

(2008) 07 KL CK 0078**High Court Of Kerala****Case No:** RP (FC) No. 244 of 2008

Joseph alias Biju George

APPELLANT

Vs

Mary alias Priya Thomas and
Another

RESPONDENT

Date of Decision: July 30, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 127

Citation: AIR 2008 Ker 225 : (2009) 237 ELT 224 : (2008) 3 ILR (Ker) 562 : (2008) 3 KLJ 473 : (2008) 3 KLT 775**Hon'ble Judges:** R. Basant, J**Bench:** Single Bench**Advocate:** Vijai Mathews, for the Appellant;**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

R. Basant, J.

Can there be a settlement of a claim under Sec. 125 Cr.P.C. before the Counselor of the Family Court? Is the Family Court justified in accepting and acting upon such report of the Counselor? These are the questions strenuously raised by the learned counsel for the petitioner in this revision petition at the stage of admission. Fundamental facts are not disputed. Marriage is admitted. Paternity if not in dispute. That the spouses are residing separately is also not disputed. Separate residence according to the petitioner, started on 8-12-03. The claim for maintenance was filed by the claimants - wife and child, on 16.03.07. Parties were referred to Counselor and the Counselor made attempts to settle the dispute. On 10.10.07 there allegedly was a settlement before the Counselor. The Counselor recorded that settlement, countersigned the same and along with a report submitted the same to the learned Judge of the Family Court. In such settlement, it was recorded that an

amount of Rs. 750/- per mensem each shall be paid by the petitioner to both the claimants - his wife and child. Such payment was agreed to be made from the date of the petition. It was also agreed that the petitioner shall send the amount by money order to the 1st claimant/wife before the 15th of every month from November, 2007. It is accepting and acting upon the said settlement arrived at before the Counselor and reported to the court by the Counselor after due counter signature that the learned Judge of the Family Court proceeded to pass the impugned order.

2. The petitioner claims to be aggrieved by the impugned order. What is the grievance? The signature in the agreement is not disputed. It is contended that such a settlement before the Counselor is of no legal effect or value. The learned Judge of the Family Court should not have accepted and acted upon such settlement. In these circumstances, it is prayed that the impugned order may be set aside and this the revision petition may be allowed.

3. The learned counsel for the petitioner was heard in detail. The learned counsel for the petitioner was specifically asked to respond to the specific stipulation in Rule 35 of the Family Courts (Kerala) Rules, 1989. The same reads as follows:

35. Settlement before Counselor-When the parties arrive at a settlement before the Counselor relating to the dispute or any part thereof, such settlement shall be reduced to writing and shall be signed by the parties and countersigned by the Counselor. The court shall pronounce a decree or order in terms thereof unless the court considers the terms of the settlement unconscionable or unlawful.

4. There is no contention that the settlement is unconscionable or unlawful. There is no specific contention even that the petitioner's signature was obtained fraudulently or without apprising him of the consequences. The counsel raised various contentions to assail the agreement on the basis of which the impugned order was passed.

5. The first contention that no settlement at all can be arrived at before the Counselor cannot obviously be accepted in the light of the clear and unambiguous language of Rule 35 of the Family Courts (Kerala) Rules extracted above. The said first contention does therefore fall to the ground.

6. Secondly it is contended that what happened on 10/10/07 was not a settlement. The contention is based on the reasoning that settlement contemplated under the Family Courts (Kerala) Rules can only be an agreement to unite and live harmoniously. I am afraid, I cannot agree. The words "settlement" in language or in the context in which it is used in the of the Family Courts (Kerala) Rules cannot at all convey that only an agreement to reunite and resume harmonious cohabitation would fall within the ambit of the expression "settlement". Any arrangement by which the dispute is settled between the parties can fall within the ambit of the expression "settlement" in Rule 35. This second contention cannot also hence

succeed.

7. Thirdly and lastly it is contended that the petitioner was not given legal assistance when the parties went for conciliation. The settlement arrived at without the assistance of a legal practitioner is not justified. The same must be eschewed and ignored, it is contended. This contention cannot also obviously stand. The rationale of the provisions of the Family Courts Act and Rules is that assistance by a lawyer need be granted to a party even for the conduct of the case only if the court in its discretion feels the need to grant such permission. The fact that the petitioner was not assisted by a counsel does not vitiate the order passed on merits by the Family Court and definitely not an order passed on the basis of a settlement arrived at.

8. The learned counsel for the petitioner, it would appear, is perturbed by the fact that O.P. No. 32/07 is pending before the same court i.e., the Family Court, Kannur, for restitution of conjugal rights. It would appear that the apprehension of the petitioner is that this agreement to pay maintenance for the wife residing separately might affect his claim for restitution of conjugal rights adversely. I need only mention that that apprehension is without any basis. The settlement that has been reached which was reduced to writing under Rule 35 as also the report of the Counselor does not, in any way, have any bearing on the claim of the petitioner for restitution of conjugal rights. I need only mention that the fact that the maintenance claim was settled and the maintenance was agreed to be paid will not, in any way, fetter the rights of the petitioner to raise all relevant contentions before the Family Court in O.P. No. 32/07 for restitution of conjugal rights. The petitioner, I feel, will even be able to contend that without prejudice to his contentions in the O.P. he had agreed to pay maintenance and that again only shows the bona fides of the petitioner. Even that contention does appear to me to be possible before the Family Court in O.P. No. 32/07. At any rate, pendency of the said O.P. will not, in any way, vitiate the settlement which has been reached between the parties and reduced to writing in the presence of the Counselor.

9. The learned counsel for the petitioner submits that it may be clarified that if the petitioner succeeds in the O.P. for restitution of conjugal rights and the claimant/wife does not comply with the said order, the petitioner shall be entitled to get the impugned order passed under Sec. 125 Cr.P.C. modified by resort to the provisions of Sec. 127 Cr.P.C. Certainly, if the petitioner succeeds in O.P. No. 32/07, his right to move the court under Sec. 127 Cr.P.C. for modification of the order shall remain.

10. I am satisfied, in these circumstances, that this revision petition does not merit admission. The same is dismissed with the above observations. I am satisfied that it is not necessary to order notice to the respondent and wait for service and appearance to dispose of this revision petition in these circumstances. In the result, this RP(FC) is dismissed.