

(1997) 09 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 89 of 1992

Sakina and Another

APPELLANT

Vs

Salim Khan

RESPONDENT

Date of Decision : 08-09-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 4

Citation : (1998) 1 DMC 684

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; Ravi Bakshi, for the Respondent

Judgement

Arun Kumar Goel, J.—Petitioners have filed this revision petition against the order dated 3.8.1992, passed by learned Sessions Judge, Chamba Division at Chamba. By means of impugned order maintenance granted in favour of the petitioner No. 1 was set aside, whereas maintenance granted to minor daughter Razina Begum of parties viz. Salim Khan and Sakina in the sum of Rs. 100/- p.m. has been upheld. This petition has been filed by both mother and daughter (hereinafter referred to as the "petitioners") for grant of maintenance to mother by setting aside the impugned order to that extent and by modifying the same and thus enhancing the amount of compensation awarded from Rs. 100/- p.m. to Rs. 200/- p.m. to minor daughter Razina Begum.

2. In order to understand the case in its right perspective, a few facts need to be noticed which are to the following effect:

Salim Khan and Sakina were admittedly husband and wife and they had three children from their wedlock. One is admittedly dead, another is with the husband whereas Razina Begum minor daughter is admittedly residing with the wife. As per case of the claimants, respondent is employed as a driver in Baira Suil Project and was drawing Rs. 2,000/- p.m. from such employment and since he has neglected and has also refused to maintain both the petitioners, as such

maintenance u/s 125, Cr.P.C. in the sum of Rs. 800/- p.m. was claimed. Respondent while admitting that claimant No. 2 is his daughter born from his marriage with claimant No. 1, he denied that claimant No. 1 still continues to be his wife. As per case set up by respondent, divorce has taken place between him and claimant No. 1 his wife and thus as per provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986, she was not entitled for the grant of any maintenance.

In this case the sole question that needs determination in the present proceedings is whether a divorce has taken place between claimant No. 1-wife Sakina and respondent-husband Salim Khan or not. If the answer is in the affirmative the next question that would need consideration is as to what is the effect of provisions of Sections 3 and 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (hereinafter referred to as the "Act"). Accordingly the question relating to divorce is being examined first of all in the present case.

3. It is not in dispute that parties are governed under Mohammedan Law. Respondent could divorce his wife-petitioner No. 1 orally and also be executing a writing. In case divorce is entered into between parties by means of a writing, then such a document has to be executed in the presence of Kazi or wife's father or other witnesses. Only thing that is to be seen in case of written divorce is that it should be primarily in customary form and if it is scribed and addressed so as to indicate the name of the scribe of the person addressed and if it is in customary form and is manifest, then in such a situation the intention to divorce can be presumed. In addition to this once it is held that the divorce deed is customary and manifest it takes effect forthwith. Only thing that has to be seen is whether such a document is proved in accordance with law or not.

4. It is in the aforesaid background that Talak Nama (divorce deed) Ex. RW2/ A has to be examined in the present case. There is positive evidence on record to show that divorce deed was executed between petitioner No. 1 -wife and respondent-husband and scribe of this divorce deed Ex. RW2/A was Raj Deen (RW-2) who was Pardhan of Anjuman Islamia, Churah. Although in his cross-examination the witness has stated that Sakina-wife did not put her thumb impression in the presence of the witnesses, yet that by itself would not make the execution of Ex. RW2/A as non est. This statement coupled with the statement of respondent-husband clearly establishes that matrimonial bond between the husband and wife had been dissolved by a deed of divorce and the same stands duly proved in accordance with law.

5. Since this Court has taken the view that there was a divorce between the husband and wife, as such, her claim u/s 125 Cr.P.C. was not maintainable and she can have recourse u/s 4 of the Act. This matter need not detain this Court in view of the decision of the Hon'ble Apex Court reported in case Secretary, Tamil Nadu Wakf Board and another Vs. Syed Fatima Nachi, Accordingly, it is held that the petitioner is entitled to maintenance only for the period of Iddat and not beyond that and her claim for maintenance u/s 125, Cr.P.C. is also held to be not

maintainable in view of the provisions of the Act.

6. Now coming to the claim of maintenance to petitioner No. 2, who is admittedly the daughter of respondent-husband, a sum of-Rs. 100/- p.m. has been granted to her by way of maintenance. This amount seems to be not only inadequate but is illusory too. Maintenance has to be reasonable and just so that it provides reasonable living to the beneficiary. It has been admitted by the husband while appearing as RW-1 that his monthly emoluments are Rs. 1,800/-. In view of this fact, this Court is of the view that he is liable to pay a minimum sum of Rs. 100/- p.m. for maintenance of his daughter petitioner No. 2, who is admittedly residing with her mother Smt. Sakina, and it is ordered accordingly. This amount of Rs. 200/- shall be payable by the husband to the petitioner No. 2 as maintenance with effect from the date of filing of the petition u/s 125, Cr.P.C. i.e. 3.9.1990. So far the right of maintenance to a minor child is concerned, it is still protected u/s 125 of the Cr.P.C. and has not at all been effected in any manner with the coming into force of the Act. For taking this view, reference can usefully be made to a case, Noor Saba Khatoon Vs. Mohd. Quasim, It is ordered that this amount will be regularly remitted with effect from October, 1997 by the husband to the petitioner No. 2 through her mother petitioner No. 1 by way of money order at his own expense on or before 10th of each month.

7. Regarding arrears upto 30.9.1997, it is made clear that he would pay the same on or before 31.3.1998. In case of failure of the respondent to either pay the monthly amount of maintenance as ordered in this judgment in terms thereof and / or to clear the arrears within the time granted then on production of a certified copy of this judgment, the employer of the respondent-husband shall be liable to deduct Rs. 500/- per month from the salary of the respondent and remit at the expense of the respondent a sum of Rs. 200/- with effect from the month of October, 1997 and another sum of Rs. 300/- towards the arrears till the entire arrear is cleared.