

(1989) 09 AP CK 0011

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 21 of 1989, Cri. Revision Petition No. 21 of 1989 and Criminal No. 1079 of 1989

M.A. Hameed

APPELLANT

Vs

Arif Jan and Another

RESPONDENT

Date of Decision : 05-09-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3

Citation : (1990) CriLJ 96 : (1991) 1 DMC 366

Hon'ble Judges : Bhaskara Rao, J

Bench : Single Bench

Advocate : K. Ramakrishna Reddy, for the Appellant; Syed Shareef Ahmed and Public Prosecutor, for the Respondent

Judgement

1. This revision petition is filed by the Husband against the order of the II Addl. Judicial. Magistrate of First Class, Nellore dismissing the petition filed by him to cancel the maintenance granted to the wife. The court below has dismissed the petition to the extent of cancellation of maintenance to the wife, however, allowed the petition to the extent of cancellation of maintenance to the child. Aggrieved by the cancellation of maintenance to the child, Criminal Petition No. 1079 of 1989 is filed to quash the said order.

2. The facts of the case are that the petitioner married the respondent No. 1 in the year 1971. Thereafter there arose disputes between them. Therefore the wife and child filed M.C. No. 71 of 1986 (sic) claiming maintenance and a monthly maintenance of Rs. 205/- was granted to both of them together. Thereafter the petitioner filed Criminal Petition No. 39/79 to modify the above maintenance and the maintenance amount was modified granting Rs. 90/- to the wife and Rs. 50/- to the child. Thereafter the wife was divorced and therefore she filed O.S. No. 260/77 for Mahar and the said suit was decreed. Thereafter the husband filed Criminal M.P. No. 3009 of 1987 in M.C. No. 72 of 1976 for cancellation of the maintenance to the wife and child on the ground that the Muslim Women

(Protection of Rights on Divorce) Act, 1986 (Act 25 of 1986) came into force and in view of that Act, the wife is entitled for maintenance only for the Iddat period and that she is not entitled for the claim of maintenance. The court below considered the question elaborately and found that the maintenance awarded to the wife under S. 125, CrI.P.C. before the commencement of the Act 25 of 1986 is not taken away by the said Act, but however held that the child is entitled for maintenance only for two years. Against that the present petitions are filed.

3. In this case the maintenance was awarded much earlier to the commencement of Act 25 of 1986 because the right conferred on a divorced Muslim woman is not taken away by Act 25 of 1986 (sic). Further, as per S. 3 of the Act, a divorced Muslim woman is also entitled to claim maintenance for the child for a period of two years, giving an additional safeguard to her under Act 25 of 1986. But there is no provision under the Act, taking away the right of the child to claim maintenance under S. 125, Cr.P.C. Therefore, even the child can claim maintenance under S. 125, Cr.P.C. Therefore, even the child can claim maintenance under the guardianship against the father under S. 125, Cr.P.C. Therefore, the court below has erred in cancelling the maintenance granted to the child. Therefore, the order of the court below to the extent of cancellation of maintenance to the child at the rate of Rs. 50 per month is set aside and it is declared that the child is entitled to the maintenance at Rs. 50/- per month as awarded earlier.

4. The Criminal Petition is ordered accordingly. However, the revision petition filed by the husband is dismissed as there are no merits.

5. Order accordingly.