

**Agreement By Which Wife Waives Right Of Maintenance Under Section 125 CrPC Not Enforceable, Kerala High Court Reiterates**

**2023 LiveLaw (Ker) 60**

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**A. BADHARUDEEN, J.**

**R.P.F.C No.327 of 2022; 2 February, 2023**

*Revision Petitioner / Respondent in M.C by advs. P.T. Sheejish, Parvathy S. Krishnan, Harikiran, Varnibha.T, A. Abdul Rahman*

*Respondent / Petitioner in M.C: by Advs. Binu V V Veettil Valappil, S.K. Premjith Menon, Maneksha D., P.J. Stephen*

**ORDER**

This revision petition has been filed under Section 19(4) of the Family Court Act and this revision is at the instance of the respondent in M.C.No.121/2015 on the files of the Family Court, Tirur. Revision Petitioner herein is the respondent in the above M.C. The respondents herein is the petitioner in the above M.C.

2. Heard the learned counsel for the revision petitioner as well as the learned counsel appearing for the respondent.

3. Short facts:

The respondent herein, who admittedly is the wife of the petitioner, moved before the Family Court and pressed for grant of allowance of maintenance under Section 125 of Cr.P.C, alleging that she did not have any means of maintenance. Further the respondent contended before the Family Court that the revision petitioner had been running a supermarket in Gulf; owned vehicles and he was the proprietor of other business. Therefore, he had been earning Rs.90,000/- per month. Accordingly, the respondent/petitioner pressed for Rs.7,500/- as monthly maintenance from the revision petitioner.

4. The revision petitioner herein, the respondent in the M.C filed objection denying the contentions. According to the revision petitioner, talaq was pronounced and agreement was executed. Further it was contended by the revision petitioner before the Family Court that since the respondent was a divorced woman and as per agreement executed in between them, 5 sovereigns of gold ornaments and Rs.25,000/- were given to the respondent herein, she could not claim maintenance further.

5. The Family Court tried O.P.No.177 of 2015 along with M.C.No.121/2015.

6. The Family Court recorded evidence confined to PW1 to PW4 and Exts.P1 and P2 on the side of the respondent herein.

Similarly, RW1 to RW5 were examined and Exts.R1 to R13 were marked on the side of the revision petitioner.

7. The Family Court appraised the contentions. Thereafter, the Family Court granted Rs.4,500/- as maintenance to the respondent herein.

8. While impeaching the veracity of the above order of the Family Court, the learned counsel for the revision petitioner argued that the Family Court erred in holding that the revision petitioner neglected to maintain the respondent herein, after

ignoring the fact that the respondent is a lady having extra marital relationship and she had left the matrimonial home on her own volition. Further, the revision petitioner was constrained to marry another person due to the inimical and dishonest behaviour of the respondent. The Family Court ignored the contentions raised by the revision petitioner that he had only a small job abroad and he could not pay Rs.4,500/- as maintenance.

9. I have perused the impugned order. In the petition, the respondent raised a contention that she had no means of maintenance and the revision petitioner, who had been employed abroad and had been working in a supermarket, would get Rs.90,000/- per month and, therefore, he could pay Rs.7,500/- as monthly maintenance to her.

10. In the objection, the revision petitioner would contend that since the revision petitioner paid Rs.25,000/- and given her gold ornaments at the time of offering talaq, the respondent herein could not claim maintenance. The Family Court found that the revision petitioner miserably failed to prove that there was talaq/divorce, though he had produced 13 documents in support of the said contention. The Family Court also found that the revision petitioner failed to prove that he had returned Rs.25,000/and 5 sovereigns of gold ornaments. Further, the Family Court found that an agreement in this regard relied on by the revision petitioner also was not produced before the court. On perusal of the materials available, the said finding appears to be convincing. Further no evidence available in this matter to hold that the respondent has been living separately without any justification, as the evidence would suggest that she has been living separately along with her brothers, since she could not live along with the revision petitioner, who is cruel towards the respondent.

11. In so far as relinquishment of maintenance by way of agreement is concerned, the law is settled. On this point, a Division Bench of this Court in a decision reported in [2013 (1) KHC 812 : 2013 (1) KLT 899 : 2013 (2) KLJ 3 : ILR 2013 (2) Ker.9], **Rajesh R. Nair v. Meera Babu** held that:

*“S.125 of CrPC is a provision incorporated in the CrPC by the Parliament enabling certain categories of persons including a wife to claim maintenance. Under this Section, a wife who is unable to maintain herself can claim a monthly allowance for her maintenance from her husband having sufficient means when he neglects or refuses to maintain her. Thus, the right to claim maintenance provided to the wife is a statutory right created by the Parliament. This is for achieving the goal of protecting a wife who is unable to maintain herself to claim maintenance from her husband having sufficient means when he neglects or refuses to maintain her. The public policy of protecting such women is reflected in S.125 of CrPC. In other words, it is a benevolent provision enabling a weaker section of the society to earn their livelihood. An agreement by which a wife waives her right guaranteed under S.125 of CrPC will only be an agreement against public policy. An agreement against public policy is void. Therefore, a clause of waiver incorporated in Ext.P4 agreement by which the wife has given up her right to claim maintenance from the husband is void and hence, unenforceable.”*

12. Another Division Bench of this Court also in a decision reported in [2018 (5) KHC 156 : 2018 (4) KLJ 528 : 2019 (1) KLT 826], **Vikraman Nair & anr. v. Aishwarya & Ors.** in paragraph No.22 observed as under:

*“22. When an agreement is entered into by the wife and the husband, as a part of compromise filed in the Court or otherwise, whereby the wife relinquishes or waives the right to claim maintenance in future from the husband, for herself or for the minor children, such an agreement is opposed to public policy and it does not preclude her from claiming*

*maintenance under S.125 of the Code of Criminal Procedure. This is the consistent view taken by various High Courts. It has been held that statutory right which has been conferred on a person under a public policy, cannot be waived by the said person by an agreement. It is also well settled that any contract which is opposed to public policy is void under S.23 of the Indian Contract Act, 1872 and the same cannot be enforced in a court of law. If the object or consideration of an agreement would defeat the provisions of any law, and if it is against the public policy, the agreement will be treated as unlawful and void. This is a matter of public policy and not of an individual (See Ranjit Kaur v. Pavittar Singh, 1992 KHC 1114 : 1992 CriLJ 262 Hanamant Basappa Choudhari v. Laxmawwa, 2002 KHC 2588 : 2002 CriLJ 3357 Sushil Kumar v. Neelam, 2004 KHC 2833 : 2004 CriLJ 3690 Mahesh Chandra Dwivedi v. Manorama, 2009 KHC 172 : 2009 CriLJ 139 : 2009 (1) KLD 554 and Varshaben Himantlal Vejani v. State of Gujarat, 2017 KHC 2582 : 2017 CriLJ 869)."*

**13.** Thus the law is well settled that an agreement by which a wife waives her right of maintenance protected under Section 125 of Cr.P.C is an agreement against public policy and the same is *ab initio void* and not enforceable. Therefore, the claim for allowance of maintenance by the wife cannot be disputed or denied on the basis of a void agreement and the wife is entitled to get maintenance ignoring the said void agreement.

**14.** In the case at hand, though RW2 and RW3 supported the execution of an agreement in the matter of taking and return of 5 sovereigns of gold, being witnesses to the said agreement, the Family Court found that none of the witnesses stated that there was a written agreement and they had even read the same. It is relevant to note that no such agreement was produced by the counsel. Thus it appears that the entire contentions raised by the revision petitioner are found to be unsustainable and the Family Court rightly negated those contentions.

**15.** The revision petitioner did not raise any contention before the Family Court that the respondent herein is capable of maintaining herself since she had job and income for the same. The Family Court found that the respondent stated that the revision petitioner had been running business abroad. Though his income was not exactly proved, PW1 specifically asserted that the revision petitioner had been getting Rs.1 lakh per month. In this matter, there was no `talaq' as contended and, therefore, the husband cannot deny maintenance. Even otherwise, a divorced Muslim wife is entitled to get maintenance, till she will get remarried unless the claim for "a reasonable and fair provision and maintenance" to be paid under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 to the divorced wife, not paid. Therefore, the revision petitioner is bound to pay maintenance to the respondent herein.

**16.** In fact, the Family Court granted only Rs.150/- per day to the respondent as maintenance and therefore, the monthly maintenance of Rs.4,500/- alone was granted. Going by the facts of this case, it cannot be said that the amount of Rs.4,500/- is on higher side. In view of the matter, the order impugned does not require any interference and the same stands confirmed.

Accordingly, the revision petition stands dismissed.