

(1994) 03 MP CK 0009

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 542 of 1993

Smt. Noorun-nisha and Another

APPELLANT

Vs

Maqsood Ahmad

RESPONDENT

Date of Decision : 04-03-1994

Acts Referred:

Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3, 3(1), 3(2), 3(3)

Citation : (1994) CriLJ 3129

Hon'ble Judges : K.M. Agarwal, J

Bench : Single Bench

Advocate : A. Usmani, for the Appellant; R.K. Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Agarwal, J.—This revision by the Muslim wife and her minor son through the non-applicant Muslim husband is directed against the impugned order of the first revisional Court whereby the litigation expenses and the interim maintenance granted by the Court below in proceedings initiated at the instance of the applicants u/s 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, (in short, the "Act") have been set aside.

2. It is not disputed that after the date of her divorce and after the period of her iddat, the applicant No. 1 filed a petition against the non-applicant for realisation of the amount of Mahr as also for her maintenance and the maintenance of her minor son u/s 3 of the said Act. She also made an application for directing the non-applicant to pay the amount of Mahr and also to pay her and to her minor son interim maintenance and cost of litigation. On the basis of this application, it appears that the Court below was pleased to direct the non-applicant to pay the amount of Mahr as also to pay interim maintenance and cost of litigation to the applicant. Being aggrieved, the non-applicant-husband preferred a revision which was allowed by the IVth Addl. Sessions Judge, Jabalpur, by its impugned order dated 20-7-1993. Being aggrieved, the applicants have preferred this criminal

revision.

3. It was not disputed before me that the applicant No. 1 was married to the non-applicant on 25-2-1988 and that the applicant No. 2 was born to them on 23-10-1989. After the birth of applicant No. 2, the applicant No. 1 was divorced by the non-applicant on 8-8-1990. The instant application u/s 3 of the Act was filed by the applicants on 14-8-1991. It is not in dispute that the amount of Mahr that was awarded by the Court below and affirmed by the impugned revisional order has been paid by the non-applicant to the applicant No. 1. Now, therefore, the question that is required to be answered is whether the applicants are entitled to any maintenance and/or interim maintenance and-cost of litigation from the non-applicant u/s 3 of the Act. Before deciding that question, it would be necessary to look to the relevant provisions of the Act which read as follows:-

3(1). Notwithstanding anything contained in any other law for the time being in force, a divorced women 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 relative or friends or the husband or any relatives of the husband or his friends.

4. A careful reading of clause (a) of Sub-section (1) of Section 3 of the Act would show that a divorced woman is only entitled to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband. In the present case, it is not in dispute that the petition itself was filed after the period of iddat and, therefore, no interim amount of maintenance could be directed to be paid by the non-applicant to the applicant No. 1

5. Similarly, clause (b) of Sub-section (1) of Section 3 of the Act entitles a divorced woman 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. In the present case, only one son was born to the applicant and the non-applicant on 23-10-1989. The petition u/s 3 of the Act was filed on 14-8-1991 i.e., 2 months and 10 days before expiry of the period of 2 years from the date of birth of the applicant no 2, i.e., from 23-10-1989. Accordingly, by virtue of provisions of Section 3(1)(b) of the Act the applicants

were not entitled to claim maintenance for the applicant No. 2 for a period of more than 2 years. On the date of the application u/s 3 of the Act that period of 2 years was only short by 2 months and 10 days and, therefore, maintenance for the son could be claimed u/s 3(l)(b) of the Act only for this period of 2 months and 10 days. For all these reasons, I do not find any case for interference with the impugned order of the lower revisional Court.

6. The learned counsel for the applicants relied on Arab Ahemadhia Abdulla and etc. Vs. Arab Bail Mohmuna Saiyadbhai and Others etc., , Usman Khan Bahamani Vs. Fathimunnisa Begum and others, , Savitri Rawat Vs. Govind Singh Rawat, , G.M. Jeelani Vs. Shanswar Kulsum and Another, , M.A. Hameed Vs. Arif Jan and Another, and Mrs. Rupsan Begum Vs. Md. Abdus Sattar, in support of his contention that even after the divorce, the divorced wife and the child out of such broken marriage were entitled to main-. tenance without any impediment of the period of Iddat, or that of 2 years for the child. I find no substance in the contention and I also do not think it necessary to discuss the various authorities cited by the learned" counsel for the applicants in view of the fact that clauses (a) & (b) of Sub-section (1) of Section 3 of the Act are very clear and unambiguous to support the view I am taking. Even the two High Courts, i.e., Gujarat and Andhra Pradesh, do not agree as to the entitlement of the divorced wife to receive maintenance after the priod of Iddat or about right of a child for claiming maintenance for a period of more than 2 years from the date of his birth. The decision of other Courts only have a persuasive value and for that reason also it is not necessary to refer to those cases or to discuss them at length for finding support for the view I am taking in this revision.

7. In this connection, I also wish to point out that the wife is also entitled to get back all the properties given to her before or at the time of marriage or after her marriage by her relative or friends or the husband or any relatives of the husband or his friends by virtue of clause (d) or Sub-section (1) of Section 3 of the Act. Further as provided in Sub-section (3) of Section 3 of the Act where an application has been made under Sub-section (2) by a divorced woman, the Magistrate is competent to 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 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 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 women on satisfaction of the facts 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.

Accordingly, after payment of the amount of Mahr the Court below is expected to see if the claim made for and on behalf of the wife u/s 3 of the Act covers permissible claims under clause (d) of Sub-section (1) of Section 3 of the Act and/or claims under clauses (a) & (b) of sub-section (3) of Section 3 of the Act and if it finds the claim so made, it is bound to decide those claims in accordance with law.

8. Subject to observations aforesaid, I find no substance in this revision and accordingly it is hereby dismissed but without any order as to costs.