

(2006) 08 BOM CK 0004
In the Bombay High Court
Case No : Criminal W.P. No. 61 of 1986

Mohammed Abdul Hai alias Farooq Pasha	APPELLANT
Vs	
Saleha Khatoon and Others	RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 125, 126, 127
Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3, 3(1), 7

Citation : (2007) CriLJ 1394 : (2007) 3 RCR(Civil) 8 : (2007) 2 RCR(Criminal) 729

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : S.P. Daund, APP for No. 4, Sarang Joshi, holding for M.V. Deshpande, for the Appellant;

Final Decision : Dismissed

Judgement

J.H. Bhatia, J.—Heard learned Counsel for Petitioner and Respondent No. 4. None for Respondent Nos. 1 to 3.

2. To state in brief the petitioner No. 1 married respondent No. 1 on 15-8-1982 and out of this wedlock they have two sons who are respondent Nos. 2 and 3. On 8-3-1985, the wife and two children i.e. respondent Nos. 1 to 3 filed Misc. Criminal Application No. 46/1985 for maintenance u/s 125, Cr.P.C. The application was opposed by the petitioner. He had contended that he had already given divorce to the respondent No. 1 on 25-1-1985, After hearing the parties, the learned C.J.M., Nanded granted maintenance to the respondent No. 1 at the rate of Rs. 150/- p.m. with effect from the date of her application and he also granted maintenance at the rate of Rs. 75/-p.m. to each of respondents Nos. 2 and 3 from the date of their application till they attained majority. That order was challenged by the present petitioner in Criminal Revision Application No. 74/1985 before the Sessions Court, Nanded. After hearing the parties the learned

Additional Sessions Judge, Nanded passed the judgment dated 18-6-1986 and dismissed the Revision Petition. Being aggrieved by the decision of the two Courts below, the petitioner preferred this writ petition under Article 227 of the Constitution of India, challenging the legality and propriety of the order of maintenance passed by the Courts below. The main contention of the petitioner was that Muslim Women (Protection of Rights on Divorce) Act, 1986 (Muslim Women Act for brevity) had come into force on 19-5-1986 and in view of the provisions of Section 3 of the said Act a divorced woman could claim maintenance from her former husband only for the period of Iddat and for that purpose, application would lie to the Magistrate u/s 3 of the said Act. It was further contended that in view of provisions of Section 3(l)(b) of the said Act, she is entitled to get maintenance for children for a period of two years from the respective dates of birth of such children. It was further contended that in view of provisions of Section 7 of the Act, every application by a divorced woman u/s 125, Cr.P.C. or u/s 127, Cr.P.C. pending before Magistrate on the commencement of this Act, shall be disposed of by such Magistrate in accordance with provisions of this Act. In view of this, it is contended that the Magistrate had no power to pass the order u/s 125, Cr.P.C, nor the learned Additional Sessions Judge exercising his Jurisdiction could pass such order. The application could have been disposed of as per Muslim Women Act only.

3. In the present petition and several other petitions important questions of law were raised about the applicability of the provisions of Muslim Women Act in the matters pertaining to divorced Muslim women. Therefore, the matter was referred to a Division Bench. The Division Bench passed judgment in group of said matters on 13-3-2001 and it is reported as *Naseemunisa Begum d/o Shaikh Yasin v. Shaikh Abdul Rehman s/o Shaikh Gaffar* 2002 (2) Mah LJ 115.

4. Taking into consideration the facts of this case, it may be made clear that the application for maintenance was filed u/s 125, Cr.P.C. on 8-3-1985 and it was also decided on 21-2-1986 by the learned C.J.M. As such the application u/s 125, Cr.P.C. was not pending before the Magistrate when Muslim Women Act, 1986 came into force on 19-5-1986. Therefore, the provisions of Section 7 of the said Act could not be invoked. It is true that when the revision petition was pending before the Sessions Court, Muslim Women Act came into force and the revision petition was decided after the Act had come into force. The Division Bench in *Naseemunisa Begum* (supra) held that if any revision is filed either by the divorced Muslim woman or by former husband, that will be decided as per the provisions of Chapter IX of Cr.P.C. because Section 7 of the Act is not made applicable to the revisional proceedings. From this it is clear that as the application u/s 125, Cr.P.C. was already decided and disposed of by the Magistrate, it could not be said to be a proceeding pending u/s 125, Cr.P.C. before the Magistrate when the Act came into force. Only revision petition was pending and that revision petition was to be decided as per provisions of the Cr.P.C. by the Sessions Court. It was further held by the Division Bench that if rights are finally crystallized before coming into force of 1986 Act as per the

decision under Sections 125 to 127 of the Cr.P.C. then those rights continued to remain in force even after commencement of 1986 Act. It is material to note that Mr. M.V. Deshpande, learned Counsel for the present petitioner, had himself advanced the contentions raised in the present petition before the Division Bench and all those contentions were turned down by the Division Bench. Therefore, it cannot be said that the learned C.J.M. had committed any error while passing the order u/s 125, Cr.P.C. nor it can be said that the learned Additional Sessions Judge, committed an error while deciding the revision petition.

5. As far as children are concerned, it is clear that if the divorced woman claims maintenance for the minor children u/s 3(l)(b), the former husband is bound to provide maintenance for a period of two years from the respective dates of birth of such children. Right u/s 3(l)(b) is given to the divorced woman. In fact, the Act itself is, enacted for the protection of certain rights of Muslim women on their divorce. The Act has no relevance to the rights of the children to claim maintenance from their father. Their rights are covered by Section 125, Cr.P.C. and that right is not taken away by the provisions of Section 3(l)(b) of Muslim Women Act. In taking this view, I am supported "by the authorities of several High Courts including our own in Mohd. Kutubuddin v. Noore Nazar (Criminal Revision Application No. 7/1989) decided on 27-4-1989 by Nagpur Bench of the Bombay High Court. In the present matter the respondent Nos. 2 and 3 were granted maintenance u/s 125, Cr.P.C. in their own right and that right could not be taken away by provisions of Section 3(l)(b) of Muslim Women Act.

6. In view of the facts and the legal position, there is no substance in the petition and it is, therefore, liable to be dismissed.

7. The Writ Petition stands dismissed. Rule discharged.