

(2023) 01 JH CK 0027

In the Jharkhand High Court

Case No : ?Criminal Revision No. 1548 Of 2018

Md. Hanifuddin @ Hanif Ansari @ Hanifuddin

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 17-01-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125

Muslim Women (Protection Of Rights On Divorce) Act, 1986 — Section 3

Citation : (2023) 01 JH CK 0027

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : A. K. Sahani, Mahesh Tewari, Nasim Akhtar

Final Decision : Disposed Of

Judgement

Deepak Roshan, J

1. 1. Heard learned counsel for the parties.

2. This revision application is directed against the order dated 25.09.2018 passed by learned Principal Judge, Family Court, Bokaro, in Original Maintenance Petition No.121/2015; whereby the petitioner was directed to pay Rs.5000/- per month to the O.P.No.2- Sajiban @ Sajiman Bibi towards her maintenance from the month of September, 2018. It was further ordered that the petitioner shall pay the said maintenance for each month by 10th day of each succeeding English calendar month.

3. The brief fact of the case is that both the parties were married as per the Muslim custom and rites on 24.12.1978 and they have been blessed with three children, who have now attained the majority. As per the revisionist-husband, he had divorced his wife/O.P.No.2-Sajiban @ Sajiman Bibi on 08.01.1984. This factum has been disputed by the wife, but it has been admitted that she got the knowledge about the divorce on 03.1.1991.

Earlier a maintenance case being M.P Case No.21 of 1990 was filed by the wife for getting maintenance in which the show cause was filed by the husband stating that he has already divorced the wife. On getting such knowledge, the said case was withdrawn by the wife on 29.09.1992.

After accepting the factum of divorce by the wife, she has again approached the court below by filing two different petitions. The maintenance case being M.P. Case No.20 of 1992 has been filed under Section 125 of the Cr.PC for the Maintenance of three children and that has been allowed which has been upheld by the revisional court, i.e., Sessions Judge, Dhanbad in Cr. Revision No.138 of 1994 vide order dated 17.04.1995. This has come to an end and there is no dispute regarding the maintenance to the children.

Another maintenance case being M.P Case No.19 of 1992 has been filed by the wife under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 for getting deinmahar etc., which has been allowed vide order dated 27.05.1994. This has been accepted by both the parties and it has attained the finality.

The present maintenance case has been filed in the year 2015 being Original Maintenance Case No.121 of 2015 under Section 125 of the Cr.P.C claiming maintenance by the divorcee wife stating that she is not in a position to maintain herself. The said case has been disposed of by the court below vide order dated 25.09.2018 granting maintenance of Rs.5,000/(Five thousand) per month in favour of the divorced wife. Being aggrieved by the said order, the present revision application has been filed by the husband.

4. Mr. A. K. Sahani, learned counsel for the petitioner assailed the impugned judgment on the grounds that the court below has failed to appreciate the fact that the divorce between the petitioner and the O.P.No.2 was effected some times in the year 1984; as such the O.P. no.2 is not entitled for any maintenance.

Further, after the divorce the petitioner has remarried. Now the petitioner has retired and gets a pension of Rs.15000/- approximately per month and is maintaining his family including five children also on the meager pension. Therefore, the amount of maintenance of Rs.5,000/- awarded in favour of O.P.No.2 is an exorbitant amount.

He further submits that the court below has also failed to appreciate the fact that payment of maintenance to a Muslim divorced wife that too after 30 years of divorce is an exception to the rule. He lastly submits that the court below should have considered the rights of the present wife of the petitioner namely Saberan Bibi and their five kids and the court below without appreciating the totality of the facts and circumstances passed the impugned order which is bad in law and not sustainable in the eye of law. Accordingly, the same is requires interference.

Lastly he referred the judgment passed by the Hon'ble Supreme Court in the case of Rana Nahid Vs. Sahidul Haq Chisti reported in 2020(4) Supreme 1.

5. Mr. Mahesh Tewari, learned counsel for the O.P.No.2 submits that it is not in dispute that in the year 1992 the O.P.No.2 withdrew her maintenance case. Further, in 1992, she has filed maintenance case only for the children, however that withdrawal will not preclude the O.P.No.2 from asking for maintenance under Section 125 Cr.P.C.

He further contended that it hardly matters as to whether there is Talaque between husband and wife or not. The mere fact that the O.P.No.2 was legally wedded wife, she is entitled for maintenance because maintenance is a continuing process and from 2015 she is in need of maintenance for the reason that all of his sons are now living separately and O.P.No.2 is an aged lady and is facing great difficulty and hardship in meeting the daily expenses and expenses required for her medical treatment.

Mr. Tewari lastly submits that if the case is being remanded before the family court for taking evidence on the present status of the wife and for the reason that why she waited for almost 23 years; then in that circumstance the awarded money ordered by the Family Court should continue.

6. Having heard learned counsel for the parties and after going through the impugned order it appears that the O.P.No.2-wife was a legally wedded wife of the petitioner who divorced her about 30-35 years ago. So far as first contention of the petitioner is concerned that since the O.P. No. 2 is a divorced lady she is not entitled for any maintenance; reference may be made to the judgment passed in the case of Iqbal Bano vs. State of UP reported in (2007) 6 SCC 785 which followed Vijay Kumar Prasad vs. State of Bihar, reported in (2004) 5 SCC 196 and it has been held that proceedings under Section 125, Cr.P.C. are civil in nature and laid down that a petition under Section 125 of the Cr.P.C. filed by a divorced woman would be maintainable before the Family Court as long as wife does not remarry and the amount of maintenance to be awarded under Section 125 of the Cr.P.C. cannot be restricted for the iddat period only.

In other words, even a divorced Muslim woman would be entitled to claim maintenance from her divorced husband, as long as she does not remarry. This being a beneficial piece of legislation, the benefit thereof must accrue to the divorced Muslim women. It is to be noticed that the right of maintenance available to wife from husband is absolute right and even divorce cannot affect this right unless the wife is disqualified on account of remarriage or her sufficient earning. Thus, this Court holds that the O.P. No.2 is entitled for maintenance subject to the restriction incorporated in the provisions itself.

7. It goes without saying that withdrawal of the case in the year 1992 will not preclude the O.P.No.2 from asking maintenance under Section 125 Cr.P.C. The mere fact that the O.P.No.2 was legally wedded wife, she is entitled for maintenance as she might be in need of maintenance as she might be facing great difficulty and hardship. In this regard, there is no error or perversity in the order passed by the Family Court.

8. However, from the impugned order it also appears that there is no finding with regard to the quantum of maintenance. The learned Family Court should have given specific reasons as to how it has calculated the amount of maintenance. As such, interest of justice would be satisfied if the matter is remitted back to the Family Court to pass the order afresh only on the quantum of maintenance after hearing both the sides.

9. In view of the aforesaid discussions, the judgment dated 25.09.2018 passed by learned Principal Judge, Family Court, Bokaro, in Original Maintenance Petition No.121/2015; whereby the petitioner was directed to pay Rs.5000/- per month to the O.P.No.2- is quashed and set-aside. The matter is remitted back to the Family Court with a direction to pass a fresh order on the quantum of maintenance after hearing both the sides.

The learned Family Court shall decide the matter as early as possible and pass the fresh order preferably within a period of six months from the date of receipt of the order. The O.P. No.2 (Divorced Wife) shall be at liberty to prefer any application for interim maintenance during pendency of the case; and if any such application is filed, the same shall be decided forthwith.

It goes without saying that since this Court has held that O.P.no.2- divorced wife is entitled for maintenance, as such whatever amount will be fixed by the learned Family Court shall be from the date of application made by the O.P.No.2-Sajiban @ Sajiman Bibi.

10. With the aforesaid directions; the instant application stands disposed of. Pending I.As, if any is also closed.