

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 14TH FEBRUARY 2005 / 25TH MAGHA 1926

Crl.MC.No. 3016 of 1998()

CRRP.28/1992 of I ADDL. SESSIONS COURT, KOLLAM
MC.118/1990 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOTTARAKKARA
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PETITIONER:

MYTHEENKUNJU NOUSHAD,
PINACKAL, SHAJI NIVAS,
KOLLAM.

BY ADV. SRI.M.V.IBRAHIMKUTTY

RESPONDENTS:

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1. ABDUL MAJEED LEBBA LAILA BEEVI,
PEZHUMMOODU VEEDU, KARICHIRA,
CHITHARA VILLAGE.
 2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERANAKULAM.

BY PUBLIC PROSECUTOR SRI.THAVAMONY
SRI.K.RADHAKRISHNAN (SR.)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 14/02/2005, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.HEMA, J.

Crl.M.C.No.3016 of 1998

Dated this the 14th February, 2005

O R D E R

The petitioner is counter petitioner in M.C.No.118 of 1990 on the file of the Judicial First Class Magistrate's Court, Kottarakkara. The first respondent herein filed M.C.No.118 of 1990 under Section 3 of the Muslim Women (Protection of rights on Divorce) Act, 1986 claiming various amounts and gold ornaments. The trial court, after trial, as per Annexure-A order dated 30.4.1992, directed petitioner to pay Rs.2,250/- as maintenance to first respondent for her iddat period and Rs.30,000/- by way of reasonable and fair provision for post iddat period. It was also ordered to return 8 sovereigns of gold ornaments to first respondent and in case of default, first respondent was entitled to recover Rs.27,200/- from petitioner herein as the market value of 8 sovereigns. A further sum of Rs.35,000/- received by petitioner was also ordered to be paid.

2. The petitioner filed a revision before the Session's Court and as per order dated 10.12.1997, the First Additional Session's Judge, Kollam, as per Annexure-B order, modified the amount ordered to be paid to first respondent from Rs.35,000/- to Rs.25,000/-. The said order is under challenge in this proceedings. According to learned counsel for petitioner, having found that the petitioner is liable to pay Rs.25,000/- instead of Rs.35,000/-, revisional court went wrong in not interfering with the order of the trial court, directing petitioner to return 10 sovereign of gold.

3. Learned counsel for petitioner submitted that as per the allegations made by the respondent-wife, petitioner had taken 10 sovereigns of gold and Rs.10,000/- for the purpose of marriage of petitioner's sister, in 1985. But the marriage of the petitioner's sister took place only in 1987 and therefore the above allegations are baseless and

hence the direction given to return the gold ornaments has to be set aside. On going through the records, first of all, I find that no direction was issued by the learned Magistrate as per Annexure-A to return 10 sovereigns of gold, as contended. The direction was to return only 8 sovereigns of gold ornaments. But, learned counsel for petitioner pointed out that this quantum of gold was arrived at by reducing the gold which is admittedly given by petitioner to first respondent herein, at the time of fixation of marriage. 2 sovereigns of gold was deducted from 10 sovereigns of gold allegedly taken by petitioner.

4. It was also argued that the allegation made by first respondent in respect of petitioner receiving Rs.10,000/- is also inconsistent. It was pointed out that as per the allegations made by respondent, Rs.10,000/- was received along with 10 sovereigns of gold. Since the revisional court has found that evidence relating to the receipt of Rs.10,000/- is inconsistent, it has to be inferred that the receipt of 10 sovereigns also will not be probable and hence no direction ought to have been given to return the gold ornaments, it is argued.

5. On going through the order of the revisional court, it appears that the above argument on facts was not raised before the revisional court. It appears that revision petitioners challenged only the demand made in respect of Rs.10,000/- The petitioner has no case that the revisional court did not consider the contentions raised in respect of the gold ornaments. In the above circumstances, in a proceedings under Section 482 Cr.P.C., this court cannot go into the meticulous details of evidence and merits of the rival contentions. The factual disputes which are not agitated at least before the revisional court cannot be agitated in a proceedings under Section 482 Cr.P.C. This court cannot consider the legality, propriety or correctness of the impugned order, as if sitting in a second revision.

6. A second revision from the impugned is specifically barred by under Section 397(3) Cr.P.C. Ordinarily, when revision has been barred

under Section 397(3) Cr.P.C., a person cannot be allowed to take recourse to Section 397(1) or 482 Cr.P.C., since it may amount to circumvention of the provisions of Section 397(3) (vide **Krishnan v. Krishnaveni** AIR 1997 SC 987). The jurisdiction which is specifically barred by the code cannot be exercised with the aid of Section 482 Cr.P.C. I do not find any ground to interfere with the order passed by the court below under Section 482 Cr.P.C.

The petition is dismissed.

K.HEMA, JUDGE

vgs.