
(2025) 10 KL CK 1322

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26010 Of 2025

Muhammad Shareef. C

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 30-10-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 15

Kerala Registration of Marriages (Common) Rules 2008 — Rule 11

Citation : (2025) 10 KL CK 1322

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : Aswanth P.T., Manuel P.J., V.N.Ramesan Nambisan, Jessy S. Salim

Final Decision : Dismissed

Judgement

P.V.Kunhikrishnan, J.

1. A legal conundrum arises in this case regarding the registration of a Muslim man's second marriage, in accordance with the Kerala Registration of Marriages (Common) Rules 2008 (hereinafter referred to as Rules 2008), when his first marriage to another woman is in existence. Whether notice is necessary to the first wife for the purpose of registering the second marriage before the Local Self Government Institutions in accordance with the Rules 2008 is the first question to be decided. In such a situation, if the first wife objects to the registration of the second marriage, stating that the second marriage is invalid, what is the remedy for the husband? This is the next question to be decided.

2. I will narrate the facts in this case first: The 1st petitioner married a lady, and in that relationship, there were two children. The said marriage was registered before the jurisdictional registering authority. While the said marriage was subsisting, the 1st petitioner met the 2nd petitioner and gradually that relationship developed into a love relationship. Thereafter, according to the 1st petitioner, with the consent of his first wife, he married the 2nd petitioner and

the marriage was solemnised on 17.08.2017 as per the Muslim religious custom. It is submitted that, thereafter, the petitioners 1 and 2 were living together as husband and wife. Ext.P1 is a letter from P. A. Aboobakker Musaliar stating that he was present at the time of the solemnization of the marriage of the petitioners. It is also submitted that the 2nd petitioner was previously married before the marriage to the 1st petitioner, to one Hameedh C, Son of Mohammed Kunji. Two children were born to the 2nd petitioner in that wedlock. Thereafter, due to differences in opinion between Mr Hameedh C and petitioner No. 2, Mr Hameedh C pronounced Talaq, and the said marriage was subsequently separated. An agreement was executed between Mr Hameed C and the 2nd petitioner regarding the said separation of marriage. Thereafter, the 2nd petitioner married the 1st petitioner.

3. In the relationship between the petitioners, two children were born to them, and both children are minors. Exts. P2 and P3 are the birth certificates of the petitioners' children. It is submitted by the petitioners that, considering the future of the children and for getting the lawful right of the property of the 1st petitioner to the 2nd petitioner and her children, the 1st and 2nd petitioners decided to register their marriage before the Local Self Government Institution, which is the registering authority. But, it is submitted that the 2nd respondent is not ready to register the marriage between the petitioners. The 2nd respondent is not providing any valid reason for not registering the marriage of the petitioners, is the grievance of the petitioners. According to the petitioners, they are Indian Citizens and are followers of Muslim Customary Law. It is submitted that, as per the Muslim Personal Law, a Muslim male is entitled to have four wives at a time. Therefore, the Registrar is bound to register the second marriage of the 1st petitioner with the 2nd petitioner, in accordance with the law, is the submission. Hence, this Writ Petition is filed with the following prayers:

"a. Issue the Writ of mandamus or any other Writ directing the respondents to register the marriage between the petitioner No.1 and 2.

b. Grant such other reliefs which this Honourable Court may deem fit and proper in the interest of justice." (SIC)

4. Heard the learned counsel appearing for the petitioners, the learned Standing Counsel appearing for the 2nd respondent Panchayath, and the learned Government Pleader.

5. It is true that a Muslim man can marry more than once according to their personal law. But, a Muslim man can marry for the second time only in certain situations, even as per the Muslim Customary Law. This Court in *Jubairiya v. Saidalavi N.* [2025 (6) KHC 224] considered this point in detail. It would be better to extract the relevant portions of the above judgment.

"9. There is a misconception that a Muslim man can marry more than one woman in all situations if he wishes to do so. Quran Chapter 4, verse 3 reads like this:

“(3) And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice].”

Quran Chapter 4, verse 129 reads like this: “(129) And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so]. So do not incline completely [toward one] and leave another hanging. And if you amend [your affairs] and fear Allah-then indeed, Allah is ever Forgiving and Merciful.” (Relied on the English translation of Sri Mohammed Azad)

10. The spirit and intention of these verses is monogamy, and polygamy is only an exception. The Holy Quran greatly stresses ‘justice’. If a Muslim man can give justice to his first wife, second wife, third wife and fourth wife, then only marriage more than once is permissible. The majority of the people in the muslim community are followers of Monogamy, even if they have the wealth to maintain more than one wife. That is the true spirit of the Holy Quran also. The small minority among the muslim community who are following polygamy, forgetting the verses of the Holy Quran, are to be educated by the religious leaders and society.”

6. In this case, admittedly, the 1st petitioner married another woman and in that relationship, he has two children. When the relationship with that woman was in existence, the first petitioner submitted to this Court that he fell in love with the second petitioner and married her. I don’t think that the Holy Qur’an or the Muslim Law permits an extramarital relationship with another lady when his first wife is alive and his first marriage with her is in existence, and that also, without the knowledge of his first wife. The principles derived from the Holy Qur’an and Hadith collectively enjoin principles of justice, fairness, and transparency in all marital dealings. However, the petitioner is relying on Muslim Personal Law to justify his marriage to the second petitioner. Of course, it is true that a second marriage is possible under Muslim Law, but only in specific situations. This was considered in detail by this Court in Jubairiya (Supra). Now the 1st petitioner wants to register his second marriage with the 2nd petitioner in accordance with the Rules 2008.

7. The Rules 2008 is framed based on the directions of the apex court in Seema v. Ashwani Kumar [2006(1) KLT 791(SC)]. Rule 11 of the Rules 2008 deals with the filing of the Memorandum and Register of Marriages(common). Rule 11 of the Rules 2008 is extracted hereunder:

“Rule - 11. Filing of Memorandum and Register of Marriages (Common).

(1) On receipt of a memorandum and the prescribed fee for registration, the Local Registrar shall verify the entries in the memorandum for its accuracy and completeness, and enter the particulars thereof forthwith in the Register of Marriages (Common) maintained by him for this purpose in Form No. III appended to these Rules and affix his signature and seal in the space provided

therefor. A certificate of marriage shall be issued to the applicant in Form No. IV appended to these Rules in proof of registration of the marriage on payment of fee of rupees five, within five working days. The entries relating to each marriage shall be given Registration Numbers consecutively for each calendar year and separate registers shall be maintained for each calendar year.

(2) Local Registrar may, for reasons to be recorded, in writing reject the memorandum for registration if it is not in proper form or not accompanied by the requisite fee and shall intimate the reason to the parties concerned, within a period of thirty days from the date of such rejection.

(3) The Local Registrar shall forward the duplicate copies of the memorandum received in a month to the Registrar General concerned before the 10th day of every subsequent month. The originals of the memorandum received by the Local Registrar and duplicate copies forwarded to the Registrar General concerned shall be filed as permanent records."

8. A perusal of Rule 11 would show that verification of the entries in the Memorandum is necessary from the Registrar's side. Rule 9 says that parties to the marriage shall prepare a memorandum in duplicate in Form 1 appended to the rules. It will be better to extract Form 1 of the Rules 2008:

FORM NO. I

[See Rule 9(1)]

MEMORANDUM FOR REGISTRATION OF MARRIAGE

1. Date of Marriage :

2. Place of Marriage : Local area Village Taluk
District

(specify hall,
mandapam etc.)

.....

.....

Photo of the Husband to be affixed

Photo of the Wife to be affixed

3. Details of Parties to the Marriage (As on the date of marriage)

Details

Husband

Wife

(a) Name in full

(in capital letters) (b)Nationality

(c) Age and date of birth (sufficient proof shall be produced)

(d)Permanent Address

(e) Present Address

*(f) Previous marital status Married Unmarried Widower Widow Divorced

(g)Whether any spouse is

living (If yes, number of

spouse living)

(h)Signature with date

(i) Name of father or guardian

and the relationship

(j) Age

(k)Address

(l) Signature with date (If he is

a consenting party)

(m) Name of mother

(n)Age

(o)Address

(p)Signature with date (If she

is a consenting party)

*Put () mark on whichever is applicable.

4. Witness of solemnization of marriage

1. (a) Name

(b) Address:

(c) Signature with date:

2. (a) Name:

(b) Address:

(c) Signature with date:

5. Details of records of marriage required under rule 9/rule 10, if any:

Declaration of the Parties

We.....do hereby declare that the details shown above are true to the best of our knowledge and belief.

Signature of the Parties:

Place:

1. Husband

Date:

2. Wife

(For Office Use)

Received by Post/in Person on

Local Registrar.

Registered in the Register of Marriages (Common) on as Regn. No

Local Registrar.

Columns 3(f) and (g) mandate that the previous marital status of the parties is to be mentioned in Form 1. If a spouse is living, this should be noted. Therefore, a Registrar of Marriages can easily find out whether this is the second marriage of any of the parties to the marriage before him when the earlier marriage exists.

9. It is true that this court observed that the Registrar has no authority to decide the validity of a marriage. This court in Hussain v. State of Kerala [2025(4) KHC 314], considered this point and the relevant portion of the judgment is extracted hereunder.

"8. The enquiry envisaged under R.11 is summary in nature. The Registrar is not empowered to conduct a comprehensive enquiry regarding the validity of the marriage or the competence of the parties to get married at the time of considering the memorandum. If the Registrar is objectively satisfied that the marriage has been solemnised, he is empowered to register the marriage.

9. In Pranav A. M. & another v. Secretary, Engandiyur Grama Panchayat, Thrissur and another, 2018 (3) KHC 128, this Court has held that the Registrar is only to be prima facie satisfied that the marriage was solemnised as per the personal law of the parties. He is bound to register the marriage upon a declaration made by the parties, without entering into the legality of the marriage.

xxxx xxxx

12. It was on accepting the documentary proof and the oral testimonies of the

petitioners and their witnesses that the 4th respondent registered the marriage. Having produced documents to the above effect and voluntarily testifying that the marriage was solemnised, the petitioners are estopped from reprobating that there is no valid marriage. The Registrar does not have the jurisdiction to adjudicate the above disputed question of fact under R.13.

13. The questions regarding the validity of the marriage and the marital status of the parties are to be decided by a competent civil court.”

10. Therefore, the Registrar is not vested with the power to decide the validity of the marriage. The question is, when a muslim man marries again, when his first wife is alive and the marital relationship with her is in existence, the second marriage can be registered as per the Rules 2008 behind the back of the first wife. The Holy Qur'an is silent about the consent of the first wife for the second marriage to a muslim man when the earlier marriage is in existence. However, it does not prohibit the option of obtaining consent from the first wife, or at least informing her before he marries again. Equality in gender is a constitutional right of every citizen. Men are not superior to women. Gender equality is not a women's issue, but it is a human issue. As I mentioned earlier, the principles derived from the Holy Qur'an and Hadith collectively enjoin principles of justice, fairness, and transparency in all marital dealings. Therefore, I am of the considered opinion that, if a Muslim man wants to register his second marriage in accordance with the Rules 2008, when his first marriage is in existence and the first wife is alive, an opportunity of hearing should be given to the first wife for the registration. A Muslim first wife cannot be a silent spectator to the registration of the second marriage of her husband, even though the Muslim Personal Law allow a second marriage to a man in certain situations. The 1st petitioner can marry again if his Personal Law permits him to do so. However, if the first petitioner wishes to register his second marriage with the second petitioner, the law of the land will prevail, and in such a situation, an opportunity of hearing for the first wife is necessary. In such situations, religion is secondary and constitutional rights are supreme. In other words, this is essentially the fundamental principle of natural justice. This Court cannot ignore the feelings, if any, of the first wife when her husband registers his second marriage in accordance with the law of the land. I am sure that 99.99% of Muslim women will be against their husband's second marriage when their relationship with him is in existence. They may not disclose the same to society. However, their feelings cannot be ignored by a court, at least when their husbands attempt to register the second marriage in accordance with the Rules 2008. Article 14 of the Constitution says that the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India. Article 15 of the Constitution prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Religious freedom is guaranteed to all citizens. However, first, a man must respect the constitutional mandates when he wants to register a marriage, as per the Rules of 2008. A Muslim man cannot march over his first wife for registering his second marriage in accordance with the Rules 2008,

without notice to the first wife, when her marital relationship with him is in existence. However, if the second marriage occurs after pronouncing talaq to the first wife, there is no question of giving notice to the first wife. If the first wife objects to the registration of the second marriage of her husband, alleging that the second marriage is invalid, the registrar shall not register the second marriage, and the parties should be referred to the competent court to establish the validity of the second marriage as per their religious customary law. As I mentioned earlier, there is nothing in the holy Qur'an which mandates a man to get permission from his first wife for his second marriage. However, Customary Law is not applicable when the question of registering a second marriage arises. I am not saying that the second marriage cannot be registered, but an opportunity of hearing should be given to the first wife by the statutory authorities, while a second marriage of a Muslim man is to be registered. Muslim Personal Law states that a man can have more than one wife, provided that he has the capacity to maintain more than one wife and can give justice to his first wife. If the husband is neglecting the first wife or not maintaining the first wife, or inflicting cruelty on the first wife and thereafter contracting a second marriage, making use of his Personal Law, an opportunity of hearing to the first wife will be beneficial to her at least when the second marriage is registered in accordance with the Rules 2008. The marriage registration officer can hear the first wife, and if she objects to her husband's second marriage, stating that it is invalid, the parties can be referred to a competent civil court to establish the validity of the second marriage.

In this case, the first wife is not even a party to this writ petition. Therefore, this writ petition need not be entertained. However, I make it clear that the petitioners are free to file an appropriate application before the respondents, and the Registrar of Marriages shall give notice to the first wife of the first petitioner if such an application is received. If she objects to the registration, stating that the second marriage is invalid, the parties should be advised to approach a competent court to determine the validity of the second marriage of the first petitioner. Let the Muslim women also get an opportunity of hearing when their husbands remarry, at least at the stage of registering the second marriage. However, this writ petition need not be entertained because the first wife is not even a party to this case. Therefore, this writ petition is dismissed.