

(1987) 09 KL CK 0007

In the High Court Of Kerala

Case No : Criminal M.C. No. 290 of 1987

Kalipadan Mohammed Haji

APPELLANT

Vs

Thaikadan Rukiya

RESPONDENT

Date of Decision : 03-09-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 127, 128
Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 5, 7

Citation : (1987) KLJ 1154

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : V.P. Mohan Kumar and K.P. Sreekumar, for the Appellant; V. Sankara Raja and V.P. Mohammed, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, J.—Revision Petitioner who is the husband of the respondent challenges the order in C.M.P. 1939 of 1986 of the Judicial Magistrate of the Second Class, Perinthalmanna. The respondent filed the petition to enforce the order of maintenance in favour of her children and herself. Maintenance was granted at the rate of Rs. 200/- per month to the respondent and Rs. 50/- per month each to the children. This was so ordered by the Sessions Judge. This has become final. Contention of the revision petitioner is that proceedings u/s 128 Cr. P.C. cannot be taken in view of Section 7 of the Muslim Women (Protection of Rights on Divorce) Act 1986 (for short the Act). It is clearly untenable as that Act does not have any application regarding proceedings u/s 128 Cr. P.C. Section 7 of the Act contains the transitional provisions. Section 7 provides that every application by a divorced women u/s 125 or u/s 127 of the Criminal Procedure Code 1973 pending before a Magistrate on the commencement of the Act, shall notwithstanding anything contained in that Code and subject to the provisions of Section 5 of the Act, be disposed of by such Magistrate in accordance with the provisions of this Act is the petition has been filed u/s 128 Cr. P.C. for the enforcement of maintenance already ordered i.e. long prior to the

commencement of the Act and as section 7 of the Act does not bar the relief sought u/s 128 it is futile to contend that the Magistrate has no jurisdiction to proceed to recover the amount. The transitional provision contained in Section 7 of the Act applies only to applications pending before Magistrate under Sections 125 or 127 Cr. P.C. It has no application to any proceedings taken u/s 128 Cr.P.C. After the commencement of the Act the Code has not been repealed. The Act does not say that the maintenance ordered under the provisions of the Code has become unenforceable. It is always open to a divorced Muslim wife who has obtained maintenance u/s 125 or enhanced maintenance u/s 127 to enforce it u/s 128. So long as Section 7 of the Act does not interdict proceedings u/s 128 Cr.P.C. It is not possible to hold that after the commencement of the Act the respondent cannot file the petition for enforcement of the order in her favour.

The learned Magistrate has considered all aspects of the matter correctly and properly and has passed the impugned order. Hardly there is any ground to interfere. Petition is dismissed.