

(2013) 06 BOM CK 0003

In the Bombay High Court

Case No : Criminal Writ Petition No. 348 of 2005

Ibrahim Ismail Shaikh

APPELLANT

Vs

Alishan Ibrahim Shaikh and Another

RESPONDENT

Date of Decision : 14-06-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3555

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : A.N. Ansari, for the Appellant; V.G Shelke, APP for State and Shri P.R. Nangare, for the Respondent

Judgement

T.V. Nalawade, J.—The proceeding is filed to challenge the judgment and order of JMFC, Pathardi, Dist, Ahmednagar delivered in Criminal Revision No. 86/94, the judgment and order of Criminal Revision No. 3/99 delivered by Sessions Court, Ahmednagar and also the judgment and order of Criminal Application No. 2553/01 delivered by JMFC, Pathardi. The first proceeding was filed by respondents u/s. 125 of Cr.P.C. and the JMFC had allowed the claim of respondent No. 2 and part of the claim of respondent No. 1. As the maintenance in respect of period after Iddat period was not granted, Criminal Revision No. 3/99 was filed and in that proceeding, Sessions Court allowed the claim of maintenance for the period starting after Iddat period. The revision was decided on 28/6/2000. The last application was filed before JMFC u/s. 127 of Cr.P.C. and the JMFC enhanced the maintenance from Rs. 200/- to Rs. 400/- in respect of respondent No. 1 and from Rs. 250/- to Rs. 400/- in favour of respondent No. 2. This decision was given on 28/8/2002. The present proceeding came to be filed on 18/7/2005. Instead of filing revision against the decision of Miscellaneous Criminal Application No. 253/01 in Sessions Court, the present proceeding is directly filed against the said decision. Both sides are heard. Only one point was argued for petitioner. It was submitted that Talaq was given by petitioner to respondent No. 1 during pendency of maintenance proceeding and so, the

maintenance proceeding could not have been decided u/s. 125 of Cr.P.C. It was submitted that the revisional Court has committed error in granting maintenance in respect of period starting after Iddat period when there is no such provision in Muslim Women [Protection and Rights of Divorce] Act, 1986. The other side relied on some reported cases. The learned counsel for petitioner relied on the case reported in Danial Latifi and Another Vs. Union of India, .

2. The record shows that when the proceeding was filed u/s. 125 of Cr.P.C., the marriage tie was in existence. On 13/7/1995, the husband allegedly gave Talaq and then informed to the Court about Talaq. The proceeding was continued in the same form but the JMFC granted maintenance u/s. 125 of Cr.P.C. from the date of the application to the date of alleged Talaq. The maintenance at the rate of Rs. 200/- p.m. was granted in respect of Iddat period starting from 19/7/95. The Sessions Court has granted maintenance at the same rate for further period also. There is no dispute over the quantum which was a meager amount and meager enhancement came to be granted in the year 2002. Further this decision came to be challenged in the year 2005 and no revision was filed against judgment and order of proceeding filed u/s. 127 of Cr.P.C.

3. In the case reported in Dagdu Pathan, Latur Vs. Rahimbi Dagdu Pathan, Ashabi and Nasimatbi, , Full Bench of this Court has considered the plea of divorce and effective Talaq. It is laid down that there must be reasonable cause and Talaq must be preceded by attempts of reconciliation between husband and wife by arbitrators. It is observed that not only the factum of Talaq but the conditions preceding to the stage of giving Talaq are also required to be proved by the husband in proceeding pending before the Court. The detail procedure under Personal Law is discussed by Full Bench. The record shows that such procedure was not followed. It can be said that the Courts could have easily ignored the defence of the husband that he had given Talaq to present respondent No. 1.

4. In the case reported in Iqbal Bano Vs. State of U.P. and Another, , [2] Shabana Bano Vs. Imran Khan, , the Apex Court has discussed the provisions of aforesaid Act and the provision of Section 125 of Cr.P.C. In the case reported in Vimala (K.) Vs. Veeraswamy (K.), , the Apex Court has discussed the object behind the maintenance provision of Cr.P.C. In the case reported as Savitaben Somabhai Bhatiya Vs. State of Gujarat and Others, , the Apex Court has laid that while appreciating evidence given by parties in maintenance proceedings, the Court is expected to keep in mind the object behind the provisions made for maintenance. The object is to provide quick remedy by using summary procedure. It is also to achieve social purpose and to prevent vagrancy. The right of maintenance is given on the basis of natural and fundamental duty of a man to maintain his wife and children. While appreciating the evidence, the condition of women in Indian society needs to be kept in mind. Similarly, in view of the defences available to the husband, each case needs to be decided on the basis of facts and circumstances of that case.

5. The observations made by Apex Court in aforesaid case of Iqbal Bano show that when proceeding is filed u/s. 125 of Cr.P.C., it can be treated as application filed under Muslim Women [Protection of Rights of Divorce] Act, 1986. In view of these observations, this Court holds that not much can be made out of the fact that the proceeding was not converted by the wife to one u/s. 3 of aforesaid Act. The decisions are not challenged by the wife and so, this Court is not making more observations about the error committed by the Courts below which have affected rights of the wife.

6. The defense of the husband that the wife is not entitled to get maintenance in respect of period starting after Iddat period has no force. In the case of Danial Latifi cited for petitioner, it is made clear that during Iddat period itself, the husband is expected to make provisions for maintenance of divorced wife which should be reasonable one. Due to such arrangement, the wife would be in a position to live even beyond the Iddat period. The Court is expected to ascertain such amount and the Court can direct the husband to make payment of such amount in lump sum. If the husband is not in a position to pay the amount in lump sum, the Court can ascertain monthly amount which the husband can pay. In view of this provision of law, this Court holds that there is nothing wrong in the judgment and order of Sessions Court by which the Sessions Court has directed the husband to pay monthly maintenance of Rs. 200/- even after expiry of Iddat period. Thus, interference is not warranted in aforesaid decisions and the Petition stands dismissed. Rule stands discharged.