



IN THE HIGH COURT OF KERALA AT ERNAKULAM

2023/KER/70001

PRESENT

THE HONOURABLE MR. JUSTICE K. BABU

MONDAY, THE 13TH DAY OF NOVEMBER 2023 / 22ND KARTHIKA, 1945

CRL.MC NO. 5848 OF 2022

CRIME NO.461/2022 OF ALAPPUZHA SOUTH POLICE STATION, ALAPPUZHA

PETITIONER/ACCUSED:

SAHEER, AGED 34 YEARS,

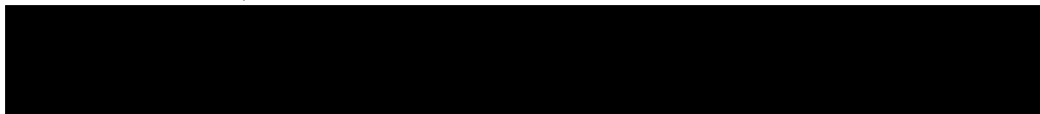


BY ADVS.

D.AJITHKUMAR

RESPONDENTS/STATE/INVESTIGATING OFFICER & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 SUB INSPECTOR OF POLICE,
ALAPPUZHA SOUTH POLICE STATION,
ALAPPUZHA, PIN - 688001
- 3 HANNA RASHID,



BY ADVS.

SRI.N.R.SANGEETHARAJ, PUBLIC PROSECUTOR

S.RAJEEV S

V.VINAY (K/355/2009)

M.S.ANEER (K/644/2013)

SARATH K.P. (K/001467/2021)

PRERITH PHILIP JOSEPH (K/000736/2015)

ANILKUMAR C.R. (K/001190/2020)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13.11.2023, ALONG WITH CRL.MC.3632/2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

2023/KER/70001

PRESENT

THE HONOURABLE MR. JUSTICE K. BABU

MONDAY, THE 13TH DAY OF NOVEMBER 2023 / 22ND KARTHIKA, 1945

CRL.MC NO. 3632 OF 2023

CRIME NO.461/2022 OF ALAPPUZHA SOUTH POLICE STATION, ALAPPUZHA

AGAINST CC 46/2023 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I,

ALAPPUZHA

PETITIONER/ACCUSED:

SAHEER, AGED 34 YEARS,
SON OF S.ABDUL SAMAD, S.R.MANZIL, MANGALAPURAM,
THONNAKAL.P.O., THIRUVANANTHAPURAM, PIN - 695317
BY ADVS.
NABIL KHADER
M.P MADHAVANKUTTY
MATHEW DEVASSI (K/000548/2017)
ANANTHAKRISHNAN A. KARTHA (K/001032/2016)
REMYA M. MENON (K/001042/2022)
MILANA OSHINE LIKE (K/001089/2023)
ANOOP SATHYAN (K/831/2006)

RESPONDENTS/STATE, INVESTIGATING OFFICER & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 SUB INSPECTOR OF POLICE,
ALAPPUZHA SOUTH POLICE STATION,
ALAPPUZHA, PIN - 688001
- 3 HANNA RASHID,
AGED 33 YEARS,
DAUGHTER OF RASHID, MADATHINKAL, CHOKKALINGAPURAM,
VELLAKINAR, ALAPPUZHA, PIN - 688001
BY ADVS.
S.RAJEEV S
V.VINAY (K/355/2009)
M.S.ANEER (K/644/2013)
PRERITH PHILIP JOSEPH (K/000736/2015)
SARATH K.P. (K/001467/2021)
ANILKUMAR C.R. (K/001190/2020)

M.K.PUSHPALATHA, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
13.11.2023, ALONG WITH Cr1.MC.5848/2022, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:



K.BABU, J.

Criminal.M.C Nos.5848 of 2022 & 3632 of 2023

Dated this the 13th day of November, 2023

ORDER

The petitioner, the accused in Crime No.461/2022 of Alappuzha South Police Station, seeks to quash Annexure-1 FIR registered against him alleging offence punishable under Section 3 read with Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 [for short 'the Act'] and Annexure-4 Final Report in C.C No.46/2023 on the file of the Judicial First Class Magistrate Court-I, Alappuzha.

2. In Crl.M.C No.5848/2022, the petitioner sought to quash the FIR registered against him. When the Investigating Officer submitted the final report, the petitioner filed Crl.M.C No.3632/2023, seeking to quash the final report and all further proceedings in C.C No.46/2023 on the file of the Judicial First Class Magistrate Court-I, Alappuzha.

3. The petitioner is the former husband of respondent No.3.



Their marriage was solemnised as per Muslim religious rites and customs on 22.02.2015. Their marital relationship strained. The petitioner pronounced the 'first talaq' on 11.02.2022. On 16.04.2022 he pronounced the 'third talaq'. Respondent No.3 filed a complaint before the Alappuzha South Police Station on 04.06.2022 alleging that the talaq pronounced by the petitioner was instantaneous and irrevocable and hence punishable under Section 4 of the Act.

4. Heard the learned counsel for the petitioner, the learned counsel for respondent No.3 and the learned Public Prosecutor.

5. The learned counsel for the petitioner submitted that Annexures B, E and H talaq kuries could not be interpreted as talaq-e-biddat and therefore, the petitioner has not committed the offence as alleged. The learned counsel submitted that the talaq pronounced by the petitioner is talaq-e-hasan. It is submitted that the petitioner pronounced talaq strictly following the procedure prescribed in the Mohammedan law.

6. The learned counsel for respondent No.3 submitted that in the present case, the talaq pronounced by the petitioner is instantaneous and irrevocable and hence, it is to be interpreted as talaq-e-biddat.



7. The distinction between talaq-e-biddat and talaq-e-sunnat, which is classified into ahsan and hasan, has been elaborately considered by this Court in **Jahfer Sadiq E.A and another v. Marwa and another [2022 (5) KHC 50]**. The relevant paragraphs of the judgment are extracted hereunder:

“Classification of talaq

12. Various authorities including Faizee and Ameer Ali classify talaq into two forms (1) talaq-e-sunnat and (2) talaq-e-bidat. Talaq-e-sunnat is further classified into “ahsan” and “hasan” forms. Tahir Mahmood opines that these classifications are not “modes” or “forms” of talaq, those expressions only refer to the conduct of the man in pronouncing talaq i.e., whether he has or has not followed the prescribed rules for it which aim at dissuading and keeping him away from actually breaking the marriage.

13. As noted already, the Muslim law prescribes a simple procedure for talaq keeping all chances of reconciliation and reconsideration open. A talaq strictly following this procedure is talaq-e-sunnat- a proper talaq. A talaq in violation of the prescribed procedure is talaq-e-bidat- an improper talaq. Talaq-e-sunnat is further classified into two based on degrees of virtue in respect of the man’s conduct – talaq-e-ahsan and talaq-e- hasan.

14. In talaq-e-ahsan, the husband repudiates his wife by a single pronouncement in a period of tuhr during which he has not had intercourse with her and then leaves her to the observances of iddat. The divorce remains revocable during iddat. If the couple resumes cohabitation or intimacy within the period of iddat, the pronouncement of divorce is treated as having been revoked. Therefore, talaq-e-ahsan is revocable. Conversely, if there is no resumption of cohabitation or intimacy during the period of iddat, then the divorce becomes final and irrevocable, after the expiry of the iddat period. In case of marriage not yet consummated, ahsan talaq may be pronounced during menstruation also. Where the wife and husband are living separate from each other or where the wife is beyond the age of menstruation (old age), the condition of tuhr is not applicable. Talak-e-ahsan is based on the following verse of Quran:



"And the divorced woman should keep themselves in waiting for three courses."

15. Hedyā brands talaq-e-ahsan as the most laudable divorce. According to Hedyā, this method of divorce is the most approved because of the compassion of the Prophet and secondly, it remains within the power of the husband to revoke the divorce during iddat.

16. Talaq-e-hasan is also an approved form of divorce, which consists of three pronouncements made during three tuhrs with no intercourse taking place during any of these intervals. After the first talaq, if there is resumption of cohabitation within a period of one month, the pronouncement of divorce is treated as revoked. The same procedure is mandated to be followed, after the expiry of the first month (during which marital ties have not been resumed). After the second pronouncement of talaq, if there is resumption of cohabitation within a period of one month, the pronouncement of divorce is treated as revoked. Not more than two talaq can be pronounced within the period of iddat. Quran says:

"Divorce is only permissible twice, after that, the parties should either hold together on equitable terms, or separate with kindness".

If the parties are unable to unite during the period of iddat, the final irrevocable talaq can be pronounced, but only after the period of iddat. When the final talaq is pronounced, it becomes irrevocable and the marriage comes to an end. In this regard Quran says:

"So, if he (the husband) divorces her (third time) she shall not be lawful to him afterwards until she marries another person".

17. The hasan form is one in which the Prophet tried to put an end to a barbarous pre-Islamic practice. The practice was to divorce a wife and takes her back several times in order to ill-treat her. The prophet, by the rule of the irrevocability of the third pronouncement, indicated clearly that such a practice would not be continued indefinitely. Thus, if a husband really wished to take the wife back, he should do so; if not, the third pronouncement, after two reconciliations, would operate as a final bar. These rules of law follow the spirit of the Quranic injunction.

"Then when they have reached their term, take them back in kindness or part from them in kindness".

18. The distinction between talaq-e-ahsan and talaq-e-hasan is that, in the former, there is a single pronouncement of talaq followed by abstinence during the



period of iddat, whereas, in the latter, there are three pronouncements of talaq, interspersed with abstinence. In both these forms there is a chance for the party to be reconciled by the intervention of friends or otherwise. They are, therefore "approved" forms and are recognized by Muslim law. The Division Bench of this court recently in **Sajani A v. Dr Kalam Pasha and Another [2021 (5) KHC 582]** held that talaq-e-ahsan and talaq-e-hasan are the valid forms of talaq recognised in Muslim Law.

19. There is yet another mode. When the husband pronounces three formulas at one time, whether the wife is in a state of tuhr or not, the separation takes place instantaneously. This is called talaq-e-bidat, more popularly known as triple talaq in India - e.g., if a man declares talaq using the expression in one sentence - "I divorce thee thrice," - or in separate sentences e.g., "I divorce thee, I divorce thee, I divorce thee". The triple talaq in one utterance resulting in divorce once and for all proceeds from the own will of the husband without there being any attempt to reconcile marital discord during the prescribed period in the Quran. It is totally antithetical to the spirit of the Quran. Quran nowhere approves of triple talaq in one utterance."

8. The Constitution Bench of the Supreme Court in **Shayara Bano v. Union of India (2017 KHC 6574)** declared the observance and practice of instant triple talaq void and unconstitutional. The judgment gave a boost to liberate Indian Muslim Women from the age old practice of capricious and whimsical method of divorce by Muslim men, leaving no room for reconciliation. The judgment in **Shayara Bano** vindicated the position that talaq-e-biddat is against the constitutional morality, dignity of women and principles of gender equality and also against the gender equity guaranteed under the Constitution. Consequent to the judgment of the



Supreme Court, the Muslim Women (Protection of Rights on Marriage) Act, 2019 was enacted declaring the practice of triple talaq as void and illegal and made an offence punishable with imprisonment of three years and fine.

9. Sections 3 and 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 read thus:

“3. *Talaq to be void and illegal.*- Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

4. *Punishment for pronouncing talaq.*-Any Muslim husband who pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.”

10. Talaq that has been made punishable under the Act means talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband [See Section 2(c) of the Act].

11. The pronouncement of talaq-e-sunnat either by Ahsan form or Hasan form has not been made penal in the Muslim Women (Protection of Rights on Marriage) Act, 2019. Talaq-e-hasan or talaq-e-ahsan are legal and valid under the Muslim Personal Law.

12. In the present case, in Annexure H 'third talaq kuri' the



petitioner has narrated the grounds for pronouncing talaq. He has explained the reasons for pronouncing talaq in Annexures B, E and H talaq kuries. The petitioner has specifically stated in Annexures B, E and H that respondent No.3 is not co-operating with him for a peaceful family life. It is alleged that she has made unfounded accusation of unchastity against him. The petitioner has further stated in Annexures B, E and H that respondent No.3 has not co-operated for reconciliation. The copies of the talaq kuries would show that several mediations took place. It is further revealed that respondent No.3 did not co-operate for a Court Centred Mediation also. Respondent No.3 filed a complaint before the Alappuzha South Police Station alleging offence under Section 498-A read with Section 34 of IPC against the petitioner and his age-old parents making false allegations. The materials placed before the Court would reveal that a series of mediations to reconcile the disputes between the parties failed. There are no indications that the talaq pronounced by the petitioner was instantaneous or irrevocable.

13. The resultant conclusion is that the talaq pronounced by the petitioner is not talaq-e-biddat prohibited under Section 4 of



the Act.

14. On the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent power under Section 482 Cr.P.C., the Apex Court in **State of Haryana and Others v. Bhajan Lal and Others (1992 Supp. (1) 335)** held thus:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated



under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

15. The present case is fully covered by categories (1) and (3), as enumerated in **State of Haryana** (supra). I am of the view that, the criminal proceedings consequent to the registration of the crime as against the petitioner is liable to be quashed.

In the result, the Criminal M.Cs. are allowed. The Final Report in Crime No.461/2022 of Alappuzha South Police Station and all further proceedings in C.C No.46/2023 on the file of the Judicial First Class Magistrate Court-I, Alappuzha stand hereby quashed.

Sd/-
K.BABU,
JUDGE

**APPENDIX OF CRL.MC 5848/2022**

PETITIONER ANNEXURES

- Annexure A CERTIFIED COPY OF THE F.I.R. IN CRIME NO. 0461 OF 2022 OF ALAPPUZHA SOUTH POLICE STATION DATED 4.6.2022
- Annexure B TRUE COPY OF THE FIRST 'TALAQ KURI' SENT BY PETITIONER TO THE 3RD RESPONDENT DATED NIL
- Annexure C TRUE COPY OF COURIER RECEIPT FROM ARAMEX COURIER DATED 12.02.2022 REGARDING THE SENDING OF ANNEXURE-B 'TALAQ KURI' TO THE 3RD RESPONDENT
- Annexure D TRUE COPY OF THE MESSAGE RECEIVED FROM ARAMEX COURIER DATED 18.02.2022 REGARDING THE RECEIPT OF ANNEXURE-B BY THE 3RD RESPONDENT
- Annexure E TRUE COPY OF THE SECOND 'TALAQ KURI' DATED 12.03.2022 SENT BY PETITIONER TO THE 3RD RESPONDENT
- Annexure F TRUE COPY OF THE RECEIPT DATED 17.03.2022 ISSUED BY ARAMEX REGARDING THE SENDING OF ANNEXURE-E 'TALAQ KURI' TO THE 3RD RESPONDENT
- Annexure G TRUE COPY OF THE MESSAGE RECEIVED FROM ARAMEX COURIER DATED 21.03.2022 REGARDING THE RECEIPT OF ANNEXURE-E BY THE 3RD RESPONDENT
- Annexure H TRUE COPY OF THE THIRD 'TALAQ KURI' DATED 16.04.2022 SENT BY PETITIONER TO THE 3RD RESPONDENT BY ARAMEX COURIER



APPENDIX OF CRL.MC 3632/2023

PETITIONER ANNEXURES

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| Annexure1 | THE TRUE COPY OF THE F.I.R. IN CRIME
NO. 0461 OF 2022 OF ALAPPUZHA SOUTH
POLICE STATION DATED 4.6.2022 |
| Annexure2 | A TRUE COPY OF THE CRLMC NO.5848/2022
ALONG WITH ANNEXURES |
| Annexure3 | A TRUE COPY OF THE ORDER DATED
25.08.2022 OF THE HIGH COURT OF KERALA
IN CRL MC 5848/2022 |
| Annexure4 | A CERTIFIED COPY OF THE FINAL REPORT
DATED 30.11.2022 PENDING IN JFCM-I,
ALAPPUZHA AS CC46/2023 |