

Kerala High Court

Sadiq Shamsudheen vs Sahira on 6 June, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

RPFC.No. 524 of 2007()

1. SADIQ SHAMSUDHEEN, AGED 34 YEARS,
... Petitioner

Vs

1. SAHIRA, AGED 24 YEARS,
... Respondent

For Petitioner :SRI.P.K.SAJEEV

For Respondent :SRI.VINOD KUMAR.C

The Hon'ble MR. Justice R.BASANT

Dated :06/06/2008

O R D E R

R.BASANT, J

R.P.F.C.No.524 of 2007

Dated this the 6th day of June 2008

O R D E R

The petitioner has suffered an order under Section 125 Cr.P.C to pay maintenance to the claimant from the date of the petition (22/9/2006) to the date of divorce, that is 10/4/2007. Marriage is admitted. There was a contention raised that the marital tie has been terminated by an agreement between the parties even prior to the filing of the petition. Parties went to trial on these contentions. The claimant/wife examined herself as PW1. The petitioner examined himself as CPW1. The petitioner relied on an agreement dated 12/8/2006 allegedly executed by the petitioner and the claimant. The claimant did not admit the document. The petitioner did not produce the original of the document. In the light of the denial by the claimant, the petitioner was certainly expected to adduce evidence. He did not adduce any better evidence. In these circumstances, the court did not place any reliance on the photocopy of the alleged agreement dated 10/4/2007 which was numbered

as Ext.B1 for the purpose of reference.

2. The petitioner relied on Ext.B2 which is a further communication which is admittedly signed by the petitioner to the Mahal Committee. That letter would show that the petitioner had subsequently pronounced talaq and had terminated the marital tie. Significantly, Ext.B2 does not refer to Ext.B1 or any anterior talaq by the petitioner. The learned Judge of the Family Court in these circumstances took the view that the divorce can be said to be effective only by Ext.B2 which is seen signed by the petitioner only on 10/4/2007. In Ext.B2 significantly there is no reference to an anterior talaq and the contents of Ext.B2 shows that the talaq was pronounced by Ext.B2. It was in these circumstances that the learned Judge of the Family Court took the view that the divorce can be said to have been effected only on 10/4/2007. The learned Judge of the Family Court in these circumstances proceeded to award maintenance to the claimant from the date of the petition to the date of divorce. The petitioner claims to be aggrieved by the impugned order. What is the grievance? The short grievance is that Ext.B1 must have been acted upon and Ext.B2 should not have been reckoned as a document under which divorce is effected.

3. The original of Ext.B1 is not produced even before this court and it is not necessary for me to embark on any detailed discussion as to whether that is a genuine agreement or not. Suffice it to say that Ext.B2 clearly shows that the talaq was pronounced only on 10/4/2007 as rightly noted by the learned Judge of the Family Court. Ext.B2 does not significantly refer to any anterior talaq and Ext.B2 only shows that the talaq was thereby pronounced by the petitioner on 10/4/2007.

4. I am not, in these circumstances, satisfied that the revisional jurisdiction of superintendence and correction can or ought to be invoked in the facts and circumstances of this case.

5. This revision petition is in these circumstances dismissed. I may hasten to observe that inasmuch as the original of Ext.B1 is not produced, I am not proceeding to express any opinion finally on the acceptability of the original of Ext.B1. The petitioner's option to plead and establish that such a document was genuinely executed in other proceedings shall of course remain.

6. The amounts deposited as per the interim order passed by this court shall forthwith be released to the claimant.

(R.BASANT, JUDGE) jsr R.BASANT, J R.P.F.C.No.

ORDER 11/02/2008