
(2010) 11 AHC CK 0156
In the Allahabad High Court
Case No : Criminal Revision No. 1551 of 2008

Smt. Chaman Bano

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2010) 11 AHC CK 0156

Hon'ble Judges : Ashok Srivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Srivastava, J.—This criminal revision has been preferred by the revisionist Smt. Chaman Bano feeling aggrieved by the judgment and order dated 12.5.2008 passed by learned Principal Judge, Family Court, Meerut in Case No. 413 of 2001 u/s 125 Code of Criminal Procedure

2. This matter was listed on 27.5.2010. On that date learned Counsel for the revisionist and learned A.G.A. were present but no one was present on behalf of opposite party No. 2, Naseem Ahmad.

3. Brief facts of the case are that on 24.12.2001 the revisionist filed a petition u/s 125 Code of Criminal Procedure before the learned Judge, Family Court, Meerut which was registered there as Case No. 413 of 2001.. Through this petition the revisionist had claimed that she was the legally wedded wife of opposite party No. 2 and opposite party No. 2 had neglected her without any rhyme or reason and turned her out of his house as the petitioner has failed to satisfy his lust for dowry. It was also alleged in the said petition that the petitioner was unable to maintain herself, that she is living with her father after being deserted by her husband. She had also mentioned that all the family members of opposite party No. 2 were continuously torturing her mentally as well as physically for dowry.

4. Notice was issued to opposite party No. 2 who appeared before the lower

court and filed his written statement on 22.1.2002. This date has got significance because in para 17 of his objection filed before the learned lower court, opposite party No. 2 has mentioned that he had divorced the revisionist on 22.1.2002 itself. Talaqnama was annexed to the written statement. Thereafter the parties led their oral as well as documentary evidence. After hearing the arguments of both the parties, the learned lower court dismissed the petition of the revisionist on the ground that opposite party No. 2 had divorced the petitioner on 22.1.2002 and this fact has been proved and, therefore, no petition u/s 125 Code of Criminal Procedure is maintainable. Feeling aggrieved by the said judgment and order the present revision has been filed.

5. It has been submitted by learned Counsel for the revisionist that the revisionist is the legally wedded wife of opposite party No. 2, Naseem Ahmad, that the talaqnama filed by opposite party No. 2 is forged and fictitious and has been manufactured. It has further been submitted that the factum of talaq has not been proved by opposite party No. 2 in accordance with law. It has also been submitted that the talaq has never been pronounced in accordance with law and learned lower court has wrongly arrived at the conclusion that opposite party No. 2 had divorced the revisionist on 22.1.2002. It has further been submitted that the judgment and order passed by the learned lower court is not based on facts available on the record and it has misinterpreted the oral evidence led by the parties.

6. Learned A.G.A. has opposed this revision and had submitted that the judgment and order impugned passed by the learned lower court is legal and does not require any interference by this Court in this revision.

7. I have examined the judgment passed by the learned lower court. The learned lower court has arrived at the conclusion that opposite party No. 2 had divorced the revisionist on 2.1.2002 and factum of talaq has been proved by him.

8. The petition u/s 125 Code of Criminal Procedure was filed before the learned lower court on 24.12.2001 and according to opposite party No. 2 he had divorced his wife on 22.1.2002. Nothing has been said by learned lower court regarding the period starting from 24.12.2001 and ending on 22.1.2002.

9. The learned lower court has mentioned in its judgment the case law reported in 2000 Cri. L.J. 4726 Shamim Ara v. State of U.P.. But it appears that the learned trial court has not read this judgment in a proper manner as it has not appreciated the spirit of it. Though he has held that it is the duty of the muslim husband to prove the factum of divorce by adducing cogent and reliable evidence but while appreciating the evidence available on record, the learned lower court has arrived at a highly perverse conclusion.

10. From the perusal of the records it is evident that opposite party No. 2 divorced the revisionist on 22.1.2002 and filed the talaqnama alongwith his written statement on the same day which by itself indicates the callous attitude of opposite party No. 2. His conduct shows that he had waited upto to a date to

divorce his wife on which his written statement is prepared by his counsel. If one goes through the judgment passed by the Apex Court in Shamim Ara's case (supra) and appreciate its spirit, it will be clear that the conduct of the husband while divorcing his wife is of significance. In para 16 of Shamim Ara's case (supra) which has also been reported as Shamim Ara Vs. State of U.P. and Another, the Apex Court has said that "the talaq to be effective has to be pronounced". It has further said that the term "pronounce" means to proclaim, to utter formally, to utter rhetorically, to declare, to utter, to articulate. Keeping in view the position of law as laid down by the Apex Court in this para, I have examined the evidence and the judgment passed by the learned lower court.

11. The plea of divorce has been taken by the husband. Presumption of divorce cannot be taken. Therefore, it was the duty of the husband i.e. opposite party No. 2 to prove the pronouncement of talaq by adducing clear and cogent evidence. But the learned lower court has laid this burden upon the petitioner. He has said in his judgment that on the point of talaq, the petitioner in her statement has stated that she has no knowledge of talaq and no talaq has taken place. From the perusal of the judgment impugned it is evident that the learned lower court has taken this ignorance as a proof of talaq in favour of opposite party No. 2. This is totally against the spirit of law relating to evidence. The basic law of evidence is that who alleges the fact should prove it. On the other hand the learned lower court has totally misread and misinterpreted the evidence of D.W. 1 and D.W. 2. The second witness of talaq Bundu has not been produced. The statement of D.W. 2 Islamuddin is full of inner inconsistencies as far as his statement relating to execution of talaqnama and its pronouncement is concerned. He has admitted in his cross examination that he does not know how to read and write Hindi. It should be mentioned here that the talaqnama filed before the learned trial court is in Hindi. Bundu is illiterate which is evident by the fact that he had put his thumb impression on the talaqnama. Further D.W. 2 Islamuddin has said at one place that the talaqnama was written by an advocate but at other place he has said that some other person had written it and that it was not read over to him. In nutshell the statement of D.W. 2 is totally unreliable.

12. Nowhere in his statement opposite party No. 2 has said that the talaq was ever pronounced. The position of law is clear that a talaq which has not been pronounced cannot be effective.

13. On the basis of the above statement and law laid down in Shamim Ara's case (supra) I am of the view that the conclusion arrived at by the learned lower court regarding factum of talaq cannot be sustained. The findings are perverse, appreciation of evidence is absolutely improper and a negative approach has been adopted by the learned lower court while dealing with the factum of talaq.

14. In the above circumstances I am of the view that the revision has got force and it should be allowed.

15. The revision is allowed. The impugned judgment and order dated 12.5.2008

passed by learned Principal Judge, Family Court, Meerut in Case No. 413 of 2001 u/s 125 Code of Criminal Procedure is quashed and set aside.

16. This Court cannot allow this revision at this stage outrightly because the learned lower court has not given its findings on many issues which were before it while disposing of the petition u/s 125 Cr.P.C., for example income of the husband, desertion of the wife without a reasonable cause, separate living by wife without justification etc. Therefore, this Court has been left with no option but to remand the case to the learned lower court and accordingly the matter is remanded back to the learned lower court.

17. The evidence of the parties in the case is complete and, therefore, it does not appear necessary that the parties should be permitted to lead further evidence. The learned lower court is directed to re-hear the final arguments and decide the case on merits keeping in view the law laid down in Shamim Ara's case (supra) and dispose the petition of within a period of two months from the date the learned lower court receives a certified copy of this order. It is made clear that the learned lower court is at liberty to give its fresh finding on the factum of talaq after proper appreciation of evidence available on record and keeping in view the guidelines given by this Court in this judgment above.