IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

MONDAY, THE 13TH DAY OF OCTOBER 2025 / 21ST ASWINA, 1947

MAT.APPEAL NO. 625 OF 2024

AGAINST THE JUDGMENT DATED 26.03.2024 IN OP NO.998 OF 2023 OF FAMILY COURT, THALASSERY

APPELLANT/RESPONDENT:

MUHAMMED ASHAR.K
AGED 39 YEARS
S/O YOUSEF, RESIDING AT ASHAR COTTAGE, PANOOR AMSOM,
P.O. PANOOR, THALASSERY TALUK, PIN - 670692

BY ADV MUHAMMED ASHAR.K(PARTY-IN-PERSON)

RESPONDENT/PETITIONER:

MUHSINA.P.K
AGED 28 YEARS
D/O MOOSA.K.T, RESIDING AT MUNER NIVAS, PANOOR
AMSOM,DESOM,PANOOR.P.O,THALASSERY TALUK,MOB:8943506077,
PIN - 670692

BY ADVS.
SHRI.T.P.SAJID
SRI.K.P.MOHAMED SHAFI
SMT.SHIFA LATHEEF
SMT.SREESHMA B. CHANDRAN
SHRI.MUHAMMED HAROON A.N.
SHRI.HASHARURAHIMAN U.

SHRI.MOHEMED FAVAS

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 13.10.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R

JUDGMENT

Devan Ramachandran,J.

The appellant was married to the respondent on 15.12.2019 and a son was born to them on 23.04.2021.

2. However, it transpires that matrimonial strife germinated between the parties, which finally led the respondent to issue Ext.A2 “Khula Nama”, dated 05.10.2023, to the appellant, thus divorcing him.

3. The respondent, thereupon, filed O.P.No.998/2023 before the learned Family Court, Thalassery, seeking declaration of her marital status as being divorced from the respondent; and this has been allowed by the said Court, after recording her statement as PW1 and evaluating Exts.A1 to A6 documents produced by her.

4. The appellant - Sri.Muhammed Ashar K., appearing in person before us, assails the order of the learned Family Court primarily on two grounds,

namely that: a) there was no conciliation between the parties before Ext.A2 "Khula Nama" was issued by the respondent; and b) that the respondent has not offered to return the "Mahar", which she conceded has been received from him.

5. Sri.Muhammed Ashar K. argued that, when he had filed objections before the learned Family Court to the specific effect that the "Mahar" given by him to the respondent had not been returned; and that there had been no reconciliation talk between the parties, the learned Family Court could not have declared the divorce to be valid, even going by the judgment of this Court, which it relied upon, namely, ***Asbi.K.N v. Hashim.M.U.*** [2021 6 KLT 292]. He contended that, going by this precedent, though a detailed enquiry may not be necessary, the learned Family Court ought to have ascertained whether there was a valid pronouncement / declaration of "Khula" and whether it was preceded by an effective attempt at conciliation. He showed us that, the said

judgment further mandates that it was also incumbent upon the learned Court to have ascertained, from the recitations in the "Khula Nama" and its communication, that there was an offer by the respondent to return the "dower". He argued that, in the absence of these requirements in this case, the learned Family Court has erred in having issued the impugned order.

6. Sri.T.P.Sajid – learned counsel for the respondent, however, submitted that the above contentions are unsustainable because, even when Ext.A2 "Khula Nama" was issued, his client has specified that there were attempts of reconciliation initiated by her and her family, through Sri.K.Abdul Sathar and Sri.P.K.Mahmood; but that the appellant did not accede to it, nor had agreed for any viable settlement. He then pointed out that, though his client had, in Ext.A2, conceded that "Mahar" had been given to her, she has stated in her petition, as well as in her testimony as PW1, that the same

had been taken away by the appellant even before she had issued the said "Kula Nama" to him. He added, relying upon ***Asbi.K.N*** (supra) that, the question whether there was an offer by the wife to return the "Mahar" is to be ascertained not merely from the recitals in the "Khula Nama" or his communication, but can also be done through the recording of the statement of the parties. He maintained that,when his client, as PW1, stated unequivocally before the learned Court that the "Mahar" given to her and then taken away by the appellant; and when he refused to controvert it by offering a statement of his, or even by producing any document in substantiation, the essential requisites for a "Khula Nama" to be declared valid, has been attracted in this case. He thus prayed that this Appeal be dismissed.

7. We have examined the order of the learned Family Court and have gone through the materials and depositions on record, which are that

of PW1 – respondent herein, and Exts.A1 to A6 documents produced by her.

8. Ext.A1 is the copy of the Marriage Certificate, which both sides do not contest; while, Ext.A2 is the "Khula Nama", written in hand by the respondent. Ext.A3 is the copy of a legal notice which the respondent asserts to have issued to the appellant and his parents, prior to her writing Ext.A2 and Ext.A4 is the unclaimed postal cover addressed to the appellant herein; while, Exts.A5 and A6 are the acknowledgment cards of the notices received by his parents, namely Sri.Yusaf and Smt.Jameela.

9. Upfront, we agree with the submissions of Sri.K.Muhammed Ashar – the appellant appearing in person, that the "Khula Nama" does not specifically say that the "Mahar" which the respondent admitted to, has been either returned, or will be returned, or has been taken away by him. However, in the petition before the learned Family Court, the

respondent has unequivocally stated that the "Mahar" had been taken away by the appellant much before she issued Ext.A2; and she reiterated so in her proof affidavit and the statement which she gave as PW1 before the learned Court. In the chief affidavit, the respondent spoke not only about the "Mahar" having been taken away by the appellant, but also that there were attempts of mediation between the parties through the aforementioned two mediators, but that it did not fructify. Her specific averment regarding the "Mahar" is available in paragraph 2 of the chief affidavit, where she says that the 10 sovereigns of gold given to her had been taken away by the appellant; while, with respect to the reconciliation efforts, her averments are contained in paragraph No.4 thereafter, in which, she mentions the names of the mediators as being Sri.K.Abdul Sathar and Sri.P.K.Mahmood. As seen earlier, she maintained the same position when she was examined as PW1 by the learned Trial Court.

10. It is pertinent that in spite of the above and though alerted by the pleadings and statement of the respondent, the appellant neither filed a proof affidavit, nor did he choose to offer a statement on his own.

11. Therefore, as matters now stand, though the "Khula Nama" does not mention that the "Mahar" had been taken away by the appellant, the Original Petition contains such averments, as also the proof affidavit and the statement of the respondent as PW1, before the learned Family Court.

12. Interestingly, the argument of Sri.Muhammed Ashar before us today is that, the persons mentioned above - namely Sri.K.Abdul Sathar and P.K.Mahmood, are relatives of the respondent and therefore, that a proper reconciliation would never had been effected. This virtually fortifies the opinion of the learned Family Court that there were attempts of reconciliation; and this is more so because, if the appellant had a case of such nature,

nothing prevented him from filing an affidavit to such effect, or in giving his statement in answer to PW1. In fact, even in the pleadings of this Appeal, he does not even whisperingly say that the stated mediators were biased, or that they were relatives of the respondent.

13. Coming to a question of "Mahar", we find favour with the submissions of Sri.T.P.Sajid because, in ***Asbi.K.N.*** (supra), there are three methods of assessment declared by this Court to be done by the learned Family Court. The first is by evaluating whether there was offer by the wife to return the "Mahar" in the "Khula Nama" itself; second, whether it is so stated in the communication if issued; and finally by recording the statement of the parties.

14. In this case, the statement of PW1 unequivocally says, as she had averred in the pleadings also, that the "Mahar" had been taken away by the appellant much before she had issued Ext.A2.

This does not mean that such statement of the respondent ought to be blindly accepted or believed, but the fact that the appellant chose not to file his proof affidavit, or to offer statement before the learned Trial Court, travels to establish the truth of the assertions of the respondent.

15. Thus, when the factum of an attempt of reconciliation and the absence of "Mahar" with the respondent being *prima facie* established, we cannot find any reason to doubt, or to find in error, the views and holdings of the learned Family Court.

16. That said, in ***Asbi.K.N.***(supra), it has been singularly declared that "Khula", as in the case of "Talaq and Mubaraat", is a mode of extrajudicial divorce and that the learned Family Court has only to verify whether the pronouncement/declaration of the same was done in a proper manner, and if it was preceded by an effective attempt of conciliation. In this case, the attempt of conciliation proceedings before issuance

of Ext.A2 has been established; and as said above, the incapacity of the respondent to return the "Mahar" also stands proved.

17. That said, the endorsement of the extra judicial divorce and consequential declaration by the learned court, does not preclude the right of the appellant from challenging the divorce as per law for which, liberties are reserved in ***Asbi.K.N*** (supra) itself.

In the afore circumstances, we obtain no cogent cause to find the judgment of the learned Family Court to be in any kind of error; and consequently, dismiss this Appeal.

Sd/-

DEVAN RAMACHANDRAN
JUDGE

Sd/-

M.B. SNEHALATHA
JUDGE

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APPENDIX OF MAT.APPEAL 625/2024

PETITIONER ANNEXURES

Annexure 1	KHULA NOTICE SENT ON 05/10/2023
Annexure 2	HOME TOWN MAHAL EVIDENCE DATED 15/12/2019