IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 3RD DAY OF DECEMBER 2021/ 12TH AGRAHAYANA, 1943

MAT.APPEAL NO. 69 OF 2015

AGAINST THE JUDGMENT IN OP 540/2010 OF FAMILY COURT, NEDUMANGAD

APPELLANT/1st RESPONDENT:

J.W.ARAGADAN
AGED 50 YEARS
S/O.JAYARAJ WILLIAM,ARAGADAN HOUSE,ILLATHUPARAMBU,PANCHAMAM SCHOOL ROAD,CALICUT,AND WORKING AS UDC,ALL INDIA,BEACH ROAD,CALICUT.

BY ADV SRI.NIRMAL. S

RESPONDENTS/PETITIONER & 2ND RESPONDENT:

1 HASHMI N.S.
AGED 19 YEARS
D/O NASEEMA ULLATTIN,SHERIFA MANZIL,NRA-22,TV LANE,PEROORKADA.P.O,KUDAPPANAKUNNU VILLAGE,THIRUVANANTHAPURAM-695601.

2 NASEEMA ULLATTIN
AGED 40 YEARS
D/O.ABHITA BEEVI,NASEEMA MANZIL,K.P.7/517,KRISHNA NAGAR,KUDAPPANAKUNNU.P.O,KUDAPPANAKUNNU VILLAGE,THIRUVANANTHAPURAM-695601.

BY ADVS.SRI.G.RANJU MOHAN
SMT.K.V.SAMUDRA
SMT.M.SANTHI K8682011

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 06.10.2021, THE COURT ON 3.12.2021 DELIVERED THE FOLLOWING:

“C.R.”

J U D G M E N T

Dated this the 3rd day of December, 2021

Kauser Edappagath, J.

The following interesting questions arise for consideration in this matrimonial appeal:

(i) Does father of a child born out of an inter–faith marriage have legal obligation to maintain it in the absence of a statutory stipulation?

(ii) Is unmarried daughter born to an inter–faith couple entitled to marriage expenses from her father?

(iii) If yes, how would the quantum be determined?

2. The appellant is the father of the first respondent. The second respondent is the mother of the first respondent. The appellant and the second respondent married in the year 1987. It was an inter–religion marriage. The appellant is a Hindu and the second respondent is a Muslim. The first respondent was born in their wedlock on 24/12/1990. The materials on record would show that the first respondent was brought up as a Muslim.

3. The first respondent filed the original petition as OP No.540/2010 at the Family Court, Nedumangad (for short, 'the Court below') against the appellant and the second respondent claiming past and future maintenance, educational and marriage expenses. The said original petition was filed invoking the provisions of Hindu Adoptions and Maintenance Act, 1956. The second respondent remained absent at the Court below. The appellant alone contested the matter. His liability to pay maintenance, educational and marriage expenses claimed was disputed. He *inter alia* contended that the petition invoking the provisions of Hindu Adoptions and Maintenance Act, 1956 is not maintainable.

4. The first respondent gave evidence as PW1. Exts. A1 to A7 were marked on her side. The appellant was examined as CPW1. Exts. B1 to B3 were marked on his side. The Court below on analysis of evidence found that the first respondent was brought up as a member of Hindu family and inasmuch as the appellant is a Hindu, the original petition filed by the first respondent invoking the provisions of Hindu Adoptions and Maintenance Act, 1956 is perfectly maintainable. On merits, the Court below found that the first respondent is entitled to all the

reliefs claimed by her from the appellant and the second respondent who are her parents. Accordingly, a decree for ₹1,08,000/- towards past maintenance, ₹14,66,860/- towards marriage expenses and ₹96,000/- towards educational expenses with interest was granted. The said decree and judgment are under challenge in this appeal.

5. We have heard the learned counsel for both sides.

6. As stated already, the appellant is a Hindu and the second respondent is a Muslim. No doubt, any child, legitimate or illegitimate, one of whose parents is a Hindu, can maintain an application seeking reliefs under the provisions of the Hindu Adoptions and Maintenance Act, 1956 if such child is brought up as a Hindu. The Court below found that the first respondent was brought up as a member of Hindu community and, hence, the original petition is maintainable. The said finding, according to us, is contrary to the evidence on record. In the original petition itself, the first respondent has pleaded that when she attained three years old, the appellant left the company of the second respondent and she was under the custody and guardianship of the second respondent and that in the year 1997, the second respondent married another person and she was brought up

thereafter by her maternal grand parents. The maternal grand parents of the first respondent are Muslims. The first respondent also gave evidence in tune with the above pleadings. Thus, it is clear that after three years of age, she was not brought up as a Hindu. The first respondent got married to a Muslim on 07/10/2012. She stated in her evidence that her marriage was solemnized according to Muslim rites. Ext. A1 marriage invitation card would also prove this. The evidence on record would show that after three years of age, the first respondent was brought up as a Muslim and not as a Hindu. Hence, the finding of the Court below that the first respondent was brought up as a member of the Hindu community and, therefore, the provisions of the Hindu Adoptions and Maintenance Act, 1956 would apply cannot be sustained. The Muslim Personal Law also cannot be applied since both parties are not Muslims. As per Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, the Muslim Personal Law can be applied to questions regarding maintenance etc.. only if the parties are Muslims. Here, the appellant is a Hindu and the respondents are Muslims. There is no substantive law mandating a father of a child born out of an inter–religion marriage to maintain it. The Special Marriage Act, 1984 is silent

on this. Then, the crucial question is whether father of a child born out of an inter–faith marriage has legal obligation to maintain it in the absence of a statutory stipulation?

7. Every children born to this world is entitled to be maintained. It is their right-both legal and moral. The right of children for maintenance has been recognized for a long time. The duty to take care of the children has also been duly recognised as an enforceable obligation in the entire civilized society. Under the law, the father is an heir and succeeds to the property after the death of the son. The custom as well as statutes recognize father as a natural guardian. He is entitled to the custody of the minor child's person and property. The right to custody carries a duty to take care. The right necessarily carries with it a corresponding duty. Since father is recognized as the guardian, he is under a duty to maintain and protect the child. The child being non *sui juris*, the State and the courts as *Parens Patriae* are bound to protect it.

8. The right of a child has been recognised in the international conventions. The United Nations Convention on the Rights of the Child (UNCRC), a legally-binding international agreement, sets out the civil, political, economic, social and

cultural rights of every child, regardless of their race, religion or abilities. It says every child has the right to survival, protection and education. Article 18 recognizes the primary responsibility of the parents to maintain their children. India had acceded to the Convention on 11/12/1992. International Treaties, even if unincorporated into National law, have a binding effect. The Apex Court in ***Sheela Barse v. Secretary Children's Aid Society*** (AIR 1987 SC 656) has held that Conventions ratified by India for protection of children cast an obligation to implement the principles embodied therein. In ***Vishaka & Ors. v. State of Rajasthan*** (AIR 1997 SC 3011), it was held that International Conventions and Norms were to be read into fundamental rights in the absence of enacted domestic law in the field.

9. In ***Mathew Varghese v. Rosamma Varghese*** (2003 KHC 362), a Bench of five Judges of this Court had occasion to consider whether even in the absence of a contract, principle of personal law or a specific statutory stipulation, the parent/father has the duty to maintain his child. That question was considered in the light of the duty of a Christian father to maintain his minor child. Drawing inspiration from Art.21 of the Constitution of India, it has been held in paragraph 86 of the said judgment that every

father whatever be his religious denomination and faith has the indisputable liability to maintain his child. Relying on ***Mathew*** (supra), a Division Bench of this Court in ***Ismayil v Fathima and Another*** (2011 (3) KHC 825) has held that all fathers, be they Hindus, Muslims, Christian or others, have duty to maintain their children. It was further held that right of the children to be maintained by their father, in the absence of any contract, legal principle, personal law stipulation or statutory prescription flows from the fountain stream of the all encompassing fundamental right to life guaranteed under Art.21 of the Constitution.

10. Every child irrespective of his race, caste or religion has a remedy by way of a suit or petition under S. 9 and O. XXXII A of the Code of Civil Procedure and Section 7(1)(e) of the Family Courts Act, 1984 to claim maintenance. A criminal liability is imposed by Section 125 of Cr.P.C to a father irrespective of the faith or religion professed by him to maintain his children. Section 20 of the Hindu Adoptions and Maintenance Act, 1956 imposes a statutory obligation on the parents to maintain their legitimate or illegitimate children. Under the Muslim Personal Law administered in our country, a Muslim father is bound to maintain his sons until they have attained the age of puberty and his daughters until

they are married. In ***Mathew Varghese*** (supra), it was held that Christian father is under an obligation to maintain his minor child. All Personal Laws oblige all fathers to maintain their unmarried daughters. On principles of justice, equity and good conscience also, a father is bound to maintain his child. There are judgments of the Apex Court that the parties to a live-in relationship or non formal relationship who have lived together for an extended period of time could be brought within the purview of laws relating to maintenance {see ***Chanmuniya v. Virendra Kumar Singh Kushwaha and Another*** [(2011) 1 SCC 141]; ***Dwarika Prasad Satpathy v. Bidyut Prava Dixit and Another*** [(1998) 7 SCC 675]}. We see no reason to deny the children born to an inter-faith couple legal right to claim maintenance from their father for the reason that there is no specific statutory provision mandating such a father to maintain his children. The caste, faith or religion cannot have any rational basis for determining the parental duty of a father. All the children have to be treated alike irrespective of the faith or religion professed by the parents. We, hence, hold that the children of an inter-faith couple are entitled to be maintained by their father. No doubt, son’s entitlement is

until he attains the age of the majority and that of daughter's is until she gets married.

11. The first respondent claimed, apart from maintenance, medical expenses and marriage expenses. There cannot be any dispute that the maintenance includes the educational expenses. The question is whether the maintenance includes the marriage expenses also. The obligation of all fathers, be they Hindus, Muslims, Christians, Parsis or others, to maintain their minor children and the right of all children, to be maintained by their father can be spelt out from Article 21 of the Constitution of India as declared in ***Mathew Varghese*** (supra) and ***Ismayil*** (supra). The right to life as embodied in Article 21 is not merely a right to subsist or survive. It embodies the right to lead a dignified, meaningful and honorable life. Article 21 is an all encompassing provision which includes within its fold the inherent right to marry some one of one's choice. In ***Shafin Jahan v. Asok K.M. and Others*** (AIR 2018 SC 1933), the Apex Court held that the right to marry a person of one's choice is integral to Article 21 of the Constitution. In ***Ismayil*** (supra), the Division Bench of this Court held that consistent with the mandate with Article 21 of the

Constitution as accepted by the Full Bench in ***Mathew Varghese*** (supra), maintenance is the right of the child and such maintenance does and must include all expenses for the mental and physical well being of the child and so far as unmarried daughter is concerned, her marriage is also something essential for the mental and physical well being of the child. The Court was considering the question whether a Muslim father is liable under Personal Law to meet the marriage expenses of his unmarried daughter. It was held that Muslim father also like all other fathers have the obligation to pay/meet the marriage expenses of his unmarried daughter. In so far as the Hindu father is concerned, Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956 which obliges the father to maintain his unmarried daughter specifically includes the right of the claimant for marriage expenses. For all these reasons we hold that an unmarried daughter born to an inter religious couple is entitled to marriage expenses from her father.

12. The next question is what is the amount entitled by an unmarried daughter towards her marriage expenses. In our society, marriage is not a ceremony any more. Gone are the

days when marriages used to be austere. Extravagance has become the hallmark of marriages. The sacred occasion of marriages is now being considered as an appropriate opportunity to show off. Pompous marriage functions are trending, destination weddings keeps on increasing. The wedding industry has become one of the biggest in the country – more than 10 million marriages take place every year. However, the corona virus pandemic has taught us that a small intimate marriage ceremony with no celebration or even virtual wedding is possible. No doubt, one is free to conduct marriage in whatever manner she/he wishes. But, an unmarried daughter cannot ask or compel her father to conduct marriage in a lavish or luxurious manner. Father cannot be fastened with the liability to bear the amount spent by the daughter lavishly according to her whims and fancies. Nor can the Court award marriage expenses without any basis. Section 3(b) (ii) of the Hindu Adoption and Maintenance Act, 1956 gives direction in this regard. The said provision makes it clear that the entitlement is only for reasonable expenses. In ***Ismayil*** (supra) also, the Division Bench made it clear that the right of the unmarried daughter and the duty of the father is only to meet the reasonable marriage expenses, that too only when

the daughter is dependent on the father. The financial capacity of the father has also to be taken into consideration while determining the quantum. Hence, in a petition filed by the unmarried daughter against the father claiming marriage expenses, the court can only award bare minimum reasonable expenses, that too only if the father has requisite means and the daughter is dependent on him.

13. Coming to the facts, the first respondent claimed ₹25,00,000/- towards marriage expenses. The Court below granted ₹14,66,860/-. The first respondent produced Ext. A6 series bills pertaining to the amount spent for the marriage. All the bills except three are for the purchase of gold ornaments. Out of the said three bills, the first one dated 7/10/2012 for ₹1,53,150/- is towards payment of food served to 800 invitees at the wedding reception. The second bill dated 1/10/2012 for ₹14,000/- is towards rent of the Kalyana Mandapam. The third bill dated 1/10/2012 for ₹6,000/- is towards stage decoration. The total would come to ₹1,73,150/-. The rest of the amount spent was for gold alone. As stated already, the first respondent is a Muslim. She was married to a Muslim. The marriage was

performed according to Muslim rites. In Islam, marriage ceremony comprised of *Nikah* followed by *Walima*. It has to be simple and least expensive. It should be celebrated according to the teachings of Islam which advocate simple marriage ceremonies. Prophet Mohammad regarded simple marriages the best marriages. The Prophet is reported to have said: “The marriage which is most blessed is the one which is the lightest in burden [expense]. However, if people are well catered for, without extravagance and show, there is no problem with that either.” (*Bayhaqi*). "The best marriage is that upon which the least trouble and expense are bestowed"(*Mishkat*). There is no concept of dowry/sthreedhanam in a Muslim Marriage. There is no obligation for the father to pay any money, gold or sthreedhanam to his daughter. In fact, under the Muslim Law, *mahar* (dower) is to be paid by the bride groom to the bride. Even the marriage feast (*Walima*) is to be provided by the bride groom and not by bride's father. Hence, there is absolutely no justification in directing the appellant to meet all the marriage expenses allegedly incurred by the first respondent especially the amount spent for purchase of gold ornaments. Taking into account the entire evidence on record, we are of the view that a sum of ₹3,00,000/- would be just

and reasonable towards the marriage expenses. The amount granted by the Court below towards the marriage expenses has to be modified accordingly. The Court below granted maintenance @₹5,000/- only. Similarly, the education expenses of ₹96,000/- granted was actually spent by the first respondent for her education. Hence, we find no reason to interfere with those reliefs.

In the light of the above findings, we reduce the amount granted by the Court below towards marriage expenses to ₹3,00,000/- (Rupees Three lakhs only). The appeal is, accordingly, allowed in part without costs.

Sd/-
A.MUHAMED MUSTAQUE
JUDGE

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

Rp

APPENDIX

APPELLANT'S EXHIBITS

ANNEXURE A1	TRUE COPY OF THE IA 1841/2015 FILED BEFORE THE FAMILY COURT, NEDUMANGAD.
ANNEXURE A2	TRUE COPY OF THE RECEIPTS EVIDENCING THE DEPOSIT OF THE ENTIRE AMOUNT PAID BY THE PETITIONER.

//True copy//

PS to Judge