
(2015) 05 JH CK 0005

In the Jharkhand High Court

Case No : Criminal Revision No. 369 of 2011

Mokhtar Ahmad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 5

Citation : (2015) 3 JLJR 523

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : Ashutosh Kumar Singh, for the Appellant

Judgement

Ravi Nath Verma, J.—This revision has been preferred by the sole petitioner Mokhtar Ahmad against the order dated 31st March, 2011 passed by learned Principal Judge, Family Court, Dhanbad in M.P. Case No. 396 of 2003, whereby and whereunder on a petition filed by the present opposite party No. 2 under Section 125 of the Code of Criminal Procedure (hereinafter referred to as "the Code"), the court below directed the petitioner to pay Rs. 2,000/- per month as maintenance to the opposite party No. 2 and Rs. 1,000/- per month to her minor daughter from the date of filing of the said petition within 15th of each calendar month and also to pay the arrears of maintenance in 30 equal installments. It appears from the record that the aforesaid petition for maintenance under Section 125 of the Code was filed by the opposite party No. 2 in the court below stating therein that the petitioner and this opposite party are the legally married husband and wife and their marriage was solemnized on 21.1.1968 according to Muslim Custom and out of the said wedlock, they were blessed with one son and two daughters. It is alleged that after the marriage of one daughter and one son, the present opposite party No. 2 was assaulted by her husband and she was also ousted of her matrimonial house and since then she has been residing along with her minor daughter at her parents' house at Giridih. It is also stated that petitioner started neglecting the opposite party No. 2 and refused to maintain

her and her daughter Rukhsar Praveen. Since the opposite party No. 2 had no source of income, she requested her husband to provide maintenance to her and to her minor daughter but no amount was ever given though the husband was drawing a monthly salary of Rs. 12,000/- per month being an employee of BCCL, Salanpur Colliery. In the said petition, the opposite party No. 2 prayed for maintenance of Rs. 5,000/- for herself and Rs. 2,000/- for her daughter.

2. After issuance of notice by the court below, the present petitioner appeared and filed his show cause stating therein that the petition filed under Section 125 of the Code is not maintainable and though the opposite party No. 2 was his legally married wife but he had given "Talak" to her and informed her in writing also on 15.4.1977. The petitioner denied that Rukhsar Parveen born out of their wedlock and that the only intention of opposite party is to grab his retiral benefits, which he has received from B.C.C.L. It was also stated that the opposite party No. 2 was working in a Glass Factory at Giridih and was competent to maintain herself and that a Muslim woman is not entitled for maintenance after "Talak" from her husband under Section 125 of the Code in view of Section 5 of Muslim Women (Protection of Rights on Divorce) Act, 1986.

3. Both parties led evidences in court below and after considering the evidences adduced on behalf of the parties, the court below directed the petitioner to pay maintenance to the present opposite party Nos. 2 and 3 as indicated above.

4. Learned counsel for the petitioner while assailing the impugned order, seriously contended that after divorce, a Muslim wife cannot claim maintenance under Section 125 of the Code and only remedy available for her is to claim maintenance under section 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and in support of his contention, learned counsel relied upon a judgment reported in 2002 (3) East Cr.C. 148 (S.C.) in the case of Saheb Khan K. Malek vs. Jamilasurun S. Malek. It was also submitted that the court below without giving specific finding on the actual income of the petitioner has allowed the maintenance amount though the petitioner is a retired B.C.C.L. worker. Hence, the order impugned is bad in law.

5. Contrary to the above submissions, learned counsel for opposite party Nos. 2 and 3 submitted that not a chit of paper was produced by the petitioner in court below or any cogent evidence to show that he had ever given "Talak" to the opposite party and only with ulterior motive, the petition filed for maintenance was opposed. It was also submitted that it is now well settled that even a Muslim divorcee wife is entitled for maintenance under Section 125 of the Code. Learned counsel further relying upon a judgment reported in [2003 (2) East Cr.C. 50 (S.C.)] (Samim Ara vs. State of U.P. & Anr.) submitted that the mere plea taken by the husband in written statement regarding pronouncement of "Talak" cannot by itself be treated as effectuating "Talak".

6. From perusal of the evidences adduced on behalf of both parties in court below, it appears that this petitioner in his deposition has testified that after

giving Talak" to the opposite party No. 2, he married with another lady. He had admitted this fact that opposite party No. 2 is not living with him rather she has been staying with her father at Giridih. No cogent evidence has been brought on record to show that the opposite party No. 2 was ever divorced (Talak) by this petitioner. The court below has discussed the evidences of both the parties after formulating four issues and it is admitted position that the petitioner was an employee of B.C.C.L. and he is getting monthly pension besides the huge amount which he received as retiral benefit. It is also an admitted position that opposite party No. 2 has not solemnized any second marriage with any other person. In the case of Samim Ara vs. State of U.P. & Anr. (supra), the Hon''ble Supreme Court has held as follows:--

"A plea of previous divorce taken in the written statement cannot at all be treated as pronouncement of Talak by the husband on wife on the date of filing of the written statement in the court followed by delivery of copy thereof to the wife."

7. Hence, in the light of the ratio decided above, I am constrained to hold that the provision of Section 125 of the Code was rightly invoked by the court below for granting maintenance to the opposite party No. 2 and her daughter. Since the amount of maintenance granted by the court below is a very reasonable one, I do not feel any cogent ground or reason to interfere in the order impugned. The revision application thus, being devoid of any merit, is accordingly dismissed.