

**(1982) 07 KL CK 0017**

**High Court Of Kerala**

**Case No:** Criminal M.C. No. 338 of 1988

Kochukutti Ammini

APPELLANT

Vs

Raghavan Mohanan

RESPONDENT

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**Date of Decision:** July 20, 1982

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Hindu Marriage Act, 1955 - Section 11, 13B, 5, 5(1)

**Citation:** (1988) 2 KLJ 245

**Hon'ble Judges:** K. Sreedharan, J

**Bench:** Single Bench

**Advocate:** M.V. Ibrahimkutty and K. Ravu, for the Appellant; T.D. Robin (Amicus Curiae) and T.N. Surendran (Govt. Pleader), for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

K. Sreedharan, J.

Petitioner approached the Judicial First Class Magistrate's Court, Ambalapuzha, by filing a petition u/s 125 of the Code of Criminal Procedure. Her allegations in the petition filed before the court were that she is the legally wedded wife of the respondent, that he is neglecting her, that she is unable to maintain herself, that the respondent is possessed of sufficient means and that he should be directed to pay maintenance. The petitioners' claim was disputed by the respondent contending that there was no valid marriage between them, that the petitioner is a teacher in a Government School, that she has sufficient means to maintain herself and that he has no liability to pay maintenance to the petitioner. The petitioner gave evidence as PW-1. She also produced Ext. P1 letter stated to have been written by the respondent. As PW-1 she had stated before court that one Sri K. Bhaskaran had married her on 6-12-1976 in accordance with the religious rites of the community to

which they belong. That marriage was solemnised at a temple in Thiruvalla. For effecting divorce of that marriage a joint petition was filed before the Sub court, Alleppey, as O.P (H. M. A.) 29/1982. That court granted the decree of divorce on 21.1.1983. The marriage between the petitioner and the respondent was solemnised in accordance with the religious rites of the parties in temple at Thiruvalla on 3.6.1982. There-after they lived as husband and wife for a short period. The respondent then went to Gulf countries for taking up employment there. On his return he is conducting a motor workshop and that he gets daily income of Rs. 400/-. The petitioner admitted before court that she is a P.D. teacher in a Government School and that she gets Rs. 600 per month towards salary.

2. The learned Magistrate took the view that the alleged marriage between the petitioner and the respondent which took place on 3-6-1982 was during the subsistence of the valid marriage between the petitioner and Sri K. Bhaskaran. Therefore it was held that there was no legal marriage between the petitioner and the respondent. Consequently the claim for maintenance was negatived. The petitioner took up the matter in revision before the Sessions Court. That court concurred with the learned trial Magistrate in holding that there is no legal marriage between the parties. The result was the petitioner's claim for maintenance was disallowed. Hence this Petition.

3. Following facts are admitted. They are: The petitioner legally married Sri K. Bhaskaran in accordance with the religious rites of the community to which, they belong on 6-12-1976. For effecting divorce of that marriage the petitioner and Sri Bhaskaran filed a joint application u/s 13B of the Hindu Marriage Act, 1955, hereinafter referred to as "the Act" before the Sub-Court, Alleppy. The Sub Court granted the decree for divorce on 21-1-1983. The petitioner and the respondent underwent all the ceremonies for a valid marriage in accordance with the religious rites of the community to which they belong on 3-6-1982. The ceremonies were held subsequent to the filing of the petition u/s 13B of the Act. The petitioner is a P.D. teacher in a Government School and she is getting a pay of Rs. 600/- P.M.

4. The argument advanced by the learned Counsel is that the petitioner and the respondent underwent all the ceremonies that are required for a valid marriage in accordance with the religious rites of, the community to which they belong. These ceremonies were held subsequent to the petition u/s 13B of the Act. The decree of divorce granted by the Sub Court will relate back to the date of petition filed jointly by the petitioner and Sri Bhaskaran. The respondent had not taken any step to get a declaration that there exists no valid marriage between him and the petitioner. The respondent has no case that he is maintaining the petitioner either. In these circumstances, it is contended, the courts below have gone wrong in declining to grant the prayers of the petitioner on the ground that no valid marriage subsists between the petitioner and the respondent.

5. It has been consistently held by all courts that only a legally married woman is entitled to claim maintenance. For a legal marriage not only that all the ceremonies in accordance with the religious rites of the parties to which they belong should be undergone but the-marriage must be in accordance with the personal law applicable to the parties as well. This means that solemnisation of the marriage in due form has to be established and also that the marriage was in-conformity with the personal law. The parties to this proceedings are Hindus. They are governed by the provisions of the Hindu Marriage Act, 1955. For a valid marriage between two Hindus, as per section 5 (1) of the Act neither party should have a spouse living at the time of the marriage. The petitioner was legally married to Mr. Bhaskaran in accordance with the religious rites of the community on 6.12.1976. A joint petition u/s 13B of the Act was filed before court for effecting divorce of that marriage. Before a decree of divorce in pursuance to that application was passed, the ceremonies of the alleged marriage between the petitioner and the respondent were conducted. By that can a valid marriage come into existence? The answer is in the negative.

6. As per Section 13B of the Act both parties to a marriage can file a joint petition for effecting divorce of their marriage. That application is not to be disposed of by the court before the expiry of six months after the date of its presentation. Nor is the court to pass an order after the expiry of 18 months from the date of filing of that petition. Six months fixed by the statute must be taken as the period within which the parties may have a chance of rapprochement. Within that period they may patch up all differences and agree to live as husband and wife. To give such an opportunity to the parties to settle their dispute the above period is fixed. During that period it cannot be held that the earlier marriage ended on divorce. This is clear from clause (2) to Section 13B of the Act which provides that the decree of divorce declaring the marriage to be dissolved will be effective from the date of the decree only. Thus the joint application u/s 13B of the Act will not automatically terminate the marriage. A decree for divorce has to be passed by the court. That decree can be passed only after the expiry of six months from the date of filing the petition. The said decree will be effective from the date of its passing only. So the marriage between the parties must be deemed to be subsisting between the date of petition and the date of decree of divorce. Viewed in this manner the petitioner's marriage with Sri Bhaskaran was subsisting till 21-1-1983. In other words she was having her spouse living till 21-1-1983, The petitioner and the respondent under-went the ceremonies of marriage on 3-6-1982 when the petitioner was having her spouse living. Such a marriage is against Section 5 of the Act. The marriage held in contravention of the provisions contained in Clause (i) of Section 5 of the Act is null and void as per Section-11 of the Act. When it is provided that such a marriage is null and void no right can flow out of that marriage. Consequently the marriage between the petitioner and the respondent should be taken as null and void and no legal right flow out of it. The petitioner is not the legally wedded wife of the

respondent.

7. Where the marriage between the parties is disputed in a proceeding u/s 125 of the Code of Criminal Procedure, the Trial Magistrate should decide the question as to whether the marriage is valid or not. According to the learned Counsel appearing for the petitioner when there is proof of solemnisation of the marriage in accordance with the religious rites of the parties, the learned Magistrate was bound to uphold the marriage and the respondent who disputes its validity should have been directed to establish the nullity in a competent civil court. In support of this argument the learned Counsel relied on the decision in Smt. Rudramma Vs. H.R. Puttaveerabhadrapa (1987 CrL. L.J. 677). In that case a learned Single Judge of Karnataka High Court took the view that on proof of solemnisation of the marriage between the applicant and the respondent with essential customary rites and ceremonies, the other requirements like neglect and refusal having been established, the Magistrate, who is empowered and conferred with jurisdiction to provide maintenance to a wife unable to maintain herself, should award maintenance to the wife leaving the husband to establish the invalidity of marriage in a competent Civil Court. This view, with due respect to the learned Judge, does not appear to be correct. In [Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Another](#), it was contended before Their Lordships that the term "wife" in Section 125 of the Code of Criminal Procedure should be given a wider and extended meaning so as to include therein not only, a lawful wedded wife but also a woman married in fact by performance of necessary rites or following the procedure laid down under the law. This argument was repelled by holding that the legislature decided to bestow the benefit of the section even on an illegitimate child by express words but none are found to apply to a de facto wife where the marriage is void ab initio.

8. As stated earlier the marriage held in contravention of the provision contained in sub-section (i) of Section-5 is null and void u/s 11 of the Act. Therefore the marriage of the petitioner with the respondent should be treated as null and void from its very inception. Argument advanced by the learned Counsel appearing for the petitioner is that the personal law applicable to the parties, viz., the Hindu Law, is not to control the powers of the criminal court in awarding maintenance to the lady when it is found that the ceremonies necessary for a valid marriage have been performed. This argument cannot be accepted because the personal law governs the rights of the parties. One who intends to establish the claim for maintenance has to show that she is the legally wedded wife of the man from whom she claims maintenance. This can be decided only with reference to the personal law applicable to the parties. Only when the petitioner establishes her status or relationship with the respondent as his legally wedded wife with reference to the personal law can an application for maintenance be sustained. Thus the question regarding the validity of the marriage has to be done into by the Magistrate. Only on finding the marriage valid under law can maintenance be awarded to the wife. For these

reasons it has to be held that the petitioner is not the legally wedded wife of the respondent. The findings arrived at by the courts below to this effect are not open to challenge.

9. In the case on hand the petitioner as PW-1 admitted that she gets a salary of Rs. 600/- per month as a P. D. Teacher in a Government School. On account of this income the petitioner cannot be considered as a person unable to maintain herself. In view of what has been stated above, I find no merit in this petition. It is accordingly dismissed.