

(1997) 07 BOM CK 0091

In the Bombay High Court

Case No : Crim. Writ Petition No. 1296/1295

Karim Abdul Rehman Shaikh

APPELLANT

Vs

Shehnaj Karim Shaikh

RESPONDENT

Date of Decision : 04-07-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 4, 5

Citation : (1997) 99 BOMLR 463

Hon'ble Judges : V.H. Bhairavia, J

Bench : Single Bench

Judgement

V.H. Bhairavia, J.—This petition is preferred against the order of awarding maintenance dated 5.5.1995 passed u/s 125 of the Criminal Procedure Code by the Family Court, Pune, in Petition E.No. 652 of 1994.

2. The petition in the Family Court was filed by the respondent No. 1, a divorced Muslim woman, u/s 125 of the Criminal Procedure Code for maintenance. The Family Court has allowed the said application, and awarded maintenance to respondent No. 1- wife and her two minor children. Mr. Mulla, learned Counsel for the petitioner-husband, has submitted that the aforesaid ruling is contrary to the object and spirit of the Muslim Women (Protection of Right of Divorce) Act, 1986, under which Act, the right of a divorced Muslim woman to claim maintenance from her former husband u/s 125 of the Criminal Procedure Code for the post-ideate period, has been repealed. Therefore, if she wants to claim post-ideate period maintenance, she has to apply u/s 4 of the said Act before the learned Magistrate. In the instant case, application u/s 125 of the Criminal Procedure Code was filed before the Family Court and the Family Court, relying on the ruling of this Court in Allabuksh Karim Shaikh Vs. Smt. Noorjahan Allabuksh Shaikh and another, allowed the said application. This Court in paragraph 8 of its said judgment has observed thus:

As we read the relevant provisions of Chapter IX of the Code of Criminal

Procedure, of the Family Courts Act, 1984, and the Muslim Women Act, 1986, the position appears to us to be as hereunder. A Muslim divorced woman may apply for maintenance before a Magistrate u/s 5 of the Muslim Women Act payable to her only during the period of iddat. She may, thereafter, if still unable to maintain herself, apply for maintenance for the post-ideate period also, before a Magistrate, where no Family Court has been constituted, under Chapter IX of the Code of Criminal Procedure and such application shall be governed and disposed of in accordance with the provisions of Chapter IX only if both the divorced woman and her former husband declared u/s 5 of the Muslim Women Act and choose to be so governed. A divorced woman in need for maintenance for the post-ideate period, may also, if she so chooses, apply to a Magistrate u/s 4 of the Muslim Women Act for maintenance to be paid to her from such of her relatives as would be entitled to inherit her property on her death, or, that failing, by the Wakf Board. But where a Family Court has been constituted, such a divorced woman, intending to apply for maintenance under Chapter IX of the Code of Criminal Procedure, shall have to apply for maintenance under that Chapter in and before the Family Court and the Family Court shall have to dispose of such application in accordance with the provisions of that Chapter IX. notwithstanding anything in the Muslim Women Act of 1986. For the post-ideate period maintenance, therefore, the divorced Muslim woman has clear option either to move a Magistrate u/s 4 of the Muslim Women Act or to apply to the family Court, if there is one. for maintenance under Chapter IX of the Code of Criminal Procedure. It may be noted that while under Chapter IX of the Code of Criminal Procedure, there is an upper limit fixed and not exceeding Rs. 500/- per month, u/s 4 of the Muslim Women Act there is no such limit fixed.

Therefore, now the question arises for my consideration is:

Is the Family Court empowered to entertain an application u/s 125 of the Criminal Procedure Code filed by a divorced woman against her former husband for post-ideate period maintenance?

3. Having gone through the various authorities on this point, the consistent view of the various Courts is that since the Act came into force, a Muslim woman is entitled to claim post-ideate period maintenance under Section 4 of the said Act and not u/s 125 of the Criminal Procedure Code. The view taken by this Court in the case of *Allabuksh v. Noorjahan* (supra) is that the Family Court has power to entertain an application u/s 125 of the Criminal Procedure Code by a divorced Muslim woman. I have my own doubts in accepting this ruling. Therefore, in the interests of fair justice, this matter requires to be referred to Full Bench for decision.

In this view of the matter, this matter be referred to Full Bench to decide the following issue:

Can a Family Court hear an application filed by a divorced Muslim woman u/s 125 of the Criminal Procedure Code, claiming post-ideate period maintenance

against her former husband?

4. However, since the execution of the order granting maintenance passed by the Family Court is stayed pending this petition, respondent No. 1- wife is not getting anything towards maintenance from the petitioner-husband. In my view, pending the reference, respondent No. 1- wife should not be kept without any maintenance. In view of this, it is ordered that the said stay is vacated and the petitioner-husband is directed to pay the maintenance as per the order of the Family Court till the Full Bench decides the aforesaid issue. However, the order regarding maintenance awarded to the children is confirmed.

Certified copy is expedited.