

(1995) 05 AHC CK 0108
In the Allahabad High Court
Case No : Criminal Revision No. 15 of 1988

Muslim @ Bhoora

APPELLANT

Vs

State of U.P. and Khatoon @ Zaitun

RESPONDENT

Date of Decision : 02-05-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397(2)
Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3(2), 3(3)

Citation : (1996) 1 DMC 298

Hon'ble Judges : C.A. Rahim, J

Bench : Single Bench

Advocate : Siya Ram, for the Appellant; K.K. Shangloo, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

C.A. Rahim, J.—None appears on behalf of the Revisionist even when the list is revised. Today is fixed for admission of the Revision. The only ground that has been taken is that the provision of Sub-section (3) of Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 was not followed, as no order was passed within one month from the date of filing of the application and hence the proceeding is bad in law.

2. An application was filed by Smt. Khatoon @ Zaitun on 16.12.1987 for allowing maintenance during the Iddat Period Act the rate of Rs. 500 per month, Mahr of Rs. 1000/- alongwith the prayer for recovery of the articles of its price mentioned in Schedule "A" of the Petition before the Court of the II Munsif Magistrate, Muzaffarnagar and the case was stated u/s 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, directing the Revisionist to appear on 15.1.1988, but the Revisionist did not attend on that day and the matter was adjourned, ultimately on 23.2.1988 the revisionist appeared in the Lower Court but no written statement was filed till 26.4.1988 for which cost was imposed.

3. A revision was filed for non-compliance of the provision of Sub-section 3 of the

said Act, but the same was dismissed on the ground that it was not practicable of the Magistrate to dispose the application within one month when the revisionist himself took several adjournments and ultimately did not file written statement till 26.4.1988. The learned Judge also held there is no provision in the law that such reasons should be recorded before expiry of the stipulated period of one month and it should be recorded simultaneously with the disposal of the application after expiry of the said period. Being aggrieved by the said order of the learned 1st Addl. Sessions Judge the instant revision has been filed.

4. Sub-section (3) of Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 provides that where an application has been made under Sub-section (2) by the divorced woman, the Magistrate may make an order within one month of the date of filing of the application, directing her former husband to pay such reasonable and fair provision for maintenance to the divorced woman as he may determine as fit and proper having regard to the circumstances, he may also pass an order for the payment of such Mehr or dower or the delivery of such properties referred to Clause (d) of Sub-section (1) to the divorced woman. There is one provision to the section which prescribes that if the Magistrate finds it impracticable to dispose of the said application within the said period, he may, for the reasons to be recorded by him, dispose the application after the said period. This section provides for speedy remedy when any prayer u/s 3 of the Act is filed by a divorced woman before a competent Court. The contention of the learned Counsel for the revisionist is that such a speedy remedy could not be made available to the divorced lady and this petition should be dismissed as Magistrate did not record reasons for such delay on disposing of the said application. It makes out a proposition that the legislature intended that if no speedy remedy is made available to the destitute lady, her application should not be considered. That can never be proposition of enacting the special Act for the purpose of giving relief to a Muslim Divorced lady. If the Magistrate is unable to dispose of the application within one month as provided in Sub-section (3) of Section 3 of the Act for that matter if he does not record the reason, a divorced lady is out of ground for no fault of her own. For granting relief to a lady she is to file an application with necessary details and allegations if any, and it is the duty of Court to take speedy recourse to make available to the petitioner the relief granted by the Legislature under the special legislation and if he cannot do it within the period which was provided in the Act the lady should not suffer. In the instant case it appears that the petition was filed on 16.12.1987. Order to issue notice was passed on same day fixing 15.1.1988 for service, which though within one month of the date of filing of the application, was not in conformity with the spirit of the Act. A short date should have been fixed for that purpose. When the notice was not served on 15.1.1988 a date was fixed on 23.2.1988. From Paragraph 6 of the judgment of the learned lower Court it appears on 23.2.1988 the revisionist appeared and a copy of the application was furnished to him on that date but no written statement was filed him inspite of imposition of costs till 26.4.1988, when this is the conduct of the

revisionist he should not claim a relief under Sub-section (3) of Section 3 of the Act by dismissing the petition itself. This provision refers that the said section is directory and not mandatory. The word "may" has been used in all the places even when in the proviso where it has been stated that the Magistrate may record the reason if it is not practicable from him to dispose the application within one month. So I do not think that by not following the direction, as mentioned in Sub-section (2) of Section 3 of the Act the Magistrate has committed any illegality for which the proceeding would be vitiated.

5. That the learned A.G. A. has submitted that the Revision is not maintainable as it is barred u/s 397(2) Cr.P.C. it appears from the record that against the order of the Magistrate a revision was preferred before the Sessions Court. The learned 1st Addl. Sessions Judge, Muzaffarnagar dismissed the said revision on 28.7.1988 this is the second revision filed by the same person for which I find that the second revision, after dismissal of first revision filed by the same person is barred by law.

6. The revision is accordingly dismissed, the interim order, if any, is vacated.