



2025:KER:91029

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

THURSDAY, THE 27TH DAY OF NOVEMBER 2025/6TH AGRAHAYANA, 1947

ICR(CRL.M.C).NO.14 OF 2025

AGAINST THE ORDER DATED 09.04.2025 IN CRL.M.C.NO.3126 OF 2022
OF HIGH COURT OF KERALA

PETITIONER/REVISION PETITIONER/PETITIONER:

SAFIA P.M.
AGED 49 YEARS
D/O.MUHAMMED, ROSE GARDENS, PANAVALLY VILLAGE,
CHELATTUBHAGOM MURI, THRICHATTUKULAM P.O.,
CHERTHALA TALUK, ALAPUZHA DISTRICT, PIN - 688581

BY ADV.SRI.PRASHANTH PADMANABHAN
BY ADV.SMT.K.V.BHADRA KUMARI

RESPONDENTS/RESPONDENTS/STATE & RESPONDENT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA

2 T.A. SIRAJ
AGED 52 YEARS
S/O.ABOOBACKER, THUKALIL HOUSE,
MARAMPALLY VILLAGE, KUNNATHUNADU TALUK,
MUDICKAL P.O., ERNAKULAM DISTRICT, PIN - 683547

BY SMT.SHEEBA THOMAS, PUBLIC PROSECUTOR
BY ADV.SRI.B.J.JOHN PRAKASH
BY ADV.SRI.P.PRAMEL
BY ADV.SRI.SOORAJ M.S.
BY ADV.SMT.VARSHA VIJAYAKUMAR NAIR
BY ADV.SMT.ANAGHA MADATH THEKKEPATTE
BY ADV.SMT.SONA A.B.



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BY ADV.SRI.COLIN ALEX

THIS INTRA COURT REFERENCE (CRIMINAL MISC. CASE)
HAVING BEEN FINALLY HEARD ON 19.11.2025 ALONG WITH
CRL.M.C.NO.3126 OF 2022, THE COURT ON 27.11.2025 DELIVERED
THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

THURSDAY, THE 27TH DAY OF NOVEMBER 2025/6TH AGRAHAYANA, 1947

CRL.M.C.NO.3126 OF 2022

PETITIONER/REVISION PETITIONER/PETITIONER:

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BY ADV.SMT.SONA A.B.
BY ADV.SRI.COLIN ALEX

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
19.11.2025 ALONG WITH ICR (CRL.M.C).NO.14 OF 2025, THE COURT
ON 27.11.2025 PASSED THE FOLLOWING:



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"C.R."

ORDER

Dr. A.K. Jayasankaran Nambiar, J.

The aforementioned Intra-Court Reference [ICR] application and Criminal Miscellaneous Case have been posted before us pursuant to an order of the Hon'ble the Chief Justice on the administrative side, for answering the legal question raised by a learned Single Judge vide order dated 09.04.2025 in Criminal Miscellaneous Case No.3126 of 2022. The question of law referred to us reads as follows:

"Whether Article 137 of the Limitation Act, 1963 applies to a claim under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, as held in **Hassainar v. Raziya - [1993 (2) KLT 805]**?"

2. Before we embark upon a consideration of the question referred to us, we might notice the factual circumstances under which the reference arose. They are as stated hereinafter:

3. The petitioner in the Crl.M.C was aggrieved by the judgment dated 10.12.2021 in Crl.R.P.No.9 of 2020 of the Sessions Court, Alappuzha, that upheld an order of the Judicial First Class Magistrate Court-II, Cherthala that had dismissed the claim for maintenance preferred by the petitioner under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 [hereinafter referred to as



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the “1986 Act” for brevity]. The learned Magistrate was of the view that the application under Section 3 of the 1986 Act, that was preferred by the petitioner nine years after the dissolution of her marriage in 2004, was barred by limitation under Article 137 of the Limitation Act, 1963. The Magistrate also found that the petitioner had executed an agreement with her husband at the time of pronouncement of Talaq whereby she had relinquished all her rights in connection with the divorce. The claim of the petitioner was therefore dismissed by the Magistrate.

4. In the Revision preferred by the petitioner before the Sessions Court, her contention that the provisions of the Limitation Act would not apply to a claim under Section 3 of the 1986 Act was rejected by the Court by placing reliance on the judgment of this Court in **Hassainar (supra)**. However, the court found that on the facts of her case, the petitioner having filed her claim within three years from the date of refusal by her husband to pay a reasonable and fair maintenance, the claim was not barred by limitation. On the merits of her case, the Sessions Court found that since the petitioner had relinquished all her rights through the agreement entered into with her husband, her claim could not be considered. The court also found that, at any rate, the petitioner had not proved that the respondent husband had sufficient means to pay the amount claimed by her. The Sessions Court therefore dismissed the revision petition.



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5. In the Crl.M.C filed before the learned Single Judge of this Court, the grievance of the petitioner was essentially with regard to the findings of the Sessions Court dismissing her claim on the ground that she had relinquished all her rights under the 1986 Act through the agreement entered into with her husband at the time of pronouncement of the Talaq, and further that she had not proved that her husband had sufficient means to pay the amount claimed by her. Significantly, there was no challenge to the specific finding of the Sessions Court that the provisions of Article 137 of the Limitation Act would apply to claim petitions preferred under Section 3 of the 1986 Act, probably because the Sessions Court had found in favour of the petitioner on the point of limitation by holding that on the facts of the case, the petitioner's claim was filed within time.

6. We have deemed it apposite to emphasise on the last-mentioned aspect because we find that the question referred to us for consideration did not really arise for consideration in the Crl.M.C before the learned Single Judge. This is apparent from a reading of paragraphs 4 and 5 of the Reference Order which read as follows:

"4. Thus, the pivotal question involved in this Crl.M.C. is whether the petitioner's claim under Section 3 of the Muslim Women Rights Act is barred by the Law of Limitation. Although the question of limitation was found in favour of the petitioner/wife in the impugned Order, the revision was ultimately dismissed, which prevents the respondent/husband from challenging the Order impugned, including the finding with respect to limitation. An adverse finding, by itself, cannot be challenged by a successful party to the lis, is a proposition too well settled.

5. Before me, the petitioner/wife would contend that **Hassainar** (supra) requires a re-look, whereas the respondent/husband would prefer this Court to sustain the same." (emphasis supplied)



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7. The learned Single Judge, however, proceeded to decide the main issue raised in the Crl.M.C viz. whether the agreement executed between the petitioner and her husband would preclude her right to seek reasonable and fair maintenance in terms of Section 3 of the 1986 Act, and answered the said issue in her favour. The correctness of the finding of the Sessions Court that the petitioner had not proved that her husband had sufficient means to pay the amount claimed by her, was not considered by the learned Single Judge. Thereafter, the learned Single Judge went on to hold that the Crl.M.C can be disposed of only after an authoritative declaration of law by a Division Bench on the question of applicability of Article 137 of the Limitation Act, 1963 to a claim under Section 3 of the 1986 Act as held in **Hassainar (supra)**.

8. We have heard Sri.Prashanth Padmanabhan, the learned counsel for the petitioner, Smt.Sheeba Thomas, the learned Public Prosecutor for the 1st respondent State and Sri.John Prakash B.J., the learned counsel for the 2nd respondent.

9. At the very outset, we might only observe by way of re-iteration that, while the question referred to us for our consideration did not really arise in the Crl.M.C that was before the learned Single Judge, of the two issues that did arise for consideration in the Crl.M.C, the learned Single Judge has considered only the issue of whether the agreement executed between the petitioner and her husband would



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preclude her right to seek reasonable and fair maintenance in terms of Section 3 of the 1986 Act, and answered the said issue in her favour. The correctness of the finding of the Sessions Court, that the petitioner had not proved that her husband had sufficient means to pay the amount claimed by her, was not considered by the learned Single Judge. For the said purpose, the CrI.M.C would have to be inevitably remitted back to the learned Single Judge for adjudication.

10. Notwithstanding that the issue referred to us for consideration is purely academic as far as these proceedings are concerned, since the learned Single Judge has raised a doubt with regard to the correctness of the view taken in **Hassainar (supra)**, we choose to answer the reference as follows:

11. It is clear from a perusal of the reference order that the doubt entertained by the learned Single Judge is essentially with regard to the applicability of the provisions of the Limitation Act to criminal proceedings. This is apparent from a reading of paragraphs 6 and 7 of the reference order that read as follows:

“6. The following aspects are taken note of:

The Muslim Women Rights Act, was enacted in the year 1986 to protect the rights of divorced Muslim women and to provide for matters connected therewith. Section 3(1)(a) speaks of reasonable and fair provision, as also, maintenance to be paid to a Muslim wife within the iddat period by her former husband. Clause (b) of Section 3(1) speaks of maintenance to the children. Section 3(2) is important, which provides that, if the reasonable and fair provision and maintenance has not been delivered to a divorced woman, she can make an application to the Magistrate for an Order for payment of the same. Section 3(3) empowers the Magistrate to make an Order directing the respondent/husband to pay the amount of fair provision and maintenance to the divorced wife and



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her children, after considering the aspects referred to in that Section and having been satisfied thereof. Section 3(4) is all the more important in the present context, which provides that an Order made against the respondent/husband, if not complied, empowers the Magistrate to issue a warrant for levying amount of maintenance/mahar/dower in the manner provided for levying fines under the Code of Criminal Procedure. The Section also empowers the Magistrate to sentence the respondent/husband to imprisonment for a term which may extend upto one year in respect of the whole or part of the amount remaining unpaid. Section 4 of the Act specifically deals with the order for payment of maintenance, which is to be recovered from the relatives of the wife, who would be entitled to inherit her property.

7. The above provisions are referred only to point out that the procedure contemplated for the relief envisaged by the Muslim Women Rights Act is essentially criminal in nature. To count, an application has to be made to a Magistrate; the enforcement of the Order is contemplated by issuance of a warrant; and for the amount remaining unpaid, by imprisonment. Therefore, the very applicability of the Limitation Act, 1963, itself, is doubtful. As could be seen from the preamble, the Limitation Act is an Act to consolidate and amend the law for the limitation of '*suits and other proceedings*'. Part II of the Limitation Act deals with the limitation of suits, appeals and applications. The expression '*appeals and applications*', which comes after the '*suits*' has to be interpreted applying the principle of *noscitur a sociis*. Without much ado, it can safely be concluded that the Limitation Act applies to civil proceedings, but not limited to those specifically envisaged by the Code of Civil Procedure."

Thereafter, the learned Single Judge proceeded to consider the decision in **Hassainar (supra)** and felt that it required reconsideration to the extent it held that Article 137 of the Limitation Act would apply to applications under the Cr.P.C as well. At paragraph 12 of the reference order, the learned Judge observes as under:

"12. Having referred to the above, I am of the definite opinion that the above legal position held in **Hassainar (supra)** that Article 137 of the Limitation Act will govern the applications contemplated by the Code of Criminal Procedure as well, requires reconsideration. **K.S.E. Board v. T.P.K.Aliumma [AIR 1977 SC 282]** was a case under the Telegraph Act seeking compensation. Needless to say that, it is a civil proceeding and Article 137 will apply. The judgment in **T.P.K.Aliumma (supra)** was rendered in the context of the contention that Article 137 applies to an application under the C.P.C. alone; not to one under the Telegraph Act. That was repelled, holding that Article 137 will apply to any petition or application filed in a Civil Court. Whether that proposition can be extended to hold that Article 137 will govern the petitions/applications filed before the Criminal Court under the Cr.P.C. requires serious reconsideration, in my opinion. The definitions under the Limitation Act, referred to in **Hassainar (supra)**, has to be read, interpreted and understood within the general scope and ambit of that Act; and not so as to include applications under Cr.P.C. as well, within the meaning of 'applications', as employed in Section 3 of the Limitation Act. Limitation



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Act cannot govern proceedings under the Cr.P.C., when Section 468 of the Code of Criminal Procedure specifically speaks about the period of limitation as a bar for taking cognizance after the prescribed period.”

12. In our view, the reference order proceeds on an erroneous premise viz. that the proceedings under Section 3 of the 1986 Act are criminal proceedings. The exclusion of the provisions of the Limitation Act in criminal proceedings, unless there are express and specific provisions making them applicable, is premised on the fundamental principle that ‘crime never dies’ which is expressed through the Latin maxim *nullum tempus aut locus occurrit regi* that translates as ‘lapse of time is no bar to the Crown in proceeding against offenders’ **[Asst. Collector of Customs, Bombay & Anr. v. U.L.R.Malwani & Anr. - [AIR 1970 SC 962]; Janani Sahoo v. Chandra Sekhar Mohanty - [(2007) 7 SCC 394]]**. Since a criminal offence is a wrong against the State and the Society, notwithstanding that it has been committed against an individual, a mere delay in the prosecution approaching a court of law would not by itself be a ground for dismissing the case against an accused. Proceedings under Section 3 of the 1986 Act are not criminal proceedings but civil proceedings, although the adjudicatory forum might be a Magistrate’s court. The nature of the right envisaged to a claimant under the 1986 Act, and which crystallises in her pursuant to an adjudication as envisaged under sub-section 3 thereof, being of a civil nature, the adjudication proceedings have necessarily to be seen as civil proceedings. The mere fact that the enforcement machinery to effectuate the adjudicated right is specified under the Cr.P.C does not take away from the fact that the adjudication



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proceedings themselves are civil proceedings. In other words, the proceedings partake of the nature of criminal proceedings only at the stage of execution, when what is sought to be recovered from a claimant's husband is the amount adjudged as payable by him in the adjudication proceedings, and in the payment of which he has defaulted. This is what was stated by the learned Single Judge in **Hassainar (supra)**, and we see no reason to take a different view. We therefore affirm the view of the learned Single Judge in **Hassainar (supra)** that holds that the provisions of Article 137 of the Limitation Act would apply to applications for adjudication made under Section 3 of the 1986 Act.

13. The learned counsel for the petitioner would rely on the decisions of the Bombay High Court in **Ramkrishna v. Kusum Ramkrishna - [1982 I.L.R. Bom 808]** and **Skh. Hafiz Skh. Habib v. State of Maharashtra & Anr. - [2008 SCC Online Bom 1872]**, as also the judgment of the Gauhati High Court in **Sahera Khatoun v. Mafijuddin Ahmed - [2012 SCC Online Gau 380]** to argue that the provisions of Section 3 of the 1986 Act have to be seen as intended to achieve the same object as Section 125 of the Cr.P.C. He contends therefore that insofar as there is no limitation period prescribed for preferring an application under Section 125 Cr.P.C, there cannot be any such limitation period read into the provisions of Section 3 of the 1986 Act. We find ourselves unable to accept the said proposition. While it may be a fact that the provisions of Section 125 Cr.P.C do not specify a limitation period for preferring an application thereunder for



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maintenance, sub-section (2) of Section 125 makes it clear that the maintenance, when granted in terms of that provision, would not be from a date prior to the date of the application. In other words, the provisions of Section 125 Cr.P.C have a built-in scheme that is designed to protect the husband from paying maintenance to his divorced wife for a period when she had not raised a claim for maintenance. In contrast to the provisions of Section 125 Cr.P.C, a Muslim woman is granted a specific right under Section 3 of the 1986 Act, to claim maintenance from her husband who divorced her, but only subject to her establishing the extent of her needs and that her husband had neglected to pay her a reasonable and fair provision and maintenance despite having sufficient means to do so.

14. In the result, we answer the question referred to us in the affirmative, by affirming the judgment of the learned Single Judge in **Hassainar (supra)** to the extent it holds that the provisions of Article 137 of the Limitation Act would apply to applications for adjudication made under Section 3 of the 1986 Act. The CrI.M.C is now remitted back to the learned Single Judge for deciding the correctness of the finding of the Sessions Court, that the petitioner had not proved that her husband had sufficient means to pay the amount claimed by her, and then disposing the CrI.M.C based on the finding already entered in the reference order on the issue of the petitioner's claim not being affected by the agreement entered into between her and her husband, and the answer provided herein to the question referred to us.



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The Registry is directed to place the file before the Hon'ble the Chief Justice for passing appropriate orders on the administrative side.

**Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE**

**Sd/-
JOBIN SEBASTIAN
JUDGE**

prp/



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APPENDIX OF CRL.M.C.NO.3126/2022

PETITIONER'S ANNEXURES:

- ANNEXURE1 TRUE COPY OF THE PETITION, M.C. : 4/2014
FILED BY THE PETITIONER BEFORE THE JFCM COURT
II, CHERTHALA.
- ANNEXURE2 TRUE COPY OF THE OBJECTION FILED BY THE 2ND
RESPONDENT IN THE M.C. NO:4/2014 DATED
25/2/2020
- ANNEXURE3 TRUE COPY OF THE ORDER PASSED BY THE JFCM
COURT II, CHERTHALA IN M.C. NO: 4/2014 DATED
25/2/2020
- ANNEXURE4 TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN
THE PETITIONER AND THE 2ND RESPONDENT.
- ANNEXURE5 TRUE COPY OF THE CRL.R.P. N: 9/2020 FILED NY
THE PETITIONER BEFORE THE SESSIONS COURT,
ALAPPUZHA.
- ANNEXURE6 CERTIFIED COPY OF THE ORDER PASSED IN CRL. R.
P NO: 9/2020 BY THE ADDITIONAL SESSIONS COURT
II, ALAPPUZHA.

RESPONDENTS ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE