

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

W.P. No. of 2013

Mrs. Bader Sayeed
Advocate,
W/o Dr. Zaheer Ahmed Sayeed
No. 4 Seshadri Road, Alwarpet
Chennai 600018

....Petitioner

Versus

1. Union of India
Represented by its Secretary to Government
Ministry of Law & Justice
2. State of Tamil Nadu,
Secretary to Government
3. Chief Kazi, Tamil Nadu

Affidavit filed by the Petitioner

I Bader Sayeed, W/o of Dr. Zaheer Ahmed Sayeed, aged about 66 years, Muslim, residing at No. 4 Seshadri Road, Alwarpet, Chennai 600018, do hereby solemnly affirm and sincerely state as follows.

1. I am the petitioner herein and I am well acquainted with the facts of the case. I am filing the above writ petition in Public Interest, especially in interest of all the muslim women in the state.
2. I respectfully submit that, Muslim women in India, especially in the State are suppressed and are unable to freely agitate for their rights and approach the Courts on

account of the certain religious restrictions imposed on them and therefore I am espousing their cause in the present Public Interest Litigation.

3. I respectfully submit that I am a practising lawyer since 1982. I hail from a family of philanthropists and educationalists and I hail from the family which established a renowned educational Educational Trust by name S.I.E.T which runs various institutions in the city.
4. I respectfully submit that my area of practice has been exclusively in women rights and family laws. I respectfully submit that, I have published various articles in journals and presented papers in conferences, especially on Muslim Law relating to women. I respectfully submit that I was the Chairperson of Tamil Nadu Minorities Commission, between 1991-96, the 1st women chair person of the Wakf Board, between 2002-06 and I have also served as Additional Advocate General of Tamil Nadu between 2005 & 2006. I have also been a Member of Legislative Assembly elected from the Triplicane constituency from the year 2006-2011.
5. I respectfully submit that I am filing the present writ petition in public Interest for a Writ of Declaration to declare that, 'Kazis' in India particularly in state of Tamil Nadu are not empowered to certify Talaq and consequently forbear them from issuing Certificate & other documents certifying or approving Talaq under the Following circumstances.
6. I respectfully submit that, in view of the provisions of the Muslim Personal Law (Application) Act 1937, Muslims are governed by Shariat, with regard to certain matters, including marriage and dissolution of marriage. Section 2 of the said Act, as amended by Madras Act 18 of 1949 & 23 of 1960, reads as follows:

"Notwithstanding any custom or usage to the contrary in all questions regarding intestate succession, special property of females, including personal property inherited

or obtained under contract or gift or any other provision of personal law, marriage, dissolution of marriage, including Talaq, Ila, Zihar, Lian, Khula and Mubarat, maintenance, dower, guardianship gifts, trusts & trust properties and wakfs the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)”

7. I respectfully submit that, though the 1937 Act referred to above provided for dissolution of marriage by court in certain cases, the said provision was repealed by the Dissolution of Muslim Marriages Act 1939, Act 8 of 1939, which enables a Muslim women to obtain divorce on certain Grounds. Subsequently in 1986, certain provisions have been made in Muslim Women’s Protection of Rights in Divorce, Act 1986, to protect the rights of Muslim Women who have been divorced by or has obtained Divorce from their Husbands, or to provide for matters connected therewith. However, the Muslim Personal Law, enabled Men to divorce, the spouse by pronouncing Triple Talaq. Though all other women belonging to other religions, have been sufficiently protected by necessary legislations against arbitrary divorce, as far Muslim Women in India is concerned, they have been subjected to unilateral & arbitrary divorce by their Husbands. I submit that, though under, Part IV of the Constitution, namely Directive Principles of State Policy, under Art 44, it has been provided that, the State shall endeavour to secure for citizens, the Uniform Civil Code, throughout the territory of India, the said protection is still a dream for Muslim Women in this Country. In fact the right to be treated equally before Law and to have an equal protection of is traceable to Art 14 & 15 of the Constitution. While all other communities in the country have reasonable Judicial process & protection against arbitrary divorce, particularly by Men, only with regard to Muslim women, there is no such protection in this country, and thereby a clear violation of 15(1) of the Constitution. Though there is a specific enabling provision under Art 15(3) to make

specific provisions for women, no legislature has so far, come forward to legislate regarding, protection of women against arbitrary divorce. The power under Art 15(3) is a power coupled with duty and the legislatures have failed to act.

8. I respectfully submit that, it is my duty to bring to the notice of this Hon'ble Court, that the provisions of the Muslim Personal Law (Shariat) Application Act, 1937, was challenged before this Hon'ble Court in W.P. 744/1992, by A.S. Parveen Akthar, and in the said writ petition, I impleaded myself as Respondent to assist the Court. A Division Bench of this Hon'ble Court, on 27.06.2002, consisting of Hon'ble Mr. Justice R. Jayasimha Babu & Hon'ble Mr. Justice E. Padmanabhan JJ, upheld the practice of Triple Talaq, but held referring to earlier Judgments that, the correct law as per Quran is that, Talaq must be for a reasonable cause, and must be preceded by attempts at reconciliation between the Husband & Wife by two arbiters, one chosen by wife's family and the other from the Husband's family and only if the attempts fail, Talaq may be effected. [(2003) 1 LW 370]
9. I respectfully submitted that, *Dehors*, the Constitutional Validity of the Triple Talaq, it is submitted that, even the condition precedents for pronouncing the Talaq are not being followed by many muslim men and the unfortunate muslim women are left in the lurch and asked be satisfied by certain reliefs to be given under the Muslim Women (Protection of Rights on Divorce) Act, 1986.
10. I respectfully submit that, in my capacity as a social worker as well as a Member of Legislative Assembly, between 2006-11, which constituency was in majority population of Muslims, it has come to my notice that, several Muslim men, even without following necessary condition precedents like reconciliation etc, and even without the knowledge of the wives, are pronouncing Talaq and also represent to the Kazis that they have pronounced Talaq and have obtained certificate to the said effect. It is very unfortunate that, Kazi's though having no authority or power, are in the

habit of issuing certificates, behind the back of Muslim Women. I am enclosing few sample certificates issued by the Kazi of ____ & ____, to demonstrate the above position. It is submitted that, on Account of arbitrary manner in which the Kazis in the state are issuing functioning is causing undue hardship to Muslim women. It is submitted that such certificates, obtained by Muslim men, are being used for various purposes and Muslim women are left with no effective remedy.

11. I respectfully submit that, though the Kazis were once upon a time, Judicial authorities under Muslim Personal Law, their powers were taken over by Civil Courts, DURING THE COLONIAL PERIOD after the British took over our country and they are mere ornaments in view of the provisions of the Kazi's Act 1880.

12. I respectfully submit that, even taking that the provisions of Talaq in respect of personal law is constitutionally valid, whether the condition precedent for invoking Triple Talaq, were satisfied or not, cannot be adjudicated or enquired into by the Kazis and the said process can be conducted only by a court of law. I submit that, as the practice of issuing such certificates by Kazi are on the rise, to protect the rights of Muslim Women, I am instituting the present Public Interest Litigation, on behalf of the Muslim Women, for a Writ of Declaration to declare that, 'Kazis' in India, particularly in state of Tamil Nadu are not empowered to certify Talaq and consequently forbear them from issuing Certificate & other documents certifying or approving Talaq on the following among other grounds:

Grounds

- A. Kazis Act 1880 was enacted only for the purpose of Attendance of Kazi's at Marraiges and Kazis have no right or power to recognise or certify "Talaq"
- B. Section 4 of the Kazis Act clearly provides that the Act does not confer Administrative or Judicial Power to KAZIS and therefore the question of their

issuing any certificate or other documents, recognising divorces or Talaq, does not arise.

C. It has been repeatedly held that, any Talaq, unless preceded, by mediation or reconciliation is invalid and the Kazis in the State are unilaterally issuing certificates or documents recognising “talaq” which is not permitted in law.

D. Whether a “Talaq” pronouncement is in accordance with customary Muslim Law or not, can be decided only by a court of competent Jurisdiction and kazis have no power to ascertain the same and hence any certificate issued by them is void and without jurisdiction.

E. It is submitted that, by unilaterally issuing such certificates, the Kazis are offending the Human Rights of Muslim women and their right to lead a marital life enshrined under Art 21 of the Constitution.

F. It is submitted that, the validity of the 1937 Act has not been considered in the Context of Art 14 & 15(1) read with Art 44 of the Constitution of India, and the W.P. No. 242/1992 dated 27.06.2002, reported in (2003) 1 LW 370 requires reconsideration insofar as it holds the practice of Triple Talaq as valid.

13. I respectfully submit without prejudice to the above stated that, I have a fair chance of success in the above writ petition and pending disposal of the same Kazis are allowed to issue certificates, certifying Talaq, serious prejudice will be caused to Muslim Women. In the circumstances it is prayed that the Hon’ble Court may be pleased to issue a direction restraining the 3rd Respondents and the Kazis under him in Tamil Nadu, from issuing any certificate of approval noting pronouncement of Talaq, pending disposal of the above Writ Petition and thus render justice.

14. In the circumstances, it is prayed that, the Hon’ble Court may be pleased to issue Writ of Declaration or any other appropriate writ to declare that, ‘Kazis’ in India,

particularly in state of Tamil Nadu are not empowered to certify Talaq and consequently forbear them from issuing Certificate & other documents certifying or approving Talaq, and pass any such further or other Orders as this Hon'ble Court may deem fit in the facts and circumstances of the case and thus Render Justice.

Solemnly Affirmed at Chennai

Before Me

On this the 22nd day of April 2013

And signed her name in my presence

Advocate, Chennai