
(2013) 01 AHC CK 0106
In the Allahabad High Court
Case No : Criminal Revision No. 737 of 2010

Mohammad Asif Siddiqui

APPELLANT

Vs

Smt. Sofia Bano and Others

RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Family Courts Act, 1984 — Section 20

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

Citation : (2013) 1 ACR 646 : (2013) 3 ADJ 177 : (2013) 4 ALJ 682 : (2013) 81 ALLCC 162 : (2013) 97 ALR 622

Hon'ble Judges : Aditya Nath Mittal, J

Bench : Single Bench

Advocate : Mustaqeem Ahmad Siddiqui, for the Appellant; R.K. Shukla and Rakesh Shukla, for the Respondent

Judgement

Aditya Nath Mittal, J.—Heard learned counsel for the revisionist and the learned counsel for the opposite parties.

This revision has been filed against the judgment and order dated 16.1.2010 passed by Principal Judge, Family Court, Jhansi in Case No. 137 of 2006 u/s 125 Cr.P.C., P.S. Kotwali, district-Jhansi.

The opposite parties filed an application u/s 125 Cr.P.C. for maintenance on the ground that Smt. Sofia Bano was married to Mohd. Asif Siddiqui on 1.11.1998 and by the wedlock of the parties, one son Mohd. Saif and one daughter Km. Manal were born. The opposite party-husband demanded more dowry and committed cruelty with the applicant-wife and leaving behind the applicant-wife, the husband-respondent went to Saudi Arab. Thereafter, applicant No. 1 was also sent to Saudi Arab on 17.11.2000 but the opposite party sent back the applicant to India on 23.11.2003. Again the family members of the applicant sent the applicant to Dubai on 9.9.2004 but the respondent sent back again the applicant on 30.9.2004. The family members of the opposite parties sent the applicant and

her both children to her maternal home. The opposite party is working as Electrical Engineer in Dubai (UAE) and he is getting a salary of Rs. 2 lacs per month.

2. The petition was contested by the opposite party and denied the allegations of extra dowry. The opposite party has taken the ground that because the applicant was pregnant, so, she could not have the Visa. It was also alleged that there was interference by the parents of the applicant due to which he has divorced his wife on 22.4.2006, therefore, the applicant is not entitled for any maintenance and the respondent is ready to bear the expenses of education of his children and he is earning Rs. 20,000/- per month. It was also alleged that the applicant is working as teacher in a private school and she is getting Rs. 5000/- as salary. Apart from it, she also earns a sum of Rs. 1000/- per month by tuition.

3. After recording the evidence of both the parties, learned family Court Judge came to the conclusion that husband-opposite party is earning a salary of Rs. 2 lacs per month and accordingly granted maintenance of Rs. 10,000/- per month to applicant-wife and Rs. 5000/- per month to both of the minor children.

4. Learned counsel for the revisionist has submitted that because the applicant has already divorced Opposite Party No. 1 on 22.4.2006, hence, in accordance with Muslim Sariat, the application for maintenance was not maintainable. It has also been submitted that Opposite Party No. 1 is an earning member and is working as a teacher and she is not unable to maintain herself. It has also been argued that the revisionist is still ready to bear the educational expenses of both the children. But the learned lower Court has not considered this aspect. It has also been submitted that the monthly salary of the revisionist is Rs. 20,000/- per month while the maintenance of Rs. 20,000/- per month has been granted to all the respondents which is excessive.

5. Learned counsel for the opposite parties No. 1 to 3 has submitted that the revisionists had neglected his wife and children and the wife has no source of income and she is residing with her parents. It has also been submitted that the revisionist has remarried on 26.11.2009 with Smt. Nazma daughter of Yunus but the revisionist has not disclosed about his second marriage before the family Court. It has also been submitted that the revisionist is an Electrical Engineer and is highly paid and in view of rising price of everything, the amount of maintenance is on the lower side.

6. It has also been submitted by the learned counsel for the respondents that the matter was referred to High Court Mediation and Conciliation Centre and interim settlement agreement took place on 14.10.2008 but the revisionist had not complied with the terms and conditions of the interim settlement agreement and has not provided accommodation to the respondents.

7. It is not disputed that the matter was referred to Allahabad High Court Mediation and Conciliation Centre and an interim settlement agreement was arrived between the parties on 14.10.2008 whereby the following settlement was

arrived.

The following settlement has been arrived at between the Parties hereto:

(a) That both parties have agreed to a partial modification of the interim settlement informally recorded on 20.5.2008 on the session note sheets. The modified terms are herein after detailed.

(b) That the husband Mohd. Asif Siddiquie and his wife Smt. Sofia Bano represented by her father Sri. Naieem Uddin agree that Mr. Kasif Zaidi, Adv., High Court Allahabad, may be entrusted the task of arranging for accommodation of not less than 3 rooms at Jhansi, which he will make convenient to ensure by 30th of Nov, 2008. The rent and other outgoings related to this accommodation will be borne by the husband.

(c) That upon the accommodation being available, Mr. Kasif Zaidi, Adv., will intimate over telephone and through Regd. Post to Sri. Mohd, Shahid Siddiquie of the accommodation becoming available. A similar intimation will be sent by Mr. Kasif Zaidi to Sri. Naieem Uddin. Upon receipt of such intimation Sri. Shahid Siddiquie will send by Speed Post four post dated A/c payee cheques to Mr. Kashif Zaidi towards rent of the accommodation so arranged which will be handed over to the land lord concerned. The notice/ intimation sent to Sri. Shahid Siddiquie will indicate the name of the landlord in whose name cheques will be drawn. Sri. Naieem Uddin undertakes on behalf of Smt. Sofia Bano that on receipt of the intimation regarding the accommodation becoming available, Smt. Sofia Bano will move to the tenanted house alongwith her 2 children and will live there with either of her parents.

(d) Both parties agree that all the expenses incurred on the household, personal and of the establishment, shall be borne by Mohd. Asif Siddiquie through Mohd. Shahid Siddiqui. However, personal expenses of Smt. Sofia Bano's parents shall not be borne by Mohd. Asif Siddiqui.

(e) Both parties agree that the complainant Smt. Sofia Bano will endeavour to culture good relations with her husband Mohd. Asif Siddiqui, who will reciprocate the same.

(f) Above interim arrangement will continue for a period of four months commencing from the date of notice of arrangement of the tenanted house given to the parties by Mr. Kasif Zaidi, Advocate.

(g) Both parties agree to appear before the mediation centre for further mediation and appraisal of the relationship on 24th March 2009 at 4.15 p.m.

8. Learned counsel for the revisionist has submitted that because that was interim settlement agreement and in the further mediation, the mediation failed, hence, that interim settlement agreement is not binding upon the revisionist.

It is admitted to the revisionist that he is remarried with Smt. Nazma on 26.11.2009.

As for as the divorce dated 22.4.2006 is concerned, the suit for divorce is still pending, therefore, the revisionist is not entitled to take any benefit of Muslim Shariyat. It is settled law that even after the divorce, a Muslim lady is entitled for maintenance even after the period of Iddat till she remarries.

9. In *Shabana Bano Vs. Imran Khan*, Hon''ble Supreme Court considered that whether a Muslim divorced wife would be entitled to receive the amount of maintenance from her divorced husband u/s 125 Cr.P.C. After considering the provisions of Section 4 of Muslim Women (Protection of Rights on Divorce) Act 1986, Section 125 Cr.P.C. and Section 20 of the Family Courts Act 1984, Hon''ble the Supreme Court following *Danial Latifi and Another Vs. Union of India*, held as follows:

In our opinion, the point stands settled by judgment of this Court in *Danial Latifi and another v. Union of India*, *Danial Latifi and Another Vs. Union of India*, pronounced by a Constitution Bench of this Court, Paras 30, 31 and 32 thereof fully establish the said right of the appellant. The said paragraphs are reproduced herein under:

30. A comparison of these provisions with Section 125 Cr.P.C. will make it clear that requirements provided in Section 125 and the purpose, object and scope thereof being to prevent vagrancy by compelling those who can do so to support those who are unable to support themselves and who have a normal and legitimate claim to support are satisfied. If that is so, the argument of the petitioners that a different scheme being provided under the Act which is equally or more beneficial on the interpretation placed by us from the one provided under the Code of Criminal Procedure deprive them of their right, loses its significance. The object and scope of Section 125 Cr.P.C. is to prevent vagrancy by compelling those who are under an obligation to support those who are unable to support themselves and that object being fulfilled, we find it difficult to accept the contention urged on behalf of the petitioners.

10. Hon''ble Supreme Court further held that cumulative reading of the reading of the relevant portion of judgments of the Court in *Danial Latifi (Supra)* and *Iqbal Bano (Supra)* would make it crystal clear that 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.

Therefore, the ground of divorce cannot be a ground of refusing maintenance u/s 125 Cr.P.C.

11. As far as the income of the revisionist is concerned, the applicant-wife had alleged that the husband is getting a salary of Rs. 2 lacs per month which was denied by the revisionist-husband and he alleged his monthly income in between Rs. 22,000/- to 25,000/- per month. Learned lower Court has considered this aspect in detail and has come to the conclusion that at the time of marriage on 1.11.1998, the husband-revisionist was working as Electrical Engineer at Batra

Hospital, New Delhi and now since last 10 years, he is working in Saudi Arab in Dubai. Therefore, this cannot be believed that still he is getting a salary of Rs. 25,000/-. Learned Family Court Judge has further come to the conclusion that because the revisionist-husband gets his salary, hence he should have filed the pay slip, income tax return or the salary certificate of the employer but no such evidence has been submitted by the revisionist-husband and the best evidence which was within the knowledge of the revisionist-husband has been withheld by him. It is not disputed that the revisionist-husband is an Electrical Engineer and by any stretch of imagination, it cannot be believed that he is getting only Rs. 25,000/- per month in Saudi Arab. Certainly he could have filed his salary statement or the salary certificate issued by the employer and the income tax return but none of such best evidence has been produced by the revisionist-husband. Hence, there is no illegality in the impugned finding that he is earning Rs. 2 lacs per month.

12. As for as the means of wife O.P. No. 1 are concerned, it was alleged in the written statement that she is employed as teacher and getting a salary of Rs. 5500/- per month and also earns Rs. 1000/- per month from tuition. No such evidence was adduced by the husband-revisionist. Moreover, the wife O.P. No. 1 in her statement has said that she has got no means to maintain herself and the children and she is unable to maintain herself. She has been cross-examined at length, but no such suggestion has been given to her that she is employed as teacher in a private school and she is getting any salary. The husband-revisionist has also not stated in his statement on oath that wife-respondent is working as teacher in a private school and is getting any salary. In these circumstances it is not proved that the wife-respondent has sufficient means to maintain herself.

13. Learned counsel for the revisionist has also submitted that since he was working in Saudi Arab, he continued to sent a sum of Rs. 1500/- for the maintenance to wife and children. The receipts of the Money Order from 13.6.2007 to 22.9.2008 have been submitted but the Court below has not considered this aspect.

The maintenance in the present case was granted by the order dated 16.1.2010 and admittedly the wife respondent is living separately since 2004, The maintenance has been granted from the date of order i.e. 16.1.2010, hence, it cannot be said that the learned lower Court has not taken into consideration, the Money Order sent by the revisionist-husband. Had it been so, the family Court judge would have granted maintenance since Oct. 2004. Therefore, this argument has no merit.

14. This aspect cannot be overlook that the revisionist agreed at the mediation and Conciliation Centre and agreed to provide accommodation of not less than 3 rooms at Jhansi by 30th Nov. 2008 and the amount and other outgoings were to be borne by the husband. It was also agreed that four post dated account payee cheques regarding the rent were also to be handed over to bear the expenses of rent. It was also agreed that all the expenses incurred at the household and of

the establishment shall be borne by Mohd. Asif Siddique through Mohd. Shahid Siddique but the personal expenses of parents of Smt, Sofia Bano shall not be borne by Mohd. Asif Siddique. Admittedly, this agreement has not been honoured by the revisionist and in the final mediation proceedings, the mediation has failed.

15. There is no doubt that agreement dated 14.10.2008 was an interim settlement agreement but the revisionist has not honoured the said interim settlement agreement without any sufficient cause. It in itself proves the neglected behaviour of the husband towards the wife and children although the learned counsel for the revisionist has submitted that no such agreement was entered into. In the counter-affidavit it has been specifically alleged that the revisionist has remarried and solemnised his marriage on 26.11.2009 with Smt. Nazma which has also not been denied. Further it goes to show that the husband has no intention to keep the respondents with him.

In these days of inflammation, the maintenance of Rs. 10,000/- to wife and Rs. 5000/- each to the minor children cannot be said to be excessive more particularly in view that the income of the revisionist-husband is Rs. 2 lacs per month.

Learned lower Court has considered each and every aspect of the matter and I do not find any error of law, infirmity or illegality in the impugned order.

The revision is accordingly dismissed. The interim stay granted by the order dated 19.2.2010 is vacated. The revisionist is directed to pay the arrears within two months from today failing which the respondents shall be at liberty to realise the same through the process of Court.