
(2002) 03 SC CK 0005
In the Supreme Court Of India
Case No : 466 Of 2002

Mst. Bilkis Begum @ Jahanara	Vs	APPELLANT
Majid Ali Gazi and Another		RESPONDENT

Date of Decision : 13-03-2002

Acts Referred:

Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3(1), 5

Citation : (2002) 3 ACR 2169 : (2002) 1 JT 115 Supp

Hon'ble Judges : D. P. Mohapatra, J;Brijesh Kumar, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. The appellant Mst. Bilkis Begum @ Jahanara, was the wife of respondent No. 1 Majid Ali Gazi. She filed an application u/s 125 of the Criminal Procedure Code (Cr. P.C.) claiming maintenance for herself and for her two minor daughters @ Rs. 500/- per month each. The application was registered as proceeding No. M 71 92. During pendency of the proceeding, the respondent divorced the appellant on 7.2.92. Thereafter, she filed an application u/s 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, (for short the 1986 Act) stating, inter alia that she prefers to be governed by the provisions of Sections 125 to 128 of the Cr. P.C. instead of the provisions of 1986 Act and sought permission of the magistrate for the purpose. The said application was rejected by the learned magistrate by order dated 27.4.94 on the ground that an application u/s 5 of the 1986 Act, has to be made either jointly or separately by both the parties and an application filed by one of the parties without consent of the other could not be entertained. She carried the matter to the High Court in revision wherein the order passed by the magistrate was confirmed and the revision petition was dismissed. Hence, the grievance of the appellant.

3. On analysis of the arguments placed by learned counsel for the parties, the

question that arises for determination is whether the application filed by the appellant u/s 125 Cr. P.C. claiming maintenance for self and for minor children could be considered by the magistrate or she had to seek relief under the 1986 Act. This question was considered by this Court in the case of Noor Saba Khatoon Vs. Mohd. Quasim, , whereof, this Court interpreting Section 3(1) of the 1986 Act and Section 125 of the Cr. P.C. observed:

"Indeed Section 3(1) of 1986 Act begins with a non obstante clause 'notwithstanding anything contained in any other law for the time being in force' and clause (b) thereof, provides that a divorced woman shall be entitled to a reasonable and fair provision for maintenance by her former husband to maintain the children born out of the wed lock for a period of two years from the date of birth of such children, but the non obstante clause in our opinion only restricts and confines the right of a divorcee muslim woman to claim or receive maintenance for herself and for maintenance of the child/children till they attain the age of two years, notwithstanding anything contained in any other law for the time being in force in that behalf. It has nothing to do with the independent right or entitlement of the minor children to be maintained by their muslim father. A careful reading of the provisions of Section 125 Cr. P.C. and Section 3(1) (b) of the 1986 Act, makes it clear that the two provisions apply and cover different situations and there is no conflict, much less a real one, between the two, whereas the 1986 Act, deals with the obligation of a muslim husband vis-a-vis his divorced wife, including the payment of maintenance to her for a period of two years of fosterage for maintaining the infant/infants, where they are in the custody of the mother, the obligation of a muslim father to maintain the minor children, is governed by Section 125 Cr. P.C. and his obligation to maintain them is absolute till they attain majority or are able to maintain themselves, whichever date is earlier. In the case of female children this obligation extends till their marriage. Apart from the statutory provisions referred to above, even under the muslim personal law, the right of minor children to receive maintenance from their father, till they are able to maintain themselves, is absolute."

In paragraphs 10 and 11 of the judgment, this Court summed up its conclusions in the following words:-

"Thus, both under the personal law and statutory law (Section 125 Cr. P.C.) the obligation of a muslim father, having sufficient means, to maintain his minor children, unable to maintain themselves, till they attain majority and in case of females till they get married, is absolute, notwithstanding the fact that the minor children are living with divorced wife.

Thus, our answer to the question posed in the earlier part of the opinion is that, the children of muslim parents are entitled to claim maintenance u/s 125 Cr. P.C. for the period till they attain majority or are able to maintain themselves, whichever is earlier and in case of females, till they get married, and this right is not restricted, affected or controlled by the divorcee wife's right to claim maintenance for maintaining the infant child/ children in her custody for a period

of two years from the date of birth of the child concerned u/s 3(1)(b) of the 1986 Act. In other words, Section 3(1)(b) of the 1986 Act, does not in any way affect the rights of the minor children of divorced muslim parents to claim maintenance from their father u/s 125 Cr. P.C. till they attain majority or are able to maintain themselves, or in the case of females, till they are married."

4. From the observations quoted above it is clear that the right of the appellant to claim maintenance for her children from her former husband u/s 125 of the Cr. P.C. is recognized even after the enactment of the 1986 Act. The position is also settled that liability of the father to maintain his minor children and unmarried daughters is absolute and in case he defaults the divorced wife can file an application u/s 125 of Cr. P.C. claiming maintenance for the children who are living with her.

5. Applying the principles laid down in the aforementioned decided case to the case in hand the position is clear that the application filed u/s 125 of the Cr. P.C. claiming maintenance for the two children is to be proceeded with by the learned mag-istrate and disposed of applying the provisions of the Code of Criminal Procedure. So far as the claim of maintenance for the divorced wife is concerned the proceeding's u/s 125 cannot be proceeded with. She is entitled to receive her dues according to the 1986 Act, and if she has not yet received the same she has to take recourse of the proceedings under that Act, and realize the amount in accordance with law.

6. With the above observations this appeal is disposed of. Since the matter has been considerably delayed, we direct the learned magistrate to dispose of the proceedings expeditiously within four months from the date of receipt of the intimation of this order.