

(1999) 04 BOM CK 0004

In the Bombay High Court

Case No : Criminal Writ Petition No. 1299 of 1990

Smt. Jaitunbi Mubarak Shaikh

APPELLANT

Vs

Mubarak Fakruddin Shaikh and Another

RESPONDENT

Date of Decision : 22-04-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 126, 127, 128, 488
Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 2, 3, 3(1), 3(2), 3(3)
Waqf Act, 1954 — Section 9

Citation : (1999) CriLJ 3846 : (1999) 3 MhLj 694

Hon'ble Judges : T.K. Chandrasekhara Das, J; A.V. Savant, J

Bench : Division Bench

Advocate : A.R. Kamath, Addl. P.P., K.B. Sonwalkar, for the Appellant; R.G. Ketkar, for the Respondent

Judgement

A.V. Savant, J.—This Criminal Writ Petition is filed by a divorced Muslim woman. In view of the reference to a Division Bench by T.K. Chandrasekhara Das, J. the following questions of law arise for our determination :-

(1) In proceedings for maintenance instituted by a Muslim wife, if a Muslim husband makes a plea in his written statement that his marriage had been dissolved at an earlier date in the talak form, even assuming that the fact of such dissolution at an earlier date is not proved, whether the filing of the written statement containing such a plea of divorce in the talak - form amounts to the dissolution of marriage under the Muslim Personal Law from the date on which such a statement was made?

(2) Whether the law laid down by this Court in Chandbi Ex Vs. Bandesha, still holds good or whether it requires re-consideration in view of the two subsequent decisions of this Court in:-

i) Mehtabbi and Another Vs. Sk. Sikander and Another, ; and

ii) Shaikh Mobin s/o. Shaikh Chand Maharashtra, reported in 1996 (1) Mh LJ 810.

(3) What is the extent of the liability of a Muslim husband under clause (a) of Sub-section (1) of Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short, the 1986 Act). In other words, whether the liability to make a reasonable and fair provision and pay maintenance is only restricted to the iddat period or whether it extends beyond the iddat period?

(4) What is the nature of the right given to a divorced Muslim woman who has not re-married and who is not able to maintain herself after the iddat period having regard to the provisions of Section 4 of the 1986 Act.

We have heard the learned Counsel Mr. Sonwalkar for the divorced wife; Mr. Ketkar for the husband and Miss Kamath, A.P.P. for the State. In order to answer the above questions, a few relevant facts may be stated.

2. The petitioner-wife had filed Misc. Application No. 61 of 1980 u/s 125 of the Code of Criminal Procedure, 1973 (for short, "Code") for maintenance against respondent No. 1 husband. By an Order dated 26th June, 1981 the Magistrate fixed the amount of maintenance at Rs. 60/- p.m. On the 6th October, 1986 the wife initiated the present proceedings by filing Maintenance Application No. 297 of 1986 u/s 127 of the Code for enhancement of maintenance claiming that she was entitled to Rs. 500/- per month. In the application for enhancement, the wife contended that she was ill-treated by her husband and was driven out of the matrimonial home, pursuant to which she had made an application for maintenance. However, having regard to the general inflationary tendencies; it was not possible for her to maintain herself in the meagre sum of Rs. 60/- per month. She was unwell but was not able to afford the medicines needed by her. She alleged that her husband had improved his financial condition. He had secured a permanent job in the Fire Brigade of Baramati Municipal Council and was earning Rs. 1000 to Rs. 1200/- per month. He was also trading in cattle in Baramati and Phaltan Markets and was earning Rs. 500 to Rs. 700 per month. The wife, therefore, claimed that the amount of Rs. 60/- should be enhanced to Rs. 500/- per month.

3. In reply to this Application dated 6-10-1986, the husband filed his written statement on the 1st November, 1987. He denied the allegations made by the wife. He contended that he had already given a talak to his wife on 29-10-1987 and he had informed her by a notice sent by registered post to that effect which was refused by her. He had sent an amount of Rs. 125/- towards Mehr and Rs. 150/- towards maintenance for the iddat period. However, since the wife had refused to accept the said amount, the husband had deposited the said amount in the Magistrate's Court. The husband specifically contended that in view of the provisions of the 1986 Act, the application was not maintainable in the Magistrate's Court. Reliance was placed on the provisions of Sections 5 and 7 of the 1986 Act, to which we will make a reference later.

4. The trial Magistrate framed the necessary points, including the question as to

whether the husband had divorced the wife as alleged. The husband led the evidence of two witnesses Farukh Sayed and Shaikh Hassan. The Magistrate disbelieved the evidence on the point of talak and held that he had jurisdiction to entertain the application for enhancement since the 1986 Act was not applicable in view of the fact that there was no divorce. On merits, the Magistrate enhanced the amount from Rs. 60 to Rs. 300 per month under his Order dated 30th September, 1988.

5. Being aggrieved by the said Order, the husband preferred Criminal Revision Application No. 220 of 1988 in the Sessions Court, at Satara. The learned Sessions Judge came to the conclusion that though the plea of talak given on 29-10-1987 as pleaded by the husband in his written statement filed on 11-11-1987, was not proved on evidence, still in view of the decision of this Court in Chandbi Ex Vs. Bandesha, , the declaration of talak would, at any rate, be effective from the date of filing of the written statement viz. 11-11 -1987. Hence, he held that the wife would not be entitled to maintenance from 11-11-1987. It was held that after 11 -11 -1987 the divorced wife would not be able to apply u/s 125 or u/s 127 of the Code in view of the provisions of the 1986 Act. In the result, the Sessions Court partly allowed the Revision of the husband, restricting his liability to pay maintenance at the rate of Rs. 300/- only till 10th November, 1987. It is this Order which is challenged before us by the wife.

6. As mentioned in the opening para, the matter has been referred to us since certain important questions of law arise for consideration as mentioned at the outset in view of the difference of opinion in the views expressed by the learned single Judges.

7. Let us take up the first question for consideration. In the application for maintenance filed by the wife, the husband takes a plea in the written statement that he had dissolved his marriage at an earlier date in talak form. On evidence, such a contention has been held to be not proved in the proceedings u/s 125 or Section 127 of the Code. Whether the talak takes effect from the date of filing of the written statement containing the plea of divorce in the talak form? For answering this question, we would first refer to the definition of "marriage" in section/para 250 of Mulla's Principles of Mahomedan Law, Nineteenth Edition. Marriage (nikah) has been defined to be a contract which has for its object the procreation and the legalizing of children.

Turning to the definition of "divorce", Section 307 provides that the contract of marriage under the Mahomedan Law may be dissolved in any of the following ways (i) by the husband at his will, without the intervention of a Court; (ii) by mutual consent of the husband and wife, without the intervention of a Court; and (iii) by a judicial decree at the suit of the husband or wife. Section 308 deals with divorce in the talak form and on the authority of text-books like Macnaghten, Hedaya and Baillie it is provided that any Mahomedan of sound mind, who has attained puberty, may divorce his wife whenever he desires, without assigning

any cause. Section 310 makes it clear that a talak may be effected either orally or by written document called a "talaknama". As far as oral talak is concerned, no particular form of words is prescribed for effecting a talak. If the words are express (saheeh) or well understood as implying divorce, no proof of intention is required. If the words are ambiguous (kinayat), the intention must be proved. It is not necessary that talak should be pronounced in the presence of the wife or even addressed to her. If a man says to his wife that she has been divorced yesterday or earlier, it leads to a divorce between them, even if there be no proof of a divorce on the previous day or earlier.

8. It appears to be well-settled that a statement by a husband in the pleadings filed in answer to a petition for maintenance by the wife that he had divorced her long ago operates as a talak and the wife shall be treated to have been divorced on the date on which statement to that effect was made by the husband, in the written statement. This appears to be the consistent view taken in the following cases :-

(i) In *Asmat Ullah and Others Vs. Mt. Khatun-Unnisa and Others*, , quoting from Syed Ameer Ali's *Mahomedan Law*, 5th Edition, page 479 it has been held that if an acknowledgment of talak is made by a husband, talak will be held to take effect at least from the date upon which the acknowledgment is made.

(ii) In *M.M. Abdul. Khader v. Azeeza Bee*, referring to the same learned author, Syed Ameer Ali, it has been held that under the Mahomedan Law the husband can declare a valid talak in the absence of a wife, but before it can be acted upon it must be communicated to the wife. Hence, when the wife has come to know of the talak given to her by the husband, it must be deemed to have come into effect on that day and she would be entitled to maintenance up to that date and not for the later period.

(iii) In *Wahab Ali v. Qamro Bi* AIR 1951 Hyd 117 : 52 Cri LJ 1299 proceedings were u/s 488 of the old Code of 1898. It was held that where the husband stated in his written statement to the application u/s 488 that he had already divorced his wife and the court came to the conclusion that the divorce pleaded was not proved, even then, such a statement in the written statement itself operated as an expression of divorce by the husband from that moment. It was further held that such a woman is entitled to maintenance only during the iddat period.

(iv) In *Enamul Haque Vs. Bibi Taimunissa*, referring to some of the above mentioned decisions, it was held that although the factum of divorce was not proved by the husband, the wife was liable to be saddled with the knowledge of divorce from the date of filing of the written statement. It was, thus, held that the divorce will be final when the wife is informed of the divorce.

(v) In *Mohammad Ali Vs. Fareedunnisa Begam and Another*, , it was held that on the wife's demand of maintenance, if husband issues a notice that she had been divorced on the date of marriage itself, in spite of wife's denial of divorce, such a notice will operate as a declaration of divorce from its date.

(vi) In *Smt. Ajmerylussan v. Moin Ahmad* 1983 All LJ 1332, it was held by S. Saghir Ahmad J. (as his Lordship then was) that if a suit was filed by the husband for a declaration that he had divorced his wife, though there was no reliable evidence in support of the plea of divorce, the wife could be treated to have been divorced on the date on which a statement to that effect was made by the husband in his plaint.

9. A perusal of the ratio of the above decisions based on the authority of ancient texts like *Macnaghten*, *Hedaya* and *Baillie* leaves no doubt in our mind that the pronouncement by a husband in his written statement that he had divorced his wife earlier, though such a fact is not proved on evidence, would operate as a divorce in the *talak* form at least from the date of filing of the written statement. This is also the view expressed by S.M. Shah, J. in *Chandbi Ex Vs. Bandesha*, . That was a case where in proceedings u/s 488 of the old Code, the husband had pleaded that he had divorced his wife 30 years ago. The Magistrate had rejected the contention and granted maintenance of Rs. 10/- per month. The husband filed a Revision to the Sessions Court whereupon a reference was made to this Court to decide the question as to what was the effect of the declaration of divorce in the written statement. Reliance was placed on the decisions of the Allahabad High Court in *Asmat Ullah and Others Vs. Mt. Khatun-Unnisa and Others*, and of the Hyderabad High Court in *Wahab Ali's case* 52 Cri LJ 1299 (*supra*). Reliance was also placed on a passage in the Question Answer form appearing in *Macnaghten's Mahomedan's Law*, Fourth Edition, page 296 and it was held that though a Mahomedan may fail to prove his contention in the written statement, that he had divorced his wife some years ago, nevertheless, such a statement made by him in the written statement to the effect that he had divorced his wife earlier would operate as an acknowledgement of the divorce by him and a declaration of divorce as from the date on which the statement was made. In our view, the decision of this Court in *Chandbi's case* is consistent with the principles of Mahomedan Law enunciated in *Mulla's Commentary*, which is based on the authority of ancient text like *Macnaghten*, *Hedaya* and *Baillie*. However, since a reference has been made to us because of a dissenting note sounded by two learned single Judges in the two subsequent decisions, we will consider the said decisions.

10. In *Mehtabbi and Another Vs. Sk. Sikander and Another*, , decided by *Chapalgaonkar, J.* the wife had applied u/s 125 of the Code. The husband contended that he had divorced his wife in December 1988 and hence, in view of the provisions of the 1986 Act, the application was not maintainable u/s 125 of the Code. The Magistrate dismissed the application and a Revision was also dismissed by the Sessions Court. In the Writ Petition filed by the wife, the husband placed reliance on the decision of S.M. Shah, J. in *Chandbi's case*. In para 6 of the Judgment in *Mehtabbi's case* it has been observed as under:-

Mere pleadings in written statement that respondent No. 1 has divorced petitioner by itself will not prove the factum of divorce and absolve the husband

from proving divorce by cogent and reliable oral evidence.

The learned Judge, therefore, expressed his disapproval of the law laid down in Chandbi's case and allowed the petition filed by the wife.

11. In *Shaikh Mobin s/o. Shaikh Chand v. State of Maharashtra* 1996 (1) Mh LJ 810, decided by L. Manoharan, J. the wife had filed an application u/s 125, which was granted. The husband's Revision Application was dismissed by the Sessions Court and hence, he approached this Court. The question arose whether the contention of the husband in the written statement that he had divorced his wife in the talak form can operate as divorce. In para 8 of the Judgment, a reference is made to the Judgment of S.M. Shah, J. in *Chandbi Ex Vs. Bandesha*, and it is held that a mere contention in the written statement to the effect that, the husband had given talak to the wife, cannot be treated either as oral talak as a deed of talk executed in the presence of a Qazi. A mere statement to that effect in the written statement was held not to constitute a dissolution of marriage. Manoharan, J. did not agree with the view expressed by S.M. Shah, J. in *Chandbi's* case and agreed with the view expressed by Chapalgaonkar, J. in *Mehtabbi's* case. In the result, the husband's petition was dismissed.

12. We have already referred to the true legal position enunciated in *Mulla's Principles of Mahomedan Law* with reference to sections/ paras 307 to 310, which is based on the authority of ancient texts like Macnaghten, Hedaya and Baillie. In our view, the proposition of law accepted by S.M. Shah, J. in *Chandbi Ex Vs. Bandesha*, that the contention in the written statement filed by the husband in reply to the application for maintenance that he had divorced his wife earlier, even if such a contention is not proved, would operate as a declaration of divorce from the date of filing of the written statement is well founded. We, therefore, approve of the view expressed by S.M. Shah, J. in *Chandbi's* case. With respect, we find it difficult to agree with the view expressed by Chapalgaonkar, J. in *Mehtabbi's* case and by Manoharan, J. in *Shaikh Mobin's* case. We do not find any valid basis for the said view. We, therefore, overrule the said two decisions. As indicated earlier, the view expressed by S.M. Shah, J. in *Chandbi's* case seems to be the consistent view expressed by many other High Courts such as Allahabad, Madras, Hyderabad and Patna in the six decisions referred to in para 8 above. In this view of the matter, we answer the first question in the affirmative.

13. In view of our answer to the first question in the affirmative," our answer to the second question is in the negative viz. that the law laid down by this Court in *Chandbi's* case does not require re-consideration in view of the two subsequent decisions in *Mehtabbi's* case and *Shaikh Mobin's* case, which we have disapproved and overruled. We reaffirm the view expressed by S.M. Shah, J. in *Chandbi's* case.

14. Coming to the third question as to the extent of liability of the husband under clause (a) of Sub-section (1) of Section 3 of the 1986 Act, it is necessary to appreciate the historical background which led to the enactment of the said 1986

Act. In Mohd. Ahmed Khan Vs. Shah Bano Begum and Others, which is a decision of the Constitution Bench, the appellant, an Advocate by profession, had married the respondent and had children from her. In 1975, he had driven the wife out of the matrimonial home. In April, 1978, the wife filed an application u/s 125 claiming Rs. 500/- as maintenance. On 6th November 1978, the husband divorced the wife by irrevocable talak and contended that he had already paid maintenance to her for the Iddat period. In August 1979 the Magistrate directed the husband to pay a princely sum of Rs. 25/- per month to the wife. In July 1980, in the Revision filed by the wife, the Madhya Pradesh High Court enhanced the amount of maintenance to Rs. 179.20 per month, which was challenged by the husband before the Apex Court. Question which arose before the Apex Court was "Does the Muslim Personal Law impose no obligation upon the husband to provide for maintenance to his divorced wife?" On a consideration of the relevant provisions, of 1988 Code, 1973 Code, text books on Muslim Personal Law including Mulla, Baillie, Ameer Ali, Tyabji, Dr. Paras Diwan, Dr. K.R. Nuri and Ayats from the Holy Quran, the Apex Court held that the statements in the text book of Mahomedan Law were inadequate to establish the proposition that the Muslim husband was not under any obligation to provide for maintenance of his divorced wife who was unable to maintain herself. Since the Muslim Personal Law which limits the husband's liability for maintenance of his divorced wife to the period of iddat, does not contemplate or countenance the situation envisaged by Section 125 of the Code, namely the divorced wife who is unable to maintain herself, it cannot be said that the Muslim husband, according to personal law, is not under an obligation to provide maintenance, beyond the period of iddat to his divorced wife who is unable to maintain herself. The true position was that, if the divorced wife is able to maintain herself, the husband's liability to provide maintenance for her ceases with the expiration of the period of iddat. If, however, she is unable to maintain herself, she is entitled to take recourse to Section 125. Therefore, the Apex Court held that it cannot be said that there was any conflict between the provisions of Section 125 of the Code and those of the Muslim Personal Law. on the question of Muslim husband's obligation to provide maintenance for a divorced wife who was unable to maintain herself.

15. After the decision in Shah Bano's case there was some controversy as to the obligation of the Muslim husband to pay maintenance to his divorced wife after the iddat periods had expired. Parliament, therefore, thought it fit to enact the above referred 1986 Act. It is interesting to note the statement of objects and reasons which reads as under:

STATEMENT OF OBJECTS AND REASONS

The Supreme Court, in Mohd. Ahmed Khan Vs. Shah Bano Begum and Others, has held that although the Muslim law limits the husband's liability to provide for maintenance of the divorced wife to the period of iddat, it does not contemplate or countenance the situation envisaged by Section 125 of the Code of Criminal Procedure, 1973. The Court held that it would be incorrect and unjust

to extend the above principle of Muslim law to cases in which the divorced wife is unable to maintain herself. The Court, therefore, came to the conclusion that if the divorced wife is able to maintain herself, the husband's liability ceases with the expiration of the period of iddat, but if she is unable to maintain herself after the period of iddat, she is entitled to have recourse to Section 125 of the Code of Criminal Procedure.

2. This decision has led to some controversy as to the obligation of the Muslim husband to pay maintenance to the divorced wife. Opportunity has, therefore, been taken to specify the rights which a Muslim divorced woman is entitled to at the time of divorce and to protect her interests. The Bill accordingly provides for the following, among other things, namely :

(a) a Muslim-divorced woman shall be entitled to a reasonable and fair provision and maintenance within the period of iddat by her former husband and in case she maintains the children born to her before or after her divorce. Such reasonable provisions and maintenance would be extended to a period of two years from the dates of birth of the children. She will also be entitled to mahr or dower and all the properties given to her by her relatives, friends, husband and the husband's relatives. If the above benefits are not given to her at the time of divorce, she is entitled to apply to the Magistrate for an order directing her former husband to provide for such maintenance, the payment of mahr or dower or the delivery of the properties;

(b) Where a Muslim-divorced woman is unable to maintain herself after the period of iddat, the Magistrate is empowered to make an order for the payment of maintenance by her relatives who would be entitled to inherit her property on her death according to Muslim law in the proportions in which they would inherit her property. If any one of such relatives is unable to pay his or her share on the ground of his or her not having the means to pay, the Magistrate would direct the other relatives who have sufficient means to pay, the shares of these relatives also. But where a divorced woman has no relatives or such relatives or any one of them has not enough means to pay the maintenance or the other relatives who have been asked to pay the shares of the defaulting relatives also do not have the means to pay the shares of the defaulting relatives, the Magistrate would order the State Wakf Board to pay the maintenance ordered by him or the shares of the relatives who are unable to pay.

It would be evident that the objects mentioned in para 2(a) are sought to be achieved by enacting Section 3 whereas Section 4 seeks to achieve the objects of para 2(b).

16. Section 3 of the 1986 Act deals with the rights of a divorced Muslim woman which are enforceable against her husband in respect of (a) a reasonable and fair provision to be made for her and maintenance to be paid to her within iddat period; (b) where she herself maintains the children, a reasonable and fair provision to be made and maintenance to be paid by her former husband to the

wife for the children for certain period; (c) an amount equal to the sum of mahr or dower agreed to be paid to her; and (d) all properties given to her before or at the time of marriage or after her marriage. Section 3 reads as under:

3. Mahr or other properties of Muslim woman to be given to her at the time of divorce -

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to -

(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made or paid or the properties referred to in Clause (d) of Sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under Sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that-

(a) her husband having sufficient means, has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in Clause (d) of Sub-section (1) have not been delivered to her, make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mahr or dower, or the delivery of such properties referred to in Clause (d) of Sub-section (1) to the divorced woman :

Provided that if the Magistrate finds it impracticable to dispose of the application

within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under Sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure 1973 (2 of 1974) and may sentence such person : for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.

17. Whereas Section 3 deals with the right of a divorced woman against her husband, in respect of the four items specified in clauses (a) to (d) of Sub-section (1), it is clear Section 4 deals with the rights of a divorced woman who has not remarried and is not able to maintain herself after the iddat period. She can claim from her relatives who are entitled to inherit her property such reasonable and fair maintenance to her as may be deemed fit having regard to the needs of the divorced woman, standard of life enjoyed by her and other relevant circumstances. This is clear from Sub-section (1) of Section 4. If, however, the divorced woman who is unable to maintain herself has no relatives as mentioned in Sub-section (1) or if such relatives do not have enough means to pay maintenance ordered by the Magistrate, then such a divorced woman can, under Sub-section (2) of Section 4, apply to the Magistrate for a direction to the State Wakf Board established u/s 9 of the Wakf Act, 1954 to pay such maintenance as may be determined by the Magistrate having regard to all the relevant facts and circumstances. Section 4 dealing with the right of a divorced woman, who has not remarried and who is not able to maintain herself after iddat period reads as under:-

4. Order for payment of maintenance-- (1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not remarried and is not able to maintain herself after the iddat period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during the marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specifying his order:

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in Sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso of Sub-section (1) the Magistrate may, by order direct the State Wakf Board established u/s 9 of the Wakf Act 1954 (29 of 1954), or under any other law for the time being in force in a State functioning in the area in which the woman resides, to pay such maintenance as determined by him under Sub-section (1), as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

18. Section 5 of the 1986 Act, provides that if an application is made under Sub-section (2) of Section 3 by a divorced woman for enforcement of her rights against her former husband (which rights are stipulated in Sub-section (1) of Section 31, both spouses are given the choice of filing affidavits or declarations either jointly or separately, that they would prefer to be governed by the provisions of the 1973 Code. We are not concerned with Section 8 which deals with the power to make rules. However, Section 7 deals with transitional provisions making it clear that if an application by a divorced woman is pending either u/s 125 or Section 127 of the Code on the date of commencement of the 1986 Act, namely, 19th May, 1986, then, notwithstanding anything contained in the said Code and subject to the provisions of Section 5 of the 1986 Act, such an application is to be disposed of in accordance with the provisions of the 1986 Act. Thus, it is clear that in respect of an application u/s 3(2) of the 1986 Act, Section 5 gives a choice to the spouses to opt to be governed by the 1973 Code. Section 7 of the 1986 Act, makes it clear that the application u/s 125 or 127 of 1973 Code pending on the date of commencement of the 1986 Act will be governed by the provisions of 1986 Act.

19. In this background, we are called upon to construe the scheme of the provisions of Sections 3 and 4 of the 1986 Act, in the light of the controversy arising as a result of the decision of the Apex Court in Shah Bano's case and the statement of Objects and Reasons for the 1986 enactment. It is well settled that while interpreting the statute, the primary and foremost task of a Court is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment by supplementing the

written words "if necessary." These observations have been made by the Apex Court in *Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others*, . Similarly, it is well settled that a statute is best understood if one knows the reason for it. The reason for a statute is the serest guide to its interpretation. The words of a statute take their colour from the reason for it. There are external and internal aids and discover the reason for a statute. The external aids are Statement of Objects and Reasons when the bill is presented to Parliament and the reports of Committees which preceded the Bill. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Parliament is not expected to use unnecessary expressions. Parliament does not use any words without meaning something, nor does it legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation. These observations have been made by the Apex Court while interpreting the provisions of Orissa Forest Produce (Control of Trade) Act, 1981 in *Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others*, .

20. Bearing in mind the above guidelines, let us consider the scheme of the provisions of Sections 3 and 4. It is clear that Sub-section (1) of Section 3 enumerates the various types of claims which a divorced woman has against her husband at the time of divorce. Clause (a) of Sub-section (1) talks of (1) a reasonable and fair provision to be made by the former husband and (ii) maintenance to be paid to her within the iddat period.

Under the Mahomedan law marriage (nikhah) has been defined to be a contract which has for its object the procreation and the legalizing of children (Section 250 of Mulla's Principles of Mahomedan Law 19th edition). The husband having repudiated the contract is liable to compensate the wife and her claims have been specified in Sub-section (1) of Section 3 to consist of various items mentioned in Clauses(a) to (d). As far as Clause(a) is concerned, a controversy was raised before us as to whether the payment of maintenance should be confined to iddat period or whether the words "to be made and paid to her within the iddat period by her former husband" qualify the time for payment namely payment should be made within the iddat period. There are no words in Clause(a) which restrict the quantum of (i) a reasonable and fair provision to be made and (ii) maintenance to be paid only "during or for iddat period." Clause (a) makes it clear that the husband has to (i) make a reasonable and fair provision and (ii) pay maintenance within the iddat period. Needless to say that while making a reasonable and fair provision and paying maintenance, one is required to consider the needs of the divorced woman, the standard of life enjoyed by her means of her former husband and such other relevant circumstances, as are mentioned in Sub-section (3) of Section 3. Having regard

to the object of the Act in the light of the decision of the Apex court in Shah Bano's case the guidelines indicated by the Apex Court in interpreting a statute, where every word has to be given its due meaning in our view, the words "to be made and paid" will mean (i) a reasonable and fair provision to be made for her future and (ii) maintenance to be paid within the iddat period. Needless to say that such a reasonable and fair provision has to be made for the future and maintenance has to be paid to the wife within iddat period. It is not possible for us to accept the submission on behalf of the husband that the reasonable and fair provisions must be confined only till iddat period expires. In our view, a provision for the future of the divorced wife only till the iddat period expires would defeat the very idea of a provision being reasonable and fair. Iddat period has been defined in Section 2(b) of the Act.

21. There is one more reason in support of our construction of Clause(a) of Sub-section (1) of Section 3. In Clause(b), while dealing with the rights of the children maintained by the wife a reasonable and fair provision is to be made for the children and maintenance is to be paid for the children by former husband only for a period of two years from the respective dates of birth of such children. The words for a "period of two years," specifically limit the liability of the husband against whom application is made by the divorced woman u/s 3 of the 1986 Act. No such words are to be found in Clause(a) that the reasonable and fair provision is to be made only for the iddat period or for any specific period. On the contrary, the obligation cast upon the husband in Clause(a) is (i) to make a reasonable and fair provision for the future of the divorced wife and (ii) to pay maintenance within iddat period. In our view, the making of a reasonable and fair provision has to be for the future of the divorced wife and cannot be confined to the iddat period, which is a very short period as defined in Section 2(b) of the Act. Such a provision must take into account the future needs, including food, shelter, clothing, medical care in old age etc. The amount of maintenance, however, to be paid under Clause(a) can be confined only till the iddat period expires having regard to the scheme of Sections 3 and 4 read together.

22. In view of the phraseology used in Section 3(1)(a) where there is a distinction between the making of a reasonable and fair provision and paying maintenance, we may refer to the dictionary meaning of the words "provision" and "maintenance." In the concise Oxford Dictionary, ninth edition the word provision means (sic) the act or an instance of providing (made no provision for his future) b. something provided (a provision or bread). 2 (in pi) food, drink etc. esp. for an expedition.

In Webster's Encyclopedic Unabridged Dictionary of the English Language, 1989 Edition, the word "provision" means : a clause in a legal instrument, a law etc. providing for particular matter, stipulation : proviso. 2. The providing or supplying of something, esp. of food or other necessities. 3. arrangement or preparation before hand as for the doing of something the meeting of needs, the supplying of means etc. 4. something provided a measure or other means for

meeting a need. 5. a supply or stock of something provided. 6. provisions supplies of food.

The above meanings suggest that it is something provided for future needs such as food, shelter, clothing, medicines, etc. The word "provision" has also been interpreted by the Apex Court in *Metal Box Company of India Ltd. Vs. Their Workmen*, of the judgment while dealing with the Payment of Bonus Act, 1965, the Court has made a distinction between the words "provision" and reserve to the effect. Inter alia, that an amount set aside out of profits and other surpluses not designed to meet a liability, contingency, commitment or diminution in value of assets known to exist at the date of the balance sheet is a reserve, but an amount set aside out of profits and other surpluses to provide for any known liability of which the amount cannot be determined with substantial accuracy is a provision."

23. We may now consider the meaning of the word "maintenance." In the Concise Oxford Dictionary Ninth Edition, "maintenance" means "mem" (a)nans, tm/n, 1 the process of maintaining or being maintained 2, a. the provision of the means to support life, esp. by work etc. b. (also separate maintenance) a husband's or wife's provision for a spouse after separation or divorce: alimony. In Webster's Encyclopedic unabridged dictionary of the English Language, 1989 edition, "maintenance" means : 1 act of maintaining. The apartment was too expensive for easy maintenance. 2 state of being maintained. The maintenance of friendly relations with England has always been important. 3. means of upkeep support or subsistence, livelihood. The widow was left with sufficient maintenance.

Thus, on a true construction of the meaning of the word "provision" appearing in the context of Section 3(1)(a) of the 1986 Act, it would appear that a reasonable and fair provision for the future of the divorced wife would obviously include maintenance for future as well. This reasonable and fair provision, the husband would be liable to make within the iddat period.

24. As indicated above, Clause(b) of Section 3(1) deals with the rights of the divorced woman for the maintenance of her children. Clause (c) deals with the right of the divorced woman to claim an amount equal to the sum of Mahr or dower agreed to be paid to her at the time of marriage. Clause (d) gives right to the divorced woman to claim all the properties given to her before or at the time of marriage oh after her marriage by her relatives or friends or husband or by any relative or friends of the husband. Sub-section (2) of Section 3 deals with her right to make an application for enforcing the rights given u/s 3(1). Under Sub-section (3) where the Magistrate is satisfied that the husband having sufficient means has failed or neglected to make the provision or pay maintenance under Clauses(a) or (b) of Sub-section (1) or has failed to comply with the obligation under Clauses(c) and (d) of Sub-section (1), he makes an order within one month from the date of filing of the application directing the husband to make such a reasonable and fair provision and to pay maintenance

having regard to all the relevant circumstances mentioned in Sub-section (3). Under Sub-section (4) of Section 3 it is provided that if the husband fails, without sufficient cause to comply with the order made against him under Sub-section (3), the Magistrate is empowered to issue a warrant for levying the amount of maintenance as if it was a fine under the 1973 Code. The Magistrate is also empowered to sentence the husband in respect of the unpaid amount to imprisonment for a term which may extend to one year.

25. Thus, on the third question framed above, our answer is in two parts. As far as making of a reasonable and fair provision for the future of the divorced wife u/s 3(1)(a) of the Act, the liability is not restricted to the iddat period having regard to the dictionary meaning of the word "provision" quoted in para 22 above. In our view, the dictionary meaning of the word "provision" would make it clear that the Muslim husband is required to visualise the future needs of his divorced wife and make a reasonable and fair provision for the future needs of his wife. Such needs may include food, shelter, clothing, medical relief and such other factors as may be relevant depending upon the status of the parties which would include their standard of living. A reasonable and fair provision for the future would, therefore, include maintenance for the future also viz. beyond the iddat period and u/s 3(1)(a), it is the husband who must make the provision within the iddat period.

26. However, on the second part of the third question viz. the extent of the liability to pay maintenance, we are of the view that having regard to the scheme of the provisions of Sections 3 and 4 read together, the liability to pay maintenance u/s 3(1)(a) can be restricted only till the iddat period. After the iddat period expires, despite the husband having made a reasonable and fair provision, if the divorced wife who has not remarried, is still unable to maintain herself, she has to apply u/s 4 of the Act which gives her distinct rights against her relatives and the Wakf Board. It would be difficult to fasten the liability on the husband as well in respect of payment of regular monthly maintenance after the iddat period, which, in our view, would render the provision of Section 4 totally redundant. We do not think that Parliament intended to provide for two parallel remedies to the wife in respect of her regular maintenance after the iddat period, namely, one against the husband u/s 3(1)(a) and the other against her relatives or the wakf Board u/s 4. Such an interpretation would be contrary to the avowed object of the 1986 Act and the scheme of the provisions of Sections 3 and 4 read together.

27. As indicated earlier u/s 3(1)(a) itself, the husband is liable to make a reasonable and fair provision for the future of his divorced wife. We have already held that such a provision must take care of her maintenance for the future. Therefore, Section 3(1)(a) itself contains a provision safeguarding the rights of the divorced wife by way of a dual remedy against the husband, namely, (i) a reasonable and fair provision to be made by the husband for the future of his divorced wife; and (ii) payment of maintenance for the iddat period. Needless to

say that a reasonable and fair provision for the future, would take into account all the needs of the divorced wife such as food, shelter, clothing, medical care etc. This would obviously include a provision for her maintenance for the future.

28. There is yet another reason why we are inclined to take this view. As far as the provisions of Section 125 of the Code are concerned, the decision of the Apex Court in Shah Bano's case undoubtedly holds the field. u/s 5 of the 1986 Act, it is provided that if an application is made by the wife u/s 3(2) of the said Act, the parties have the choice of being governed by the provisions of Sections 125 to 128 of the Code. Both the parties have to exercise the choice in a particular manner indicated therein. It is unlikely that a Muslim husband would opt to be governed by Sections 125 to 128 of the Code by filing an affidavit as required by Section 5 of the 1986 Act. If he did that, he would still be liable to pay maintenance to his divorced wife after the expiry of the iddat period, if she proves that she was unable to maintain herself. When a Muslim husband knows that a remedy u/s 4 of the 1986 Act is available to his divorced wife, who has not remarried and who is not able to maintain herself, it is unlikely that in proceedings u/s 3(2) of the 1986 Act, such a husband would exercise his choice to be governed by the provisions of the Code. Section 5 postulates clear intention of the Parliament that, if a husband wanted to maintain his former wife by himself without divesting that responsibility to other persons/Wakf Board envisaged u/s 4 of the Act, he can do so with the consent of his former wife. A divorced wife will, in normal case, however, be not averse to such a gesture if it comes from her former husband. If the former husband agrees for such an arrangement, he will be automatically exonerated from his liability of making a reasonable and fair provision for her future, as contemplated in Sub-section (1) of Section 3 of the 1986 Act. However, the Parliament reaffirms its commitment to ensure that a divorced Muslim woman be properly maintained even after the iddat period. Subject to the option exercised u/s 5 of the 1986 Act, the position which, therefore, emerges is that (i) as far as the payment of maintenance is concerned, the husband is liable to pay maintenance to his former wife up to the iddat period u/s 3(1) of the 1986 Act; and (ii) as far as the making of a reasonable and fair provision for the future of his former wife is concerned, which must include future maintenance as well, it is the husband who is liable to make such a provision within the iddat period u/s 3(1)(a) of the Act.

29. We may now refer to some decisions on the question of the extent of liability of the husband u/s 3(1)(a) of the 1986 Act which were cited before us. In Arab Ahemadhia Abdulla and etc. Vs. Arab Bail Mohmuna Saiyadbhai and Others etc., , M.B. Shah, J. (as his Lordship then was) had occasion to consider the scheme of the provisions of the 1986 Act. The learned Judge considered the decision of the Apex Court in Shah Bano's case, the controversy arising thereafter, the relevant texts and the Ayats from the Holy Quran and reached his conclusions which are summed up in para 36 of the judgment at page 157 of the report which we think it convenient to reproduce. "36. From the aforesaid discussion, the following conclusions emerge :

(a) Under the Muslim Women Act a divorced woman is entitled to have a reasonable and fair provision from her former husband. Reasonable and fair provision would include provision for her future residence, clothes, food and other articles for her livelihood. She is also entitled to have reasonable and fair future maintenance. This is to be contemplated and visualized within the iddat period. After contemplating of visualizing it, the reasonable and fair provision and maintenance is to be made and paid to her on or before the expiration of the iddat period. This contemplation may depend upon the prospect of remarriage of the divorced woman. If the former husband fails or neglect to make or pay a reasonable and fair provision and maintenance, then the divorced woman is entitled to recover it by filing an application u/s 3(2) of the Act. The determination of reasonable and fair provision and maintenance depends upon the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband. This conclusion is inescapable in view of the different phraseology used by the Parliament in Section 3(1) and its clauses and Section 3(3). Section 3(1)(a) contemplates reasonable and fair provision and maintenance. Section 3(3) lays down objective criteria for its determination. u/s 3(1)(b) reasonable and fair provision and maintenance is to be made and paid only for a period of two years from the respective dates of birth of children. While the Parliament has not prescribed any such period u/s 3(1)(a). Section 4 only provides for reasonable and fair maintenance. Apart from this, even Section 5 gives option to the parties to be governed by the provisions of Sections 125 to 128 of the Criminal P.C.

(b) u/s 4 of the Muslim Women Act a divorced woman is entitled to get maintenance from her relatives such as her children or her parents or from the Wakf Board if she is not able to maintain herself after the iddat period from the provision and maintenance made and paid by her former husband.

(c) As per the provisions of Section 5 the application filed u/s 3(2) of the Muslim Women Act by a divorced woman can be disposed of by following the provisions of Sections 125 to 128 of the Criminal P.C. if the divorced woman and her former husband file affidavit to that effect.

(d) u/s 7 of the Muslim Women Act, all applications filed by a divorced women u/ S. 125 or u/s 127 of the Cr. P.C. Petitions which are pending for disposal before the Magistrate on the date of the commencement of the Act are required to be disposed of by the Magistrate in accordance with the provisions of the said Act.

(e) There is no provision in the Muslim Women Act which nullifies the orders passed by the Magistrate under Sections 125 and 127 of the Cr. P.C. ordering the husband to pay maintenance to the divorced woman or take away the vested rights which are crystallized by the orders passed u/s 125 or 127 of the Cr. P.C.

30. In Arab Abdulla" s case, it is thus held that the right of a divorced woman to have a reasonable and fair provision made by her former husband and maintenance paid to her is not restricted only till the expiry of iddat period. All

that Clause(a) of Sub-section (1) of Section 3 provide is that such a provision has to be made and maintenance has to be paid within the iddat period. For making the provision the Court will have to consider all the relevant circumstances which are enumerated in Sub-section (3) of Section 3. The Court will have to look to the future needs of the wife having regard to the standard of life enjoyed by her when her marriage subsisted. It has, therefore, been held that the words "within" used in Section 3(1)(a) cannot be read as "for" or "during." Similar view has been expressed by another learned single Judge of the Gujarat High Court in *Mumtazben Jusabbhai Sipahi Vs. Mahebubkhan Usmankhan Pathan and Another*, . The learned Judge has agreed with the view expressed in *Arab Abdulla's case* (supra).

31. Sreedharan, J. of Kerala High Court (as he then was) in *Ali v. Sufaira* 1988 (3) Crimes 147, on consideration of the decision in *Shah Bano's case* and also the statement of objects and reasons of the 1986 Act, held that the liability of the former husband to make a reasonable and fair provision u/s 3(1)(a) is not restricted only for the iddat period but the divorced woman is entitled to a reasonable and fair provision for her future being made by her former husband and also to maintenance being paid to her for the iddat period. It is obvious from the said judgment that the two words "made" and "paid" have to be so construed so as to make Section 3(1)(a) effective. Therefore, the husband must not only pay maintenance for the iddat period, but he must also make a reasonable and fair provision for the future of his former wife.

32. Before S.N. Variava, J. in notice of Motion No. 822 of 1996 in Suit No. 4800 of 1995 of *Ms. Hamida w/o Hanif Payak v. Hanif Ibrahim Payak* the question arose about the jurisdiction of this Court. The husband contained that having regard to the provisions of the 1986 Act this Court had no jurisdiction to entertain the suit and consequently, no order for maintenance could be made. The learned Judge, at the stage of disposal of the motion, on 25th September, 1997 has agreed with the view taken by M.B. Shah, J. in *Arab Abdulla's case* and held that the suit was maintained and if that was so, maintenance could be awarded to the wife and that such maintenance cannot be restricted only till the expiry of the iddat period but the payment is to be made within iddat period and reasonable and fair provision has to be made within the iddat period.

33. We will now refer to the Full Bench decision of the Andhra Pradesh High Court, where a contrary view has been expressed. In *Usman Khan Bahamani Vs. Fathimunnisa Begum and others*, , the Full Bench had framed 3 questions and on question Nos. 1 and 3 the learned Judges gave an unanimous verdict while on question No. 2 there was a difference of opinion. The three questions that were framed for consideration by the Full Bench are as under :-

(1) Whether a divorced Muslim woman can claim maintenance u/s 125 of the Code from her former husband even after passing of the Act of 1986?

(2) Whether the maintenance contemplated u/s 3(1)(a) of the Act of 1986 is

restricted only for the period of "Iddat" or whether a fair and reasonable provision has to be made for future also within the period of Iddat?

(3) How far Sections 125 to 128 of the Code can be held to be applicable after coming into force of the Act of 1986 and what should be the mode of disposal of the cases pending before the Courts under these sections?

The answers given in the majority judgment delivered by Sardar Ali Khan, J. are to be found in paras 40 to 42 as under :-

40. In the light of the foregoing discussion, in answer to the first question, we are of the opinion that the divorced woman cannot claim maintenance u/s 125 of the Code after passing of the Act of 1986.

41. In regard to second question, we hold that the fair and reasonable provision and maintenance contemplated u/s 3(1)(a) payable by the husband is restricted only for the period of Iddat and the liability of the husband to provide any provision or maintenance after the period of Iddat does not arise.

42. In regard to third question, we hold that Sections 125 to 128 of the Code are not applicable after coming into force of the Act of 1986, save in so far as the parties exercise their option u/s 5 of the Act to be governed by the provisions of Sections 125 to 128 of the Code.

However, the answer given by Bhaskar Rao, J. in his minority view on question No. 2 is to be found in para 57 as under :-

Accordingly, I am of the firm view that the maintenance contemplated by Section 3(1)(a) of the Act is limited to the Iddat period while the fair and reasonable provision to be made in terms of the same section runs for the future much beyond the iddat period.

34. In view of the above, our answer to the third question is in two parts. Firstly, the divorced Muslim woman would be entitled to a fair and reasonable provision for her future being made by her former husband which must include the maintenance for future also namely beyond the iddat period. However, on the second part of the third question, namely, extent of the liability to pay maintenance we are of the view that having regard to the scheme of the provisions of Sections 3 and 4 read together, the liability of the husband to pay maintenance u/s 3(1)(a) can be restricted only till the iddat period.

35. Coming to the last question regarding interpretation of Section 4, we have already indicated above that Section 4 deals with the right of a divorced Muslim woman who has not remarried and is not able to maintain herself after the iddat period. Section 4, therefore, deals with the situation where despite the husband having made a reasonable and fair provision for her future, which means beyond the iddat period, in a given case a divorced Muslim woman, who has not remarried may be unable to maintain herself. Then such a Muslim woman has a right to make an application and the Magistrate can make an order directing such

of her relatives as would be entitled to inherit her property on her death, according to Muslim law, to pay such reasonable and fair maintenance to her as he may determine fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during marriage and means of "such relatives. It is further provided in Sub-section (1) that such maintenance shall be payable by such relatives in proportion in which they would inherit her property and at such period as the Magistrate may specify in his order. The first proviso to Sub-section (1) further makes it clear that where such a divorced woman has children, the Magistrate shall order only such children to pay maintenance to her. In the event of any such children being unable to pay maintenance, the Magistrate shall order parents of such divorced woman to pay maintenance to her. The second proviso to Sub-section (1) makes it clear that if the parents are unable to pay his or her share of maintenance, the Magistrate may order that such share which cannot be paid by the parents may be paid by such of the other relatives as may appear to the Magistrate to have means for paying the same in such proportion as the Magistrate may think fit and proper.

36. After providing for this liability of the relatives, including the children and parents of the divorced woman, who has not remarried and who is not able to maintain herself after the iddat period, Sub-section (2) of Section 4 provides that if the divorced woman has no relatives as mentioned in Sub-section (1) or such relatives have no enough means to pay the maintenance ordered by the Magistrate, the Magistrate may direct the State Wakf Board established u/s 9 of the Wakf Act, 1954 or any other law for the time being in force, to pay such maintenance as may be determined by him. Thus, on the expiry of iddat period, a divorced Muslim woman who has not remarried and is unable to maintain herself, can pursue her remedy under Sub-section (1) of Section 4 against her own relatives whose liability is to be determined in the same proportion in which they would inherit her property on her death. In the alternative a direction can be given to the State Wakf Board under Sub-section (2) of Section 4. Our answer, therefore, to the last question would be that u/s 4 of the 1986 Act, it is either the relatives of the divorced wife or, in their absence or inability, it is the State Wakf Board which can be made liable to pay maintenance to the divorced wife.

37. We may, therefore, sum up our conclusions and answer the questions framed in the opening para as under :

1) In proceedings for maintenance instituted by a Muslim wife, if a Muslim husband takes a plea in his written statement that his marriage had been dissolved at an earlier date in the talk form, even assuming that the fact of such dissolution at an earlier date is not proved, the filing of the written statement containing such a plea of divorce in the talk form amounts to the dissolution of marriage under the Muslim Personal Law from the date on which such a statement made. Our answer to the first question is, therefore, in the affirmative.

2) The law laid down by this Court S.M. Shah, J. in Chandbi Ex Vs. Bandesha,

still holds good and does not require reconsideration in view of the two subsequent decisions of this Court in (i) Mehtabbi and Another Vs. Sk. Sikander and Another, and (ii) Shaikh Mobin s/o Shaikh Chand Maharashtra, reported in 1996 (1) Mh LJ 810. While affirming the view expressed in Chandbi's case we overrule the view expressed in Mehtabbi's case and Shaikh Mobin's case.

3) On the third question, our answer is in two parts : namely, (a) on a true construction of the meaning of the word "provision" appearing in Section 3(1)(a) of the 1986 Act, a Muslim husband is liable to make a reasonable and fair provision for the future of the divorced wife which would obviously include maintenance for her future as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period; (b) As far as the extent of the liability to pay maintenance u/s 3(1)(a) of 1986 Act is concerned, we are of the view that having regard to the scheme of the provisions of Sections 3 and 4 read together, such liability to pay maintenance can be restricted only till the iddat period.

4) On the question of nature of the right of a divorced Muslim woman who has not remarried and who is not able to maintain herself after the iddat period u/s 4 of the 1986 Act, such a divorced woman can proceed against her relatives who are liable to maintain her in proportion to the properties which they inherit from such a divorced woman including her children and parents. In the event of any of the relatives being unable to pay maintenance, the Magistrate can direct the State Wakf Board established u/s 9 of the Wakf Act, 1954 or any other law for the time being in force, to pay such maintenance as may be determined by him.

38. In the light of the above conclusions, we will dispose of the present writ petition. Admittedly, the petitioner-wife has not remarried and the respondent-husband has married a second time. Having regard to the two-fold liability of the husband u/s 3(1)(a) of the 1986 Act viz. (i) to make a reasonable and fair provision for the future of his divorced wife; and (ii) to pay maintenance to her, the writ petition is disposed of with the following directions :-

(i) As far as the liability of the husband to pay maintenance to his divorced wife is concerned, the impugned order dated 1st September, 1990 passed by the Sessions Court in Revision Application No. 220 of 1988 is partly modified. The said order directs the husband to pay Rs. 300/-per month by way of maintenance to the petitioner from 6th October, 1986, but only till 10th November, 1987. The same is modified to the effect that the husband would be liable to pay maintenance to her at the rate of Rs. 300/- per month till the expiry of the iddat period i.e. till 10th February, 1988;

(ii) The application filed by the petitioner-wife viz. Maintenance Application No. 297 of 1986 u/s 127 of the Code is hereby restored to the file of the learned Magistrate. In view of our conclusions mentioned above, the husband will be liable u/s 3(1)(a) of the 1986 Act to make a reasonable and fair provision for the future of the petitioner, which will include maintenance for her future as well.

(iii) Since the matter is pending since 1986, we direct the parties to appear before the trial Magistrate, at Phaltan, on 5th July, 1999, as agreed before us by both the learned counsel. The parties will be free to amend their pleadings in Maintenance Application No. 297 of 1986 on the question of liability of the husband to make a reasonable and fair provision for the future of the petitioner u/s 3(1)(a) of 1986 Act. Both the parties will be free to lead necessary evidence in support of their pleadings and raise all the contentions available to them in accordance with law.

(iv) Having regard to the provisions of Section 5 of the 1986 Act, since we have restored Maintenance Application No. 297 of 1986 in the trial Court, both parties are free to exercise their option before the trial Magistrate in terms of the provisions of Section 5 of the 1986 Act.

(v) The trial Magistrate is directed to hear and dispose of the said proceedings as expeditiously as possible and preferably, by the end of the year.

39. Rule made absolute in the above terms, with no order as to costs.

40. Issuance of certified copy expedited.