

CRIMINAL REVISIONAL

Dr. Justice Kauser Edappagath

R.P.(FC) Nos.398 of 2018 and 366 of 2024

2025 November 12

Vappinu . . . Petitioner

v.

Fathima . . . Respondent

The petitioner challenges the order in M.C. filed by respondent wife, wherein maintenance is ordered. The second revision petition is filed by the petitioner challenging the order in M.C., filed by him against the respondent. It was contended by petitioner that he is jobless and has no means to provide maintenance to the wife; On the other hand, the wife is running a beauty parlour and earning her livelihood out of it. Petitioner further contends that the son provides maintenance to the wife; hence, the claim for maintenance against the husband is not legally sustainable. Dismissing both revision petitions, the Court;

Issue for Consideration

Whether a Muslim husband who contracted a second marriage during the subsistence of his first marriage can be permitted to contend that he has no means to maintain his first wife ?

Code of Criminal Procedure, 1973 (Central Act 2 of 1974)—Section 125—A mother can claim maintenance from her husband, even if her children are maintaining her—The fact that the son or daughter of a woman has sufficient means and provides maintenance to her would not absolve the husband of his independent statutory obligation—A Muslim wife who resides separately from her husband on his contracting a second marriage is entitled to claim her statutory right of maintenance under CrPC/BNSS—Polygamy for men is allowed under Muslim law only in exceptional and extraordinary circumstances, that too under the strict injunction that all the wives must be treated equally and equitably—Bharatiya Nagarik Suraksha Sanhita, 2023 (Central Act 46 of 2023) —Section 144—Muslim Personal Law.

Held:

A Muslim husband does not have a vested right to have more than one wife. Monogamy is the rule and polygamy is an exception under Muslim law. Polygamy for men is allowed under Muslim law only in exceptional and extraordinary circumstances, that too, under the strict injunction that all the wives must be treated equally and equitably. The capacity to do justice between co-wives is a condition precedent for polygamy, both under pristine Shariah law and under the Muslim Personal Law of India. The very foundation of tolerated polygamy in Muslim law is that the husband must be able to deal justly with all the wives. The verse in the

Quran (IV: 3) which permits polygamy makes it abundantly clear that if one is apprehensive of dealing justly with all his wives, he must marry only one. The term 'to do justly with all wives' implies not only the equality in love and affection but also the equality in maintenance. Therefore, a Muslim husband who contracted a second marriage during the subsistence of his first marriage cannot contend that he has no means to maintain his first wife. The fact that the husband has a second wife and is liable to maintain her cannot be a factor in denying maintenance to the first wife or reducing the quantum of maintenance she is entitled to. The scheme under Section 144 of BNSS (Section 125 of Cr.P.C.) contemplates that the right of a woman to claim maintenance from her husband under Sub-section (1)(a) of Section 144 of BNSS (Section 125(1)(a) of Cr.P.C.) is independent of the obligation of her son or daughter to maintain her under Sub-section (1)(d) of Section 144 of BNSS (Section 125(1)(d) of Cr.P.C.). A mother can claim maintenance from her husband even if her children are maintaining her. The fact that the son or daughter of a woman has sufficient means and provides maintenance to her would not absolve the husband of his independent statutory obligation under Section 144(1) (a) of BNSS (Section 125(1)(a) of Cr.P.C.) to support his wife if she needs it. Therefore, the contention that since the son provides maintenance to the mother, she cannot claim maintenance from the husband cannot be sustained. The respondent has taken yet another contention that the wife left his company, refused to live with him without any sufficient reason and hence is not entitled to maintenance. The evidence on record would show that the wife lives separately with her son, and the husband lives separately with his second wife. The right of the wife to claim maintenance from her husband, who has sufficient means under Section 125(1)(a) of Cr.PC (Section 144(1)(a) of BNSS) is subject to sub-section (4) of Section 125 (Section 144(4) of BNSS). A wife who chooses to live separately without sufficient reason is disentitled to maintenance under Section 125(4) of Cr.PC (Section 144(4) of BNSS). However, if the wife's decision to live separately is based on valid grounds, she may still claim maintenance despite living apart. The second marriage of a Muslim husband without the consent of his first wife is a sufficient reason for the latter to live separately from the former. In other words, a Muslim wife who resides separately from her husband on his contracting a second marriage is not disentitled from claiming her statutory right of maintenance under Cr.P.C./BNSS. (*Paragraphs 10, 11, 12 and 13*)

Case Law Cited:

(1) I.L.R. 2025 Kerala OnLine 59 = 2025 (1) K.H.C. 543—*Referred to.*

List of Acts:

- (1) Code of Criminal Procedure, 1973.
- (2) Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords:

Wife, husband, son, maintenance, muslim, second marriage.

Case Arising From:

Against the Order in M.C. No.89 of 2016 of Family Court, Thrissur.

Appearance of Parties:

Sri. K. Jagadeesh and Sri. V. Renju . . . for petitioner

Sri. K.N. Abhilash and Sri. Sunil Nair Palakkat . . . for respondent

ORDER

These revision petitions are connected and are disposed of by a common order.

2. R.P (F.C) No.398 of 2018 has been filed challenging the order passed by the Family Court, Thrissur, in M.C.No.89 of 2016. R.P (F.C) No.366 of 2024 has been filed challenging the order passed by the Family Court, Kunnamkulam, in M.C.No.203 of 2023.

3. M.C. No.89 of 2016 has been filed by the wife, Fathima, against her husband, Muhammed Vappinu. The Family Court, after trial, granted maintenance to the wife @Rs. 5,000/- per month as per the order dated 03.04.2018. The said order is under challenge in R.P. (F.C.) No. 398 of 2018.

4. M.C. No.203 of 2023 has been filed by the respondent in M.C.No.89 of 2016, Muhammed Vappinu, against his son, Vasif Muhammed. The Family Court dismissed the case as per the order dated 29.05.2024. The said order is under challenge in R.P. (F.C.) No.366 of 2024.

5. I have heard Sri.Jagadeesh K, the learned counsel for the husband, Sri.K.N.Abhilash, the learned counsel for the wife and the son.

6. The relationship between the parties is not in dispute. The marriage between the petitioner and the respondent in M.C.No.89 of 2016 took place on 20.04.1983. Three children were born in the wedlock: Vasif Muhammed, who is the respondent in M.C.No.203 of 2023 and Faseela and Fahima. Admittedly, the husband and the wife have been living separately since 2015. The son resides with the wife. It is also not in dispute that the husband contracted a second marriage and lives with her.

7. The learned counsel for the husband submitted that the husband is jobless and has no means to provide maintenance to the wife; on the other hand, the wife is running a beauty parlour and earning her livelihood out of it. The learned counsel further submitted that the son provides maintenance to the wife; hence, the claim for maintenance against the husband is not legally sustainable. The learned counsel also submitted that there is sufficient evidence to show that the wife left the company of the husband without any sufficient reason in 2015, and hence, she is not entitled to maintenance under Section 125(4) of Cr.P.C. The husband has also taken up the contention that he has to maintain his second wife. The learned counsel for the wife and son, on the other hand, supported the findings in the impugned orders.

8. The wife has taken a definite contention that she does not have any job or source of income to maintain herself, and her husband has sufficient means to maintain her. Even though the husband contended that the wife is running a beauty parlour,

absolutely no evidence has been produced to substantiate the same. The husband had admittedly worked in the Gulf for a pretty long period of more than 40 years. A person who had worked in the Gulf for such a long period would, no doubt, have sufficient savings.

9. It is the case of the husband that, after returning from the Gulf, he is jobless and thus has no means to maintain his wife. As stated already, it is an admitted fact that the husband has contracted a second marriage and lives with her. According to him, he was thrown out of his home by his first wife and children, had to seek shelter in a lodging house, and that was the reason for his second marriage. Whatever the reason may be for the second marriage, the fact remains that the husband is maintaining his second wife.

10. A Muslim husband does not have a vested right to have more than one wife. Monogamy is the rule and polygamy is an exception under Muslim law. Polygamy for men is allowed under Muslim law only in exceptional and extraordinary circumstances, that too, under the strict injunction that all the wives must be treated equally and equitably. The capacity to do justice between co-wives is a condition precedent for polygamy, both under pristine Shariah law and under the Muslim Personal Law of India. The very foundation of tolerated polygamy in Muslim law is that the husband must be able to deal justly with all the wives. The verse in the Quran (IV: 3) which permits polygamy makes it abundantly clear that if one is apprehensive of dealing justly with all his wives, he must marry only one. The term 'to do justly with all wives' implies not only the equality in love and affection but also the equality in maintenance. Therefore, a Muslim husband who contracted a second marriage during the subsistence of his first marriage cannot contend that he has no means to maintain his first wife. The fact that the husband has a second wife and is liable to maintain her cannot be a factor in denying maintenance to the first wife or reducing the quantum of maintenance she is entitled to.

11. The scheme under Section 144 of BNSS (Section 125 of Cr.P.C.) contemplates that the right of a woman to claim maintenance from her husband under Sub-section (1)(a) of Section 144 of BNSS (Section 125(1)(a) of Cr.P.C.) is independent of the obligation of her son or daughter to maintain her under Sub-section (1)(d) of Section 144 of BNSS (Section 125(1)(d) of Cr.P.C.). A mother can claim maintenance from her husband even if her children are maintaining her. The fact that the son or daughter of a woman has sufficient means and provides maintenance to her would not absolve the husband of his independent statutory obligation under Section 144(1) (a) of BNSS (Section 125(1)(a) of Cr.P.C.) to support his wife if she needs it. Therefore, the contention that since the son provides maintenance to the mother, she cannot claim maintenance from the husband cannot be sustained.

12. The respondent has taken yet another contention that the wife left his company, refused to live with him without any sufficient reason and hence is not entitled to maintenance. The evidence on record would show that the wife lives separately with her son, and the husband lives separately with his second wife.

13. The right of the wife to claim maintenance from her husband, who has sufficient means under Section 125(1)(a) of Cr.P.C (Section 144(1)(a) of BNSS) is subject to sub-section (4) of Section 125 (Section 144(4) of BNSS). A wife who chooses to live separately without sufficient reason is disentitled to maintenance under Section 125(4) of

Cr.PC (Section 144(4) of BNSS). However, if the wife's decision to live separately is based on valid grounds, she may still claim maintenance despite living apart. The second marriage of a Muslim husband without the consent of his first wife is a sufficient reason for the latter to live separately from the former. In other words, a Muslim wife who resides separately from her husband on his contracting a second marriage is not disentitled from claiming her statutory right of maintenance under Cr.P.C./BNSS (See **Haseena v. Suhaib**, 2025 (1) K.H.C. 543).

The Family Court has rightly found that the wife is entitled to maintenance from the husband and the husband is not entitled to maintenance from the son. I see no illegality or impropriety in the impugned orders. Accordingly, the revision petitions are dismissed.

Result of the Case:

Dismissed.

Headnote prepared by A.R.
