
(2001) 02 AHC CK 0163
In the Allahabad High Court
Case No : Criminal Revision No. 1187 of 2000

Arif	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 01-02-2001

Acts Referred:

Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3

Citation : (2001) 2 ACR 1885

Hon'ble Judges : Krishna Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Krishna Kumar, J.—This revision has been filed against the order dated 18.7.2000 whereby the revision was allowed and the order of learned Magistrate dated 17.8.1998 was set aside.

2. In brief, an ex parte judgment and order was passed u/s 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (hereinafter referred to as the Act) on 1.7.1997. The opposite party, (the revisionist before me) moved an application for setting aside the ex parte order and the learned Magistrate vide his order dated 17.8.1998 set aside the ex parte judgment and order on payment of Rs. 500 as cost. The Petitioner went in revision and the revision was allowed by the impugned judgment and order dated 18.7.2000 against which the present revision has been filed.

3. I have heard Sri N. I. Jafri, learned Counsel of the revisionist and Sri Saghir Ahmad advocate, appearing for the opposite party No. 2 and the learned A.G.A.

4. The leaned counsel of both the parties expressed that the judgment of revisional court dated 18.7.2000 may be set aside and the case be decided on merits by the learned Magistrate. However, it was contended by the learned Counsel of the opposite party No. 2 that certain amount may be got deposited by the revisionist in the learned lower court as the opposite party No. 2 was

demanding a sum of Rs. 1,27,100 for maintenance, Mehar and the value of goods which were kept by revisionist belonging to the opposite party No. 2, the list of which has been annexed as Annexure-1. The said petition u/s 3 of the Act was filed in 1996 and nothing has been allegedly paid by the revisionist.

5. It is a fact that when the learned Magistrate thought it just and proper to restore the petition to its original number for decision on merits, the learned revisional court should not have interfered with the finding of fact given by the learned Magistrate. However, the learned Counsel of the opposite party No. 2 contended that the said application was beyond time but it is clear that this point was also raised before the learned Magistrate and the delay was condoned. If the delay was condoned, again the learned Sessions Judge should not have given his own finding in respect of the condonation of delay.

6. In view of the above facts, the revision succeeds and is allowed. The order dated 18.7.2000 passed by the Special Judge (E.C. Act)/Additional Sessions Judge, Meerut, is set aside and the order dated 17.8.1998 passed by learned Magistrate is confirmed. It is, however, made clear that the revisionist shall deposit the cost, which was allowed by the learned Magistrate as well as further either the revisionist shall deposit a sum of Rs. 10,000 before the learned Magistrate as security or he may give bank guarantee of Rs. 50,000. If the amount of Rs. 10,000 is deposited, it shall be subject to the decision of the case on merits.