1953 *Present :* **Gunasekara J.**

SEYED MOHAMED, Appellant, *and* MOHAMED ALI LEBBE, Respondent

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Muslim Marriage and Divorce Registration Ordinance (Cap. 99)—Section 21—Maintenance—Claim on behalf of wife—Quantum of proof necessary—Order of maintenance—Date from which it is operative.

A wife who leaves her husband's house without valid and sufficient reason is not entitled to claim maintenance from her husband under section 21 of the Muslim Marriage and Divorce Registration Ordinance.

An order for payment of maintenance made under section 21 of the Muslim Marriage and Divorce Registration Ordinance is effective only from the date when it is made and not from the date of the application. It contemplates only maintenance after the time of the order and cannot include reimbursement of any expenditure incurred previously.

APPEAL from an order of the Board of Kathis.

M. Rafeek, for the appellant.

S. A. Marikar, with *D. Abayawickreme*, for the respondent.

Cur. adv. vult.

February 5, 1953. GUNASEKARA J.—

This is an appeal under section 21 (3) of the Muslim Marriage and Divorce Registration Ordinance (Cap. 99), taken with the leave of this court, against an order made by the Board of Kathis affirming an order of maintenance made by the Kathi Court of Harispattu. The order directs the appellant to pay a sum of Rs. 30 a month in respect of his wife and Rs. 20 in respect of his child, and purports to be effective from the date of the application.

The appellant and his wife were married about October, 1949, and the child, a daughter, was born about August in the following year. From the time of their marriage they had been living in the house of her parents, in the village of Akurana, and in September, 1950, they went to the house of his parents, in the neighbouring village of Bulukohotenne, taking the child with them. About 24 days later (on the 19th October, 1950, according to her father) she left him and returned to Akurana with the child. From that day she has lived in separation from him and he has not maintained her or the child. The present action for maintenance was instituted by her father on her behalf on the 21st October, 1950.

The appellant and his wife are both agreed that they had lived happily together until they went to his parents' house in September, 1950. There he discovered that she had left behind some of her jewellery, consisting of several rings that he had given her and a pair of gold bangles that had been given by her father. He went back to fetch them, but her father said that he did not know where they were. It is common ground that the appellant was displeased about the loss of this jewellery, which according to his wife she had left in an almirah in her parents' house. The parties are disagreed, however, as to the circumstances in which they ceased to live together. According to the appellant, his wife's parents visited them frequently and pressed them to come back, but he insisted on the missing jewellery being returned first, and eventually she went back with her father. Her case is that she left because she was being ill-treated by the appellant.

Counsel for both parties are agreed that the appellant's wife would not be entitled to maintenance if she failed to prove that she had a valid reason for leaving the conjugal domicile.

> " When the woman abandons the conjugal domicile without any valid reason she is not entitled to maintenance. Simple refractoriness, as has been popularly supposed, does not lead to a forfeiture of her right..... But if she were to leave the house against his will without any valid reason, she would lose her right, but would recover it on her return to the conjugal domicile. What is a valid and sufficient reason for the wife to leave the husband's home is a matter for the discretion of the Judge. As a general principle ....a wife who leaves her husband's house on account of his or his relations' continued ill-treatment of her....continues entitled to her maintenance ".—
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> *Ameer Ali : Mahommedan Law (fifth edition) Vol. II, p. 419.*

It was therefore necessary for the Kathi Court to decide whether the appellant's wife had a valid and sufficient reason to leave the appellant.

It appears from the order made by the Kathi, however, that the court failed to appreciate the relevancy of this question to the issue regarding her right to maintenance. He holds that while the loss of the jewellery led to " several disputes between the parties " and " there is no lack of evidence to show that the applicant's daughter was abused and ill-treated by the respondent ", yet " all these things have not much bearing on this case, which is only a claim for maintenance from the respondent for his wife and child ". He proceeds to hold that the appellant has failed to maintain his wife and child, and to consider what he should be ordered to pay for their maintenance. There is no finding on the question as to whether the appellant's wife had a valid reason to leave him, or a discussion of the evidence regarding the alleged ill-treatment. The order of maintenance in respect of the wife therefore cannot stand.

The evidence of ill-treatment consists solely of that of the appellant's wife, who stated that " the whole period of 24 days was a continuity of punishments and abuse ". The specific acts which she imputed to the appellant, however, were merely that on the third day after they went to Bulukohotenne, he complained that she was wasteful because she could not make a pound of dry fish go as far as his mother could ; that he blamed her for their child being a girl ; and that on one occasion he assaulted her. According to her, after the appellant returned from Akurana without the bangles and rings he insisted on her handing to him all her valuables, and on the following night he and his mother and sister assaulted her in an unsuccessful attempt to remove her thali from her neck. She says that she cried and a number of people collected there, and that but for them she and her child might have been killed. None of these persons however, who could have given valuable evidence if her story was true, were called as witnesses. She also says that on the next morning, which was three days after she had gone to Bulukohotenne, her father came there to see her, but the appellant prevented her from speaking to him and he went away to complain to the headman. Her father contradicts her however, for according to him it was in the appellant's absence that he visited his daughter, and she did have a conversation with him. He found her weeping, he says, and when he asked her the reason she said that all the jewellery worn by her had been taken away by the appellant with the help of his mother and sister. He questioned the neighbours and they " corroborated " her and he then complained to the headman. Had the Kathi Court given its mind to the question whether the appellant's wife had any valid reason to leave the conjugal domicile I do not think that upon the evidence they could have reasonably held that she had such reason. In my opinion there is no sufficient ground for a fresh inquiry.

The only point for consideration as regards the order respecting the child is whether the Kathi had the power to direct that it should be effective from the date of the application. A provision to the effect that a Quathi should have such power is contained in section 36 of the Muslim Marriage and Divorce Act, No. 13 of 1951, which has not yet been brought into operation. There is no similar provision in the present ordinance, and in the absence of such a provision it seems to me that the

power to make an order of maintenance must be taken to contemplate only maintenance after the time of the order and not also reimbursement of any expenditure incurred previously.

I set aside the order of maintenance in respect of the appellant's wife, and I affirm the order for payment of maintenance at the rate of Rs. 20 a month in respect of his child, subject to the variation that it shall be effective only from the date of the order, namely, the 14th July, 1951. I make no order as to costs.

Appeal allowed.