

(1964) 07 KL CK 0044**High Court Of Kerala****Case No:** Criminal R.P. No. 391 of 1963

Ayissu

APPELLANT

Vs

Ahammed

RESPONDENT

Date of Decision: July 15, 1964**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 488

Citation: (1964) KLJ 690**Hon'ble Judges:** P. Govinda Menon, J**Bench:** Single Bench**Advocate:** K. Mohammed Naha, M.A. Hameed, for the Appellant; B. Moosakutty, for the Respondent**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

Govinda Menon, J.

This revision petition arises out of a maintenance application by the minor wife represented by her mother with whom she is living, claiming maintenance from the respondent u/s 488, Crl. P.C. The respondent married the petitioner on 1-7-61 and she was taken to his house where for some time they were living. Later the respondent left for Saudi Arabia and thereafter it is stated he has neglected to maintain her. The respondent denied liability to pay maintenance on the ground that he had divorced the petitioner on 15-7-62 in the presence of the Khazi of the local Jumayath Mosque. The Khazi was examined on the side of the respondent but he gave evidence that the respondent had authorised him on 15-7-62 to pronounce Talak and divorce the wife on receipt of the Mahar amount from the parents of the girl, but as it was not paid he had not pronounced Talak and the marriage is still subsisting. The respondent did not get into the box and give evidence that divorce had, in fact, been effected. The learned Magistrate negatived the plea of the

respondent, but ordered him to pay maintenance at the rate of Rs. 30/- from the date of filing the petition till the date of filing of the written statement by the respondent alleging divorce.

2. The question that arises here is as to what is the legal effect of the husband stating in his written statement that he had already divorced his wife, if the court comes to the conclusion that the divorce pleaded is either not proved or is proved to be false. In other words whether the written statement itself could operate as a divorce from the date the written statement is filed in court. Certain authorities were placed before me which have held that whenever the husband makes an unambiguous declaration of divorcing his wife it would amount to a legal and valid divorce under the Hanafi Law. One of the decisions cited is Wahab Ali v. Qamro Bi (A.I.R. 1951 Hyd 117). It was observed that:

Where in a proceeding started under S. 488 by a Muhammadan wife against her husband for her maintenance, the husband states in his written statement that he had already divorced his wife and the court comes to the conclusion that the divorce pleaded is not proved, then such a statement in the written statement itself operates as an expression of divorce by the husband and operates as from that moment.

This decision was followed in [Chandbi Ex Vs. Bandesha](#) . In that case in an application for maintenance by a Muhammadan wife the husband filed a written statement to the effect that he had already divorced the wife about 30 years ago. That plea was found against, but it was held that:

although a Mohammedan may fail to prove the allegation that he had divorced his wife some years ago, nevertheless the statement made by him to the effect that he had so divorced his wife, even if it be false, would operate as an acknowledgement of the divorce by him or at any rate as a declaration of divorce as from the date on which the statement was made.

The same view was taken in the case in [Asmat Ullah and Others Vs. Mt. Khatun-Unnisa and Others](#) , where also it was held that even though divorce set up is not proved it will be deemed to have effect at least from the date upon which the written statement was filed.

In a later case of the same High Court in Abdul Shakoor v. Kulsum Bibi (1962-1 Cr. L.J. 247), the husband pleaded an earlier divorce in his written statement and it was held that the statement amounts to an unequivocal expression of his desire and would operate as a divorce.

I am in respectful agreement with the view expressed in these cases and hold that the divorce should be deemed to have taken effect from the date of the written statement.

3. Learned counsel for the petitioner has brought to my notice a Division Bench Ruling of the Lahore High Court in AIR 1932 498 (Lahore) . There Monroe J., speaking for the Bench stated :

According to the Hanafi law, when the husband executes a document containing a statement that he divorces his wife and the document is properly superscribed and addressed in the usual form, showing the name of the writer and the person addressed, it constitutes a valid pronouncement of divorce, irrespective of the intention with which it is written, but where the document is not written and superscribed in the usual and customary form it does not constitute a pronouncement of divorce unless it can be comprehended and read and unless it has been written with the intention of its operating as a pronouncement of divorce.

Therefore, the written statement in this case would amount to an unequivocal expression of his desire to divorce and therefore it would operate as a divorce. Learned Magistrate was, therefore, right in finding that divorce would take effect from the date of the written statement and in awarding maintenance from the date of filing the petition to the date of filing the counter-statement by the respondent. In law a divorced woman is entitled to maintenance during the period of iddat which is three lunar months. Probably, by oversight the learned Magistrate has failed to award maintenance for the iddat period. This right is not disputed even though counsel for the respondent would say that this has not been claimed even in the revision application.

In the result the petitioner will be entitled to recover maintenance from the respondent at the rate of Rs. 30/- per mensem from the date of the filing of the petition till the date of the filing of the counter statement by the respondent, viz., 1-9-62 and for the iddat period. With this modification the revision petition is dismissed.