



2025:KER:88717

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 19TH DAY OF NOVEMBER 2025 / 28TH KARTHIKA,
1947

RPFC NO. 100 OF 2023

AGAINST THE ORDER DATED 29.12.2022 IN MC NO.135 OF
2020 OF FAMILY COURT, MUVATTUPUZHA

REVISION PETITIONER/RESPONDENT IN MC:

BY ADVS. SRI.A.RAJASIMHAN
KUM.VYKHARI.K.U
SHRI.SHARAFUDHEEN M.K.
SHRI.ANAS ALI M.M.

RESPONDENT/PETITIONER IN MC:

BY ADVS.SHRI.T.K.RAJESHKUMAR
SHRI.MANOJ V GEORGE
SMT.T.N.BINDU
SHRI.ABHISHEK
SHRI.DHANANJAY DEEPAK
SHRI.JIJO JOSE

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 19.11.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**“CR”****ORDER**

This revision petition has been filed challenging the order of maintenance granted by the Family Court, Muvattupuzha, in a proceedings under Section 125 of Cr.P.C.

2. The petitioner herein is the husband of the respondent. Their marriage was solemnised on 12.09.2003. After a few years of marriage, marital disputes arose between them. The petitioner filed an original petition for divorce before the Family Court, Muvattupuzha, as O.P.No.918/2019. It is submitted that it was allowed, and divorce was granted. The respondent filed M.C. No.135/2020 in the same court, invoking Section 125 of Cr.P.C., claiming maintenance at the rate of ₹25,000/- per month. The petitioner resisted the claim mainly on the ground that the respondent is living in adultery and hence she is disentitled to claim maintenance under sub-section (4) of Section 125 of Cr.P.C. The Family Court did not accept the said contention and allowed the maintenance case, directing the petitioner to pay maintenance at the rate of ₹7,500/- per month to the respondent as per the impugned order.



3. I have heard Sri.A. Rajasimhan, the learned counsel for the petitioner, and Sri.T.K. Rajeshkumar, the learned counsel for the respondent.

4. The learned counsel for the petitioner submitted that the impugned order is illegal and unsustainable as it is against the provisions of Section 125(4) of Cr.P.C., which clearly says that no wife shall be entitled to receive an allowance for maintenance from her husband if she is living in adultery. The learned counsel further submitted that sufficient evidence has been let in by the petitioner to prove that the respondent is living in adultery, and that evidence was overlooked by the Family Court without any reason. The learned counsel also submitted that the finding of the Family Court that there is no evidence to show that the relationship, if any, between the respondent and the so-called adulterer is not an adulterous one is contrary to the evidence on record. On the other hand, the learned counsel for the respondent submitted that a wife is disentitled to maintenance under Section 125 of Cr.P.C., only if the husband proves that she is living in adultery continuously, and a single or isolated instance of adulterous act is not sufficient. Reliance was placed on the decisions of this Court in **T.Mercy and Others v.**



V.M.Varughese and State (1967 SCC OnLine Ker 95), **Sheela v. Albert Hemson** (2015 SCC OnLine Ker 1226), **K.Shyamala v. Purakkanath Balakrishnan** (2019 SCC OnLine Ker 3056), **Rupa v. Puthalath Anil Kumar** [2021 (2) KLT 239], **Nesamma v. Manuvel Hentry** (1961 KLT 964), **Sandha v. Narayanan** [1999 (1) KLT 688]; the decision of the Madhya Pradesh High Court in **Amit Kumar Khodake v. Madhuri** (2025 SCC OnLine MP 976) and the decision of the Patna High Court in **Bulbul Khatoon and Another v. State of Bihar and Another** (2025 SCC OnLine Pat 2379). The learned counsel further submitted that there is absolutely no evidence on record to show that the respondent is continuously living in adultery and hence the Family Court has rightly granted maintenance to the respondent.

5. Section 125 of Cr.P.C. (Section 144 of BNSS) states that a husband with sufficient means is liable to provide maintenance to his wife who cannot support herself. However, the wife's right to claim maintenance is not absolute. Sub-Section (4) of Section 125 (Section 144(4) of BNSS) clearly specifies that a wife living in adultery is not entitled to claim maintenance. The dictum laid down in all the decisions cited by the learned counsel for the petitioner and referenced earlier is



that a single instance of adulterous conduct is not enough to disqualify a wife from claiming maintenance; rather, there must be evidence of continuous adulterous behaviour. In brief, there should be proof that the wife is habitually engaging in an adulterous life with the partner to invoke the provisions of sub-section (4) of Section 125 of Cr.P.C. This legal principle is well settled. The key issue, however, is that when a husband defends proceedings under Section 125 of Cr.P.C. (Section 144 of BNSS) by claiming that the wife is living in adultery, what level of proof is required to establish that the wife is indeed living in adultery?

6. The right claimed by the wife under Section 125 of Cr.P.C. is a civil right. Maintenance proceedings under Section 125 of Cr.P.C. are also civil proceedings, although breach may lead to penal consequences. In criminal cases, the standard of proof is proof beyond a reasonable doubt, whereas in civil cases, the standard is based on the preponderance of probabilities. The concept of proof beyond a reasonable doubt applies only to criminal trials and cannot be used in civil disputes, including matrimonial and maintenance cases. When the husband alleges that the wife is living in adultery and thereby disqualified from claiming maintenance, he is not



required to prove the adulterous act beyond a reasonable doubt, as in criminal prosecution under the now-repealed Section 497 of IPC. Instead, proof by preponderance of probabilities is sufficient. Adultery typically occurs in secrecy, making direct proof rare. Consequently, adultery can often be established through circumstantial evidence, provided the circumstances lead logically to that conclusion.

7. Now, let me examine whether, from the evidence let in by the petitioner, he has succeeded in establishing adultery on the part of the respondent.

8. The petitioner in the objection to the maintenance case itself has taken a definite plea that the respondent was leading an adulterous life with so many persons, especially with one Sri. Ajith V. Nair. Though the petitioner has alleged that the respondent was leading an adulterous life with so many people, the evidence adduced before the court is confined to the adulterous act with Sri.Ajith. Apart from the oral testimony of the petitioner himself, who was examined as RW1, the evidence to prove adultery consists of the oral evidence of RW2 to RW4, Exts.X1 to X5 and Exts. B1 to B4.

9. The evidence of RW2 and Ext.X2 treatment records of the respondent summoned from the Caritas



Hospital, Thellakom would show that the respondent was treated by a Psychiatrist and a Psychologist at the said hospital. The Psychologist who treated the respondent was examined as RW2. Ext.X2 treatment records were proven through RW2. The testimony of RW2, coupled with Ext.X2, would show that the respondent was under the treatment of RW2 as well as Dr. Suresh Nainan, a Psychiatrist. This evidence would further show that once the respondent was treated in the said hospital as an inpatient following a suicide attempt. On page No.3 of Ext.X2, Dr. Suresh Nainan has recorded that the respondent had an extramarital affair for the last one year. On page No.7, RW2 personally recorded that the respondent has an extramarital affair with Sri.Ajith. Referring to page Nos. 7 to 9 in Ext.X2, RW2 deposed that the respondent had told him that she had an extramarital affair with Sri.Ajith. On page No.64, RW2 has recorded that "the relationship with Ajith was much more than that with her husband and her family members." RW2 deposed that the respondent stated so to her. RW2 has also stated that in Ext.X2, she has recorded that the respondent tends to have extramarital relationships. Even though RW2 was cross-examined at length, there is nothing to show that she was not



speaking the truth. Thus, the evidence of RW2 coupled with Ext.X2 would clearly prove that the respondent has admitted her extramarital affair with Sri. Ajith.

10. The learned counsel for the respondent submitted that even if the evidence of RW2 and the statements in Ext.X2 referred above are believed in toto, that would at best suggest that the respondent had only an extramarital affair with Sri.Ajith, which is insufficient to infer that the said affair led to an adulterous act. The learned counsel further submitted that the statement on page No.3 of Ext.X2 that the respondent had an extramarital affair 'for the last one year' was recorded on 11.11.2019, whereas the MC was of the year 2020. Relying on the said statement, it was argued that the alleged adulterous act, even if believed to be true, could only have occurred before 11.11.2019 and there is nothing on record to show that, as on the date of the MC, the respondent was living in adultery with the so-called Sri. Ajith. I cannot subscribe to the said argument. Whether a women is living in adultery or not cannot be determined on a numerical basis. The matter is to be looked into holistically. As stated already, since adultery is something that takes place in secrecy, we cannot expect direct proof. When a patient is



consulted by a Psychologist and Psychiatrist, it need not always be necessary that the patient open up fully and admit the adulterous act blindly. It has come out in evidence that the respondent had admitted to RW2, and it has been so recorded in Ext.X2, that she had an extramarital relationship running for a period of one year with Sri. Ajith. She had also admitted that she values her relationship with Sri. Ajith more than her relationship with the petitioner.

11. Another piece of evidence relied on by the petitioner is that of the oral testimony of RW3. RW3 was examined to prove that he witnessed the respondent along with Sri. Ajith sitting in a semi-naked compromising position in a car parked on the side of a road. He deposed that he saw the respondent and Sri.Ajith hugging and kissing inside the car. He further deposed that their dressing was not proper and their body parts were exposed. Strangely, the learned Family Court took the view that even if the evidence of RW3 is relied on, it would not prove that there was actual sexual intercourse between the respondent and Sri.Ajith.

12. At this juncture, it is relevant to note the evidence of RW4, the investigating officer who investigated Crime No.81/2020 of Koothattukulam Police Station,



Ernakulam registered against the petitioner under Section 498A of the IPC at the instance of the respondent. Ext.B1 would show that the final report in that crime was filed as a false case. As a part of the investigation of the said crime, the call details of the respondent and Sri.Ajith were collected by RW4. Relying on Ext.X5 call details, RW4 deposed that at the date and time when the respondent and Sri.Ajith were found in the car, both of them were under the tower location where the car was parked. This evidence corroborates the oral testimony of RW3.

13. It has also come out in evidence that the wife of Sri. Ajith had filed an original petition for divorce against Sri.Ajith. A copy of the said original petition has been marked as Ext.B3. In Ext.B3, the wife of Sri.Ajith had alleged that he was leading an adulterous life with the respondent.

14. The aforementioned circumstantial evidence are sufficient to establish the factum of 'living in adultery' on a balance of preponderance and probabilities to defeat the claim of the respondent under Section 125 of Cr.P.C. The finding of the Family Court that the evidence on record is insufficient to prove that the respondent is living in adultery is against the settled principles of appreciation of evidence. The respondent



is not entitled to maintenance from the petitioner as she is found to be living in adultery. The impugned order, thus, cannot be sustained, and accordingly, it is set aside.

The revision petition is allowed.

Sd/-

**DR. KAUSER EDAPPAGATH
JUDGE**

NP/kp