
(2009) 05 JH CK 0095
In the Jharkhand High Court

Md. Ayub Ansari

APPELLANT

Vs

Aisha Khatoon, Shama Perween and The State of Jharkhand

RESPONDENT

Date of Decision : 07-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3(1)

Citation : (2009) 05 JH CK 0095

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—The petitioner has preferred this Cr. Revision for setting aside the order impugned dated 11.05.2007 passed in Misc. Case No. 18 of 2005 (T.R. No. 168 of 2007) whereby the petition filed on behalf of the Opposite-Party u/s 3(1) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 was allowed directing the petitioner herein Md. Ayub Ansari to pay a sum of Rs. 1051/- as Dain Mehar to the Opposite Party No. 1 Aisha Khatoon, a sum of Rs. 500/- per month for three months during observation of Iddat period and further a fair provision of one time maintenance to the tune of Rs. 60,000/- to lead a secured life. It was further directed to the petitioner that since the girl child was born from consummation of their marriage, the petitioner Md. Ayub Ansari would maintain her by making payment of Rs. 500/- per month to the Opposite Party No. 2 (Shama Perween) till attainment of her majority.

2. The brief fact of the case for appreciation of the Criminal Revision is that the Opposite Party No. 1 (Aisha Khatoon) was married to the petitioner's elder brother Wafiz Zakir who died later on. Thereafter the petitioner married to Aisha Khatoon on 11.12.1994 after death of his brother. In due course two sons were born to them who were residing with the petitioner father. It was stated that the petitioner was working as tailor but according to him he was having a very small tailoring shop in the interior area of Giridih. Later on, the Opposite Party No. 2

(Shama Perween) was born from them. Certain allegations were made by Aisha Khatoon that she was physically and mentally tortured by the petitioner herein and other in-laws to which she had filed a complaint case vide C.P. Case No. 1361 of 2001 before the S.D.J.M., Dhanbad. It was further alleged that she was driven out from her matrimonial home on 20.05.2001 as she could not be able to satisfy the illegal demand made by the petitioner. However, during the pendency of the said complaint petition, the petitioner took her back to his home on positive assurance but again her misery started. Being fed up she filed a petition for maintenance u/s 125 Code of Criminal Procedure before the Principal Judge, Family Court, Dhanbad on 05.05.2003 for maintenance but again she was persuaded and taken back by the petitioner where he finally divorced by pronouncement. Finding no way out, she returned to her parental home. The petitioner appeared and admitted that he had married to the O.P. No. 1 (Aisha Khatoon) on 11.12.1994 after the death of her first husband who happened to be his elder brother Wafiz Zakir. The petitioner explained that it was quite unusual to demand an amount for the reasons that Aisha Khatoon had already lived for seven years with his elder brother as married wife till his death. Similarly the allegation that a sewing machine, cycle and clothes were given to the petitioner on the eve of her remarriage was blatant lie. The petitioner admitted that two sons were born to him through his wife Aisha Khatoon but at the same time disowned the paternity of O.P. No. 2 Shama Praveen who was born after an year of pronouncement of "Talak" and at the relevant time Aisha Khatoon was not bearing pregnancy. The petitioner further explained that soon after pronouncement of "Talak" on 29.04.2003, in presence of witnesses, he had immediately paid total sum of Rs. 2551/- being the amount of Dain Mehar and Rs. 1500/- for the observation period of Iddat and in that manner all the dues were paid to her by the petitioner. The petitioner finally declined to pay any kind of maintenance to the O.P. No. 2 Shama Praveen for the reasons stated that he disowned her paternity.

3. Learned C.J.M. by a detailed discussions on the basis of materials on the record and arguments advanced on behalf of parties held that there was no documentary proof that the petitioner had given the amount of Dain Mehar to the tune of Rs. 1051/- and Rs. 1500/- for the observation period of Iddat. It was further held that the petitioner Md. Ayub Ansari failed to discharge his onus that O.P. No. 2 Shama Perween was not his daughter as the Opposite Party No. 1 had shifted her burden by saying that the O.P. No. 2 was the legitimate daughter of the petitioner. In such situation, the burden was upon the petitioner to maintain his female child till the attainment of her majority.

4. While discussing issue No. 5 the court held that the petitioner was a tailor at Giridih having his earning for livelihood and that his father did not come forward to adduce that the petitioner was dependant upon him as he was a helping hand in the tailoring business of his father. It was rightly held that the petitioner failed to adduce any evidence that the O.P. No. 1 (Aisha Khatoon) was capable to earn and maintain herself and her female child hence a sum of Rs. 60,000/- was

directed to be paid by the petitioner to the O.P. No. 1 (Aisha Khatoon) for the protection of her body and soul and in my view the amount was a meagre amount for maintenance for rest of her life. However, since the O.P. No. 1 has not preferred any revision either on her behalf or on behalf of her minor daughter O.P. No. 2 aged about 3 years, I have reason to hold that one time maintenance to the tune of Rs. 60,000/- to the O.P. No. 1 (Aisha Khatoon) would meet the ends of justice. Similarly, I do not find any reason to interfere with the finding of the learned C.J.M. while awarding Rs. 500/- per month to the O.P. No. 2 being her maintenance till attainment of her majority besides, an amount to the tune of Rs. 1051/- being the amount of Dain Mehar (dower debt) to the O.P. No. 1(Aisha Khatoon). Learned Counsel for the petitioner failed to show any convincing ground to call for interference in the order impugned passed by the learned C.J.M. in Misc. Case No. 18 of 2005 on 11.05.2007 and hence the same is upheld with an observation for compliance.

5. This Criminal Revision is dismissed for the reasons as aforesaid.