



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR. JUSTICE P. KRISHNA KUMAR

MONDAY, THE 2ND DAY OF JUNE 2025 / 12TH JYAISHTA, 1947

MAT.APPEAL NO. 586 OF 2017

AGAINST THE JUDGMENT DATED 18.02.2017 IN OP NO.74 OF
2013 OF FAMILY COURT, MAVELIKKARA

APPELLANTS/PETITIONERS IN THE O.P.:

- 1 SHEELA GEORGE
AGED 50 YEARS, D/O.LATE SARAMMA GEORGE,
MEENATHETHIL HOUSE,
PALLARIMANGALAM MURI,
THEKKEKARA VILLAGE, OLAKETTIYAMBALAM P.O,
MAVELIKARA TALUK

- 2 NIKHIL GEORGE
AGED 20 YEARS, S/O. SHEELA GEORGE,
MEENATHETHIL HOUSE,
PALLARIMANGALAM MURI,
THEKKEKARA VILLAGE, OLAKETTIYAMBALAM P.O,
MAVELIKARA TALUK

BY ADV SRI.NIRMAL V NAIR

RESPONDENT/RESPONDENT IN O.P.:

V.M.ALEXANDER
AGED 50 YEARS, VALLIAZHATHU
SOUTH MURI BLOCK,PALLICKAL P.O,
KATTANAM, BHARANICKAVU VILLAGE,
THAZHAVA MUKKU,MAVELIKARA TALUK



**BY ADVS.
SRI . V . N . MADHUSUDANAN
DR . V . N . SANKARJEE
SRI . S . SIDHARDHAN
SMT . M . SUSEELA
SMT . R . UDAYA JYOTHI
SRI . M . M . VINOD**

**THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON
21.05.2025, THE COURT ON 02.06.2025 DELIVERED THE FOLLOWING:**



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SATHISH NINAN & P. KRISHNA KUMAR, JJ.

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Mat.Appeal No.586 of 2017

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Dated this the 2nd day of June, 2025

JUDGMENT

P.Krishna Kumar, J.

This appeal is preferred against the order rejecting an application for maintenance filed by the appellants against the respondent.

2. The first appellant is the divorced wife of the respondent, and the second appellant is their child. The appellants filed a petition under Section 26 and Rule 1 of Order VII of the Code of Civil Procedure r/w Section 7 of the Family Courts Act before the Family Court, Mavelikkara, claiming Rs.3,60,000/- as arrears of maintenance for the previous three years and Rs.5,000/-



each per month towards future maintenance. The parties are Christians.

3. The learned Family Judge dismissed the claim on the finding that, as per a compromise agreement (Ext.B2), the first appellant had relinquished her right to maintenance from the respondent on receiving Rs. 30,000/-. It was also found that she failed to prove her inability to maintain herself, as well as the ability of the respondent to provide the amount of maintenance claimed. Regarding the claim for the child, the Family Court found that it is not maintainable as Section 37 of the Divorce Act ('the Act', for short) does not apply to a minor child. It was also observed that, since the respondent had been paying a monthly sum of Rs.175/- to the child as per the order in M.C.No.34/1998 on the file of the Judicial First Class Magistrate Court, Mavelikkara, the remedy available to the child is to make an application under Section 127 of the Code of Criminal



Procedure ('Cr.P.C.', for short) for enhancing the allowance of maintenance before that court.

4. We have heard Sri. Nirmal V. Nair, the learned counsel for the appellants, and Dr. V.S. Sankarjee, the learned counsel for the respondent.

5. The first appellant and the respondent got married on 20.04.1995. Their marital tie was dissolved by a decree of divorce on mutual consent under Section 10A of the Act with effect from 3.8.2004. After applying for a joint divorce, they entered into a compromise agreement (Ext.B2, undated), by which the respondent relinquished his rights in favour of the first appellant in respect of 15 cents of land which was conveyed in his name at the time of their marriage by the parents of the first appellant. Further, on receiving Rs.30,000/- from the respondent, the first appellant also relinquished her rights to future maintenance.

6. In 2012, the appellants filed the petition claiming maintenance on the ground that they were unable



to maintain themselves, as the first appellant had to give up her job to bring up the second appellant. The respondent has been deriving Rs. 30,000/- per month from his lottery business, and thus he was bound to maintain them, but he refused to do so, it was contended.

7. Let us first consider whether the first appellant is entitled to get maintenance from the respondent after her divorce, and if so, whether Ext.B2 agreement would disentitle her from claiming maintenance.

8. The appellants resorted to Section 37 of the Act and Section 125 of the Cr.P.C. to support their right to claim maintenance. Section 37 of the Act reads as follows:

“37.Power to order permanent alimony.- Where a decree of dissolution of the marriage or a decree of judicial separation is obtained by the wife, the District Court may order that the husband shall to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties.



Power to order monthly or weekly payments - In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court seems fit.”

A reading of Section 37 makes it clear that a divorced wife is entitled to raise a claim for permanent alimony against the former husband. There exists no legal bar to file a separate petition asserting such a claim subsequent to the conclusion of the proceeding for dissolution of marriage. As per Section 37 of the Act, the following conditions are to be satisfied for awarding alimony to the divorced wife: (a) a decree of dissolution of marriage or judicial separation was obtained by the wife; (b) the permanent alimony has to be ordered having regard to the means of the wife, the ability of the



husband (c) the conduct of the parties; and (d) only a reasonable sum to be ordered.

9. When the wife obtained a decree of divorce through a joint petition filed under Section 10A of the Act, we find no reason to hold that Section 37 of the Act is inapplicable. For the purpose of Section 37, such a decree can be considered as 'obtained by the wife', though the husband also joined her in that endeavour. Further, in **Daniel Anand v. G. N. Sujatha** (AIR 2017 Kar. 171), the Karnataka High Court held that a conjoint reading of Sections 37 and 38 of the Act indicates that there is no legal impediment for a wife, who is the respondent in a divorce petition, to seek permanent alimony under the Act. It was further held that when Sections 37 and 38 are read together, it is evident that the relief of alimony applies to all cases, as available under Section 37 of the Act. Considering the broader constitutional principles and the true objective of



Section 37 (right to life and protection against destitution), we concur with this view.

10. As per section 37, the order for permanent alimony can be issued by securing the wife a gross sum of money, or by ordering payment of an annual, monthly or weekly sum, if the other conditions mentioned in the Section are satisfied. If the husband later becomes unable to make such payments, the court can discharge or modify the order or temporarily suspend the same, which can again be revived later.

11. The trial court observed that the appellants did not mention anywhere in the petition that they preferred the petition either under Section 37 of the Indian Divorce Act or under Section 125 of the Code of Criminal Procedure. True, the appellants instituted the petition under Section 26 and Rule 1 of Order VII of the Code of Civil Procedure r/w Section 7 of the Family Courts Act. In our opinion, there is no irregularity in it, as Section 45 of the Act states that a proceeding under the



Act would be regulated by the provisions of the Code of Civil Procedure. That apart, misquoting or omission to quote a provision will not debar the parties from claiming a right under the substantive provisions of law, if they are actually entitled to it.

12. The respondent contended that by virtue of Section 125(4) of Cr.P.C., a wife living separately from her husband by mutual consent is not entitled to receive any allowance for maintenance. The remedy provided under Section 125 of the Cr.P.C. is summary in nature and it does not limit the benefits given to a wife under other substantive provisions of law. Section 125(4) reads as follows:

“(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

(Emphasis added)

In order to attract Section 125(4), it must be shown that the husband and wife are living separately by mutual



consent. The term “wife” is defined under Section 125 to include a divorced wife who has not remarried. But the sub-clause (4) of Section 125, by its apparent tenure, seems to be inapplicable in the case of a divorced husband and wife. The question of living separately on mutual consent naturally arises only during the subsistence of the marriage. The Apex Court in ***Vanamala v. Ranganatha Bhatta*** [(1995) 5 SCC 299] had occasion to consider this aspect. The Court held as follows:

“On a plain reading of this Section, it seems fairly clear that the expression ‘wife’ in the said sub-section does not have the extended meaning of including a woman who has been divorced. This is for the obvious reason that unless there is a relationship of husband and wife there can be no question of a divorced woman living in adultery or without sufficient reason refusing to live with her husband. After divorce where is the occasion for the woman to live with her husband? Similarly there would be no question of the husband and wife living separately by mutual consent because after divorce there is no need for consent to live separately. In the context, therefore, Sub-S.(4) of S.125 does not apply to the case of a woman who has been divorced or who has obtained a decree for divorce. In our view, therefore, this contention is not well founded.”



13. Apart from Section 125(4), the provisions contained in Section 127(3)(c) of the Cr.P.C. also have some relevance in the above context. It reads:

“Section 127(3): Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from her husband, the Magistrate shall, if he is satisfied that -

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(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance as the case may be, after her divorce, cancel the order from the date thereof.”

From the plain meaning of the said provision, it is evident that a former husband may invoke Section 127(3)(c) to cancel an order of maintenance which was obtained by the wife under Section 125 of the Cr.P.C. prior to divorce, on the ground that she has obtained a divorce and has voluntarily surrendered her right to maintenance. However, the provision does not bar a divorced wife who had previously surrendered her right to maintenance from seeking maintenance under Section 125 of the Cr.P.C. if there is a change in circumstances.



14. In other words, while Section 127(3)(c) enables a divorced husband to have a maintenance order under Section 125 cancelled when the wife voluntarily relinquishes her right to maintenance, it does not prohibit the wife from later claiming maintenance if circumstances change and she becomes incapable of maintaining herself. It is also worth noting that the Punjab and Haryana High Court in **Ranjit Kaur v. Pavittar Singh** (1992 CriLJ 262), and the Karnataka High Court in **Maria Abhishegam v. Joyce Ebenezer** (2005 CriLJ 4182), have taken a similar view. In view of the above discussion, the contention of the respondent is liable to be rejected.

15. The next question to be considered is whether Ext.B2 agreement would stand in the way of the first appellant to make such a claim. Even though the respondent had a claim before the trial court that he had relinquished his right over 15 cents of land as part of their settlement (besides providing Rs.30,000/-) it is



evident from Ext.B2 that the said property was conveyed to him by the parents of the first appellant in connection with the marriage. Thus, the question narrows down to the validity of the clause in the agreement that the 1st appellant relinquished her right of future maintenance on receipt of Rs.30,000/-.

16. In *Nagendrappa Natikar v. Neelamma* (AIR 2013 SC 1541), the Apex Court considered the question whether a compromise entered into by the husband and wife in a proceeding under Section 125 of the Cr.P.C., agreeing for a consolidated payment towards alimony, would preclude the wife from claiming maintenance in a suit filed under Section 18 of the Hindu Adoption and Maintenance Act, 1956. The Apex Court held that such an agreement would be opposed to public policy and is not enforceable in a court of law, hence, the remedy of the wife cannot be foreclosed by such a compromise.

17. This Court also considered the effect of a compromise agreement by which the wife waived her right



to get maintenance, in *Rajesh R.Nair v. Meera Babu* (2013 (1) KHC 812). The court held that the right to claim maintenance is a statutory right created by the Parliament, and an agreement by which a wife waived her right guaranteed by the statute would only be an agreement against public policy. The statutory provisions for maintenance are intended to protect the spouse, children or parents from destitution and vagrancy, and they declare the public policy of the nation. Thus, the above legal principle is equally applicable to an agreement attempting to contract out of the provisions of the Act.

18. However, in cases where the wife has received a consolidated amount in lieu of maintenance, the court should, before issuing an order for further allowance, primarily consider, taking into account the change in circumstances, if any, whether the amount already given is sufficient to meet the needs of the wife. Although the clause in an agreement whereby the wife has waived her



right to claim future maintenance cannot always hold against her, in order to obtain further allowance for maintenance later, she must establish that the benefits she received in lieu of maintenance are no longer sufficient for her livelihood, due to a change in circumstances or for other eventualities.

19. It may be significant to note that, even if the court passes a decree or order for maintenance (on merit or by consent of the parties), the court is at liberty to vary or modify such order if there is a change in circumstances. To elaborate, Section 127 of the Cr.P.C. provides that on proof of a change in the circumstances of any person receiving a monthly allowance for maintenance, the Magistrate may make necessary alterations in the allowance. Under the Hindu Marriage Act, 1955, Section 25(1) provides for payment of alimony and maintenance. Section 25(2) of the said Act provides that if the court is satisfied that there is a change in the circumstances of either party at any time after it



has made an order under sub-section (1), at the instance of either party, it may vary, modify or rescind any such order. Similarly, Section 37(2) of the Special Marriage Act, 1954, also contains a provision for varying, modifying or rescinding any order passed by the court for permanent alimony and maintenance, at the instance of either party, when there is a change in circumstances. Section 37 of the Act also contains a provision for modifying or cancelling such orders, but it is only at the instance of the husband. The Constitutional courts have extended beneficial principles deriving from the Hindu Marriage Act and other matrimonial laws while applying the provisions of the Act, for ensuring parity of treatment. Drawing sustenance from the similar provisions in the said Acts, we hold that the power to vary, modify or rescind any order passed by the court for permanent alimony and maintenance at the instance of either party inheres in the Court even under Section 37 of the Act, when there is a change in circumstances. The



same principle should guide the parties in the above situation.

20. Apparently, Ext.B2 was executed in the year 2004, and the claim for maintenance was raised only in the year 2012. Thus, without much discussion, it can be held that the consolidated payment of Rs. 30,000/- towards permanent alimony under Ext. B2 compromise will not disentitle the first appellant from raising a claim for maintenance at a later stage if she is actually unable to maintain herself. Therefore, it can be concluded that the first appellant is entitled to claim maintenance from the respondent, notwithstanding the terms of Ext.B2 agreement, either under Section 37 of the Act or under Section 125 of Cr.P.C., if she was unable to maintain herself during the relevant time.

21. The next issue is whether the second appellant is entitled to get maintenance under the provisions of the Act. The second appellant has now become a major, and the question of future maintenance to him does not arise.



However, whether he was entitled to get maintenance till attaining majority is a different issue. Let us now consider the correctness of the finding of the trial court that the remedy of a minor child is only to approach the Magistrate Court under Section 125 of the Cr.P.C., as the child is not covered by Section 37 of the Act.

22. In fact, the Act expressly empowers the Court to order maintenance to minor children either during the pendency of proceedings under the Act or even after that. While Section 43 of the Act permits the court to pass such interim orders in the course of a proceeding for dissolution of marriage or decree of nullity, Section 44 empowers the court to make such orders after passing such decree. Section 44 reads as follows:

“44. Power to make such orders after decree or confirmation - Where a decree of dissolution or nullity of marriage has been passed, the District Court may, upon application by petition for the purpose, make from time to time all such orders and provisions, with respect to the custody, maintenance and



education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of of the said Court, as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.”

In view of the above provisions, it can be concluded that the Family Court was not correct in holding that a minor child has no right to claim maintenance under the provisions of the Act. Despite the order passed by the Magistrate Court directing payment of maintenance at the rate of Rs.175/- per month to the child, the Court could have treated the application as one filed under the above provision. As the remedy under Section 125 of Cr.P.C. is only summary in nature, there is no bar for the child to claim a larger amount from the Family Court.

23. Coming to the question whether the evidence on record is sufficient to establish that the first appellant lacked the means to maintain herself and the child, and that the respondent, despite having the



ability, refused to pay maintenance, it is necessary to consider certain subsequent developments in the matter. During the course of hearing, we came to understand that the first appellant has instituted a fresh petition as O.P.No.1509/2024 before the Family Court, Mavelikkara, claiming maintenance from the respondent herein, including past maintenance. That apart, the learned counsel appearing for the respondent submitted that the health condition of the respondent is now very worse, as he is ailing from a fatal disease and that he has no income of his own. According to him, the respondent was also forced to approach the Family Court, Mavelikkara, claiming maintenance from his son, the second appellant herein. In the above circumstances, we deem it appropriate to remit the case for a fresh decision on merit by the trial court, after affording opportunity to both sides to adduce evidence, on change of circumstances, if any, after the dissolution of their marriage. We are also constrained to adopt the above



course because the trial court predominantly proceeded on the assumption that the claim for maintenance was not entertainable, although it ultimately addressed the merits of the case.

24. As a result, the appeal is allowed, and the impugned order is set aside. The Family Court is directed to dispose of this matter along with O.P.No.1509/2024, after affording opportunity to both parties to adduce evidence. We are sure that the Family Court will dispose of the matter at the earliest, considering the fact that this is a maintenance claim pending since 2012.

Parties shall appear before the Family Court on 25.06.2025.

Sd/-

SATHISH NINAN

JUDGE

Sd/-

P.KRISHNA KUMAR

JUDGE



APPENDIX OF MAT.APPEAL 586/2017

RESPONDENT'S ANNEXURES

- Annexure-R1 (a) True copy of the Medical Certificate dated 11.11.2024 issued by Dr. K. Pavithran
- Annexure-R1 (b) True copy of the ID No. 104880204415 dated 12.9.2024 issued by the Bharanikkavu Grama Panchayat
- Annexure R1 (c) CERTIFIED COPY OF THE SETTLEMENT DEED NO. 2267/1/2004 DATED 9.8.2004 ON THE FILE OF S.R.O., MAVELIKKARA.
- Annexure R1 (d) TRUE COPY OF THE PETITION IN M.C. NO. 464/2024 FILED BY THE RESPONDENT BEFORE THE FAMILY COURT, MAVELIKKARA
- Annexure R1 (e) TRUE COPY OF THE PETITION FOR INTERIM MAINTENANCE FILED BY THE RESPONDENT IN M.C. NO. 464/2024 BEFORE THE FAMILY COURT, MAVELIKKARA
- Annexure R1 (f) TRUE COPY OF THE AFFIDAVIT OF ASSETS AND LIABILITIES OF THE RESPONDENT FILED IN M.C. NO. 464/2024 BEFORE THE FAMILY COURT, MAVELIKKARA
- Annexure R1 (g) ORIGINAL OF O.P. NO 1509/2024 DATED 22.8.2024 FILED BY THE 1ST APPELLANT BEFORE THE FAMILY COURT, MAVELIKKARA
- Annexure R1 (h) ORIGINAL OF I.A NO.1/2024 DATED 22.8.2024 IN O.P NO. 1509/2024 FILED BY THE 1ST APPELLANT BEFORE THE FAMILY COURT, MAVELIKKARA
- Annexure R1 (i) TRUE COPY OF SHOW CAUSE NOTICE DATED 20.12.2024 TOGETHER WITH ATTACHMENT BEFORE JUDGMENT DATED 20.12.2024 AND ATTACHMENT SCHEDULE PROPERTY
- Annexure R1 (j) ORIGINAL PRINT OUT OF THE TAX RECEIPT NO. KL04060808375/2024 DATED 30.9.2024 ISSUED BY THE VILLAGE OFFICE, KATTANAM