is severely restricted and it cannot embark upon re-appreciation of evidence. In ***Shlok Bhardwaj v. Runika Bhardwaj and Others*** [(2015) 2 SCC 721], the Apex Court held that the scope of revisional jurisdiction of the High Court does not extend to re-appreciation of evidence.

8. As stated already, positive evidence was given by the petitioner to prove the income of the 1st respondent. No contra evidence was adduced by the 1st respondent. He did not even enter into the box. He did not produce any salary certificate in spite of sufficient opportunity. At a belated stage, he produced a salary certificate before the Sessions Court and sought a remand. The Sessions Court found that there is no logical basis for fixing `33,000/- as the monthly expenditure of the petitioner and also fixing `2,00,000/- as the income of the 1st respondent. The learned Magistrate after analysing the evidence on record in its correct perspective came to the conclusion that the petitioner and her child require `33,000/- for their livelihood and 1st respondent earns `2,00,000/- per month. The learned Additional Sessions Judge while exercising the power u/s 397 of Cr.P.C ought not have upset the said finding of fact. I am of the view that the learned Additional Sessions Judge exceeded its jurisdiction in reappreciating the evidence on record. Hence, the impugned order of the Additional Sessions Court is vitiated by illegality. It is, accordingly, set aside. The order of the learned Magistrate is restored.

Crl.M.C stands allowed as above.