
(2010) 02 AHC CK 0043
In the Allahabad High Court
Case No : Criminal R. No. 2187 of 2001

Mrs. Humera Khatoon and Others

APPELLANT

Vs

Mohd. Yaqoob

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2010) 2 ACR 1235 : (2010) 2 DMC 4220

Hon'ble Judges : Naheed Ara Moonis, J

Bench : Single Bench

Advocate : S.F.A. Naqvi, for the Appellant; M.A. Haseen and R.B. Sahai, A.G.A., for the Respondent

Judgement

Naheed Ara Moonis, J.—List has been revised. Learned Counsel for the revisionist is present. None has appeared on behalf of the opposite party.

2. Heard learned Counsel for the revisionist and learned A.G.A. and perused the materials on record.

3. The instant revision has been preferred by the revisionist applicants challenging the order dated 28.5.2001, passed in Case No. 264 of 1999, Smt. Humera Khatoon and others Mohd. Yaqoob, passed by Ms. Sadhna Chaudhry Judge, Family Court, Allahabad whereby the Court below partly allowed the maintenance to the revisionist No. 1 and refused to grant maintenance to the children revisionists No. 2 to 6.

4. Brief facts of the case are that the revisionist No. 1 is the legally wedded wife of the opposite party. The revisionists No. 2 to 6 are the minor daughters and sons of the opposite party. The opposite party divorced his wife Smt. Humera Khatoon on 20.7.1999 on the ground of unusual and rude behaviour. The revisionist No. 1 moved application u/s 125, Code of Criminal Procedure against opposite party (her husband) claiming maintenance for herself as well as five minor children at the rate of 500 per month alleging that she has been divorced

and has no source of survival. She is not a well educated lady on the basis of which she can earn livelihood. She is a rustic lady and is hardly earning livelihood for doing the petty job of making biri. The husband is plying taxi at Bombay and is earning handsome amount more than 6,000 per month. The husband had been neglecting to the revisionist from the very inception for the reasons best known to him which ultimately resulted into breakage of their marital knot. The opposite party also did not take care of his children who were minor and were solely dependent upon the revisionist No. 1 who was nurturing them by her own hard labour of making biri. The career of the children was also at stake as the revisionist was not in a position to facilitate them for education because she was not in a position to provide two times meal to the children in a day.

5. Per contra, the opposite party No. 1 filed objection controverting the claim of the revisionist No. 1. The opposite party confined himself to the extent that he had already divorced to the revisionist No. 1 in accordance with Muslim Law. On account of her unusual and rude behaviour, he was constrained to divorce revisionist No. 1. When he had divorced to the revisionist No. 1 and the revisionist No. 1 ceased to be the wife of the opposite party No. 2 by reason of divorce. The revisionist No. 1 has already been paid maintenance with regard to mehr and iddat period. Since the revisionist No. 1 is a divorced Muslim lady, therefore, she is not entitled for maintenance beyond iddat period hence the application u/s 125, Code of Criminal Procedure filed by the revisionist No. 1 with regard to maintenance for herself and five children is not maintainable and deserves to be rejected at the threshold. The minor children are living with him therefore, no right has accrued to pay maintenance for the children. The revisionist No. 1 had filed written statement stating that she was divorced on 20.7.1999 in the presence of the witnesses. It was also contended that prior to filing of this application, she had filed suit from being dispossessed from the house and the said suit is pending. It was also mentioned that the revisionists were threatened or forced by the opposite party to vacate the house where she was residing alongwith her children.

6. The Court below taking into account the rival submissions advanced by learned Counsel for the parties and considering the evidence adduced by them accepted the factum of divorce with regard to payment of mehr and the amount received during iddat period. The Court below over sighted the factum of maintenance with respect to the children and only confined to the maintenance of the wife revisionist No. 1 upto the period of iddat. The Court below partly allowed the application holding that the opposite party shall pay Rs. 1,400 within one month. The maintenance with regard to the children was denied. The point for consideration was that no amount of maintenance is not payable to the wife on divorce. The amount of mehr is an obligation upon the husband as a mark of respect for the wife which was paid to the wife in consideration of the marriage.

7. It is contended by learned Counsel for the revisionists that the Court below was dissuaded from the factum of the case and has wrongly appreciated the oral

and documentary evidence led by the parties which has culminated into grave injustice with the revisionists. The revisionist No. 1 was constrained to move application u/s 125, Code of Criminal Procedure on account of the fact that she was divorced by her husband on 20.7.1999. She was facing tremendous hardship to maintain herself as well as her children as she did not have any independent source of earning. The opposite party was under legal and moral obligation to maintain the minor children. The aim and object of granting maintenance to the divorced Muslim wife is founded upon the individual's obligation so as to prevent vagrancy and destitution as most of the divorced women are unable to maintain themselves. The moral edict of law cannot be over sighted to justify that divorced Muslim women is entitled to maintenance upto iddat period. The Court below did not delve into the real factum of the case and has passed the order dated 28.5.2001 erroneously ignoring the welfare of the minor children hence the order passed by the Court below being ex facie erroneous does not deserve to sustain and may be set aside. It was also contended that the maintenance allowance which was granted only for the iddat period is also too meagre to meet two ends meal. When the factum of divorce has already been proved, the wife is entitled to get maintenance even beyond the period of iddat period till she does not remarry, therefore, the impugned order passed by the Court below is patently erroneous and suffers from legal and factum infirmity and perversity warranting interference by this Court.

8. Having regard to the aforesaid discussions advanced by learned Counsel for the parties, the precise point which has come up before this Court is whether the Muslim divorced wife is entitled to get maintenance from her husband u/s 125, Code of Criminal Procedure beyond the iddat period or not. In view of the pronouncement of judgment dealing with the aforesaid issue in the case of Danial Latifi and Another Vs. Union of India, and Mohd. Ahmed Khan Vs. Shah Bano Begum and Others, This point has been well-settled that the application u/s 125, Code of Criminal Procedure would be maintainable before the Family Court as long as the wife does not remarry. The amount of maintenance awarded u/s 125, Code of Criminal Procedure cannot be restricted only for the iddat period. It extends for the entire life of the divorced lady unless she remarries. The Court below has arrived at erroneous conclusions by ignoring the period of maintenance beyond the iddat period till the divorced wife does not remarry. The aforesaid decisions of the Apex Court makes it crystal clear that the divorced Muslim lady would be entitled to get maintenance beyond the iddat till she does not remarry. This being a beneficial position of legislation has protected the interest of divorced Muslim lady from taking any rigorous step on being deserted by her husband.

9. In the light of above observations, this Court does not find any cogent reasons and justifiable ground to uphold the order passed by the Court below. The Court below has not dealt with the issue with regard to not granting the maintenance to the children and has made very casual approach of granting maintenance to the wife to the tune of Rs. 1,400 restricting upto the period of iddat.

The order dated 28.5.2001, passed by the Judge, Family Court being ex facie fallacious and against the spirit of the judgment of Hon"ble Supreme Court is hereby set aside. The revision is allowed. The matter is remanded back to the Court below to take a fresh decision in accordance with law after giving opportunity to the parties.