

## Amir Khan Vs Mst. Mariam

**Court:** Rajasthan High Court (Jaipur Bench)

**Date of Decision:** Sept. 23, 1986

**Acts Referred:** Constitution of India, 1950 " Article 25  
Criminal Procedure Code, 1973 (CrPC) " Section 125, 482

**Citation:** (1987) RLW 414 : (1987) 2 WLN 614

**Hon'ble Judges:** G.M. Lodha, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Guman Mal Lodha, J.

This application u/s 482 Cr. P.C. by Amir Khan against his wife Mst. Mariam and son Tyab has taken a very

interesting turn during arguments because the learned Counsel has broadened the horizons of the submission invoking Article 25 of the

Constitution. According to him Section 125, Cr. P.C. so far as explanation to the second proviso of Sub-section (3) is concerned it violates Article

25 of the Constitution because it takes away the right of the minorities to follow their religion. The explanation enables a wife to claim maintenance

on the simple and mere showing that the husband has contracted a second marriage with the another woman or keeps a mistress.

2. The learned Counsel submits that according to the tenants and injunctions of the Mohammedan Law contained in the great Pious Kuran Sariff a

person who professes Muslim religion is entitled and authorised by religion to conduct marriage with four women. The learned Counsel submits

that being religious injunction any law which results in virtual denial of it or infringement of it or putting limitation over it in any way creating rider by

such enactment would extinguish that religious right and therefore, would be violative of Article 25.

3. The learned Counsel has referred to page 109 of a book with the caption ""Anudit Kuran Majid Sansipat Tika Sahit Sayeed Abul Ala Modudi

published by Marakji Maktaba Islami Delhi-6, in 1983. First Edition with the translation in Hindi by Mohammed Farook Khan. In this sacred

book the Chapter under the caption Sura Annisa (Madina Main Utari 176) with a sub caption "Allahah Ke Nam So Jo Atyant Karana may Or-

Dayawan Hai" contains the following "Ananthon ke Dhan Uneh Vapas Do" Ache Mal ko Bura Mal Se Na Badllo Aur Unke Malke Sath Milakar

Na Kha Jao Yeh Bahut Bada Paap Ha i.

4. Now comes to the relevant portion which reads as under:

vkSj vxj rqedks vukFkks ds lkFk vU;k; dk Hk; gks rks tks fL=;ka rqEgs ilUn vk;s mues ls nks&nks] rhu&rhu] ;k pkj fookg dj yks ysfdu vxj

rqEgs vka"ldk gks fd muds lkFk U;k; u dj ldxs rks fQj ,d ifRu j[kks ;k mu fL=;ks dks nkeiR; thou es ys vkvks tks rqEgkjs dCts es vkbZ gS A

vU;k; ls cpus ds fy, ;k mfpr jhfr ls vf/kd fudV gS vkSj fL=;ks ds gd [kq"kh ls vnk djs] gkW vxj os Loa; ;k viuh bPNk ls ;gka dk fgLlk rqEgkjs

fy, NksM+ ns rks mls :fpiwoZd [kk ldrs gks vkSj vius os /ku ftUgs vYykg ls rqEgkjs fy, thou O;kiu ds lkFk cuk;k gS] uknku yxsxs dks u lkSiks

ctCrk mUgs [kkus vkSj ifguus ds fy, gks vkSj xSj lykg gS vkSj vukFkks dh ijh{kk djrs jgks ;gka rd fd os fuoke dh vk;q dks igqWp tkos vxj

mues ;ksX;rk ikvsk rks muds eky mudks lkSi nks A ,slk dHkh u djuk fd U;k; dh lhek dk mYya?ku djds bl Mj ls mlds eky dks tYnh tYnh [kk

tkvks fd os cM+s gksdj vius gd dh ekax djsxs A vukFk ds ljjLr tk ekynkj gks os ijgstxkj ls dke ys vkSj tks xjhc gks og lkekU; jhfr ds vuqlkj

[kk;s fQj tc muds eky lkSius yxs rks yxsxs dks xokg cukvks rFkk fglkc ysus ds fy, vYykg dkQh gS iq:"kks ds fy, ml eky es fgLlk gS tks ekW

ckiu o ukrsnkjks us NksM+k gks o fL=;ks ds fy, ml eky es fgLlk gS tks ekW&ckiu ukrsnkjks us NksM+k gks "kk;n FkksM+k gks ;k cgqr og

fgLlk vYykg dh vksj ls fu"pr gS A

5. It is significant that the commentator has mentioned the following to explain and amplify the concept of a muslim's right to marriage of more than

one women and maximum four women. The commentator says as under:

/;ku jgs fd ;g vk;r ,d ls vf/kd ifRu;ka j[kus dh vuqefr nsus ds fy, ugh vkbZ Fkh] D;ksfd bls fy, vorfjr gksus ds igys gh ;d deZ oS] Fkk vSkj Loa;

vYykg ds jlwy ds ,d ls vf/kd ifRu;ka ekStwn Fkh A okLro es blfy, vorfjr gqbZ Fkh fd yM+kb;ks es "kghn gksus okyks ds cPps vukFk jg x;s gks]

mudh leL;k ds gy ds fy, dgk x;k Fkk A fd vxj mu vukFkks ds gd rqe oSls vnk ugh dj ldrs rks mu fL=;ks ls fookg dj yks ftuds vukFk cPps gS A

6. It would be thus seen that the holy pious and sacred Kuran Sarif according to this paragraph contained in it; and since. I am not required here

either to discuss much less to adjudicate the great important question of far reaching consequence about the right of a muslim to have one or than

more women therefore, I am limiting my observation to the portion which has been referred to me by learned Counsel and that too to the limited

extent of its application in the present case; would show that the original basic fundamental bedrock of the permissible right of a Muslim to have

marriages of more than one women and maximum four was not motivated or in any way concerned with the general unbridled right for enjoyment

of life or sex or having a company. But it was motivated with a great pious sacred object of providing protection to those orphan girls who used to

become orphan on account of war or other reasons and thereafter when the society was not capable of providing them full satisfaction and looking

after their necessities, then only great prophet injunctions were revealed that in such cases the best way to provide protection is to marry such

orphan girls upto maximum of four with the rider and the condition that all must be treated alike equal and justice must be done to all of them. Any

failure in this respect of "the husband to give equal treatment or to provide equal justice or to provide equal protection would be violative of the

basic intention of object and the purpose of protecting orphans which was kept in the tenant of Kuran Sharif by the great prophet.

7. That being so Section 125, Cr. P.C. enacted by the legislature is meant for providing such protection in cases where after conducting marriage

justice is not done to the weaker spouse and the wife is left high and dry without maintenance on account of neglect or ill treatment or any other

reason what ever the case may be.

8. It is true that the explanation added to the proviso to Sub-section (3) taken in itself alone, from the context of other clauses of this section,

would give an impression that second marriage per se simpliciter in itself is sufficient to claim maintenance and nothing more is required to prove. In

that context it would certainly raise a serious question of interpretation of the Constitution and also of Article 25 and whether Section 125, Cr.

P.C. subsection (iii) the proviso and the explanation attached to it by which a Muslim woman is entitled to claim maintenance simply on the ground

of second marriage of husband would be inconsonance with or in violation of the above tenants injunction and next of the Muslim personal law.

However that is a matter which should not be decided in such a casual manner because at the moment neither the full text of the Muslim law has

been referred to or is available before me nor it has been debated or there has been dialogues nor turning process started so far in any legal court.

9. Before me at the moment there is a simple case where there is a finding of the lower court that the husband neglected the maintenance of the

wife in addition to the other finding and those findings are sufficient for grant of maintenance, irrespective of the conduct of the second marriage or

not. That being so I would not venture to make reference to a larger Bench in a half hearted manner in a most sensitive matter where the personal

law of a community as a whole is involved and where Article 25 of the Constitution will have to be interpreted with all seriousness. I would

therefore, leave it to be considered, in some other important case if at all it arises. It is sufficient to mention in the present context that the prevalent

notice the prevalent feeling and the prevalent common parlance understanding that a muslim can marry four women according to his personal law is

based on the ordinary superficial thinking and understanding without appreciating the great pious sacred object of the great prophet who in the

above text of Kuran Sarif, provided, this is for protection of orphans. In all religion the protection of orphans the destitutes, the weakers sections

and weaker section of the society has always been emphasised and the Muslim personal law whether it permits or enables or inspires male to

conduct more than one marriages upto 4 was inspired with the sole object of providing protection to orphans who could not be otherwise looked

after and cared for by the society. It is unfortunate that this important salient feature is mostly not known and therefore, is ignored in the society.

10. Be that as it may since I am not here in this case required to consider in detail this aspect of the case, I would only reject this application with

the observation that as far as the present case is concerned, the neglect is proved and u/s 482 Cr. P.C. there has been no abuse of process of the

court nor it is required for ends of justice that I should interfere in order to deprive a woman from maintenance where one has been granted by the

lower courts.

11. Before parting with this judgment I may mention that if a proper case arises, in the proper court it would certainly be an important question to

the considered, debated and then decided if necessary by a larger bench, whether Section 125 Cr. P.C. with its Sub-section (iii) and the

explanation attached to the proviso, which permits maintenance merely on the ground of second marriage to a muslim woman in any way violates

the Constitutional guarantee under Article 25 of the Constitution, because of the Muslim personal law permitting more than one marriage.

12. With the above observations, this application is rejected.