
(2011) 09 UK CK 0026
In the Uttarakhand High Court
Case No : Criminal Revision No. 221 of 2008

Smt. Praveen Rao

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 27-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 3, 5

Citation : (2011) 09 UK CK 0026

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Servesh Kumar Gupta, J.—This criminal revision is directed against the judgment and order dated 5.11.2008, rendered by the Judge, Family Court, Haridwar in Case No. 200/2005 titled as Smt. Praveen Rao v. Javed. The said case was initiated by Smt. Praveen Rao (wife) against Javed (husband/Respondent No. 2) seeking maintenance u/s 125 Code of Criminal Procedure. Vide the impugned judgment and order, her claim of maintenance has been rejected.

2. The facts of the case, shorn of unnecessary details, are that the revisionist Smt. Praveen Rao was wedded with the Respondent No. 2 Javed as per Muslim rituals and ceremonies, though the revisionist claims that the wedding took place on 28.11.2008, whereas Javed claims that the same was solemnized on 4.1.1996. Be that as it may, the fact remains that the parties are married to each other. There is no issue from this wedlock. Having passed a couple of years amicably with all matrimonial bliss, the differences cropped up between the couple. The allegations were made by wife/revisionist against atrocious behaviour of her husband/Respondent No. 2 for demand of dowry. This bitter relation aggravated further and, in the intervening night of 19/20.11.2004, a quarrel took place between the couple. As per the version of the wife, she was beaten by her husband on the said intervening night, while as per the counter-

version of Javed, an attempt was made by his wife Smt. Praveen Rao to assault him with a knife, and Mr. Javed having felt the limit of tyrannical attitude at the hands of his wife Smt. Praveen Rao, divorced her in accordance with the provisions of the Shariat Law. Per contra, Smt. Praveen Rao claimed that she left her husband on the next day on 20.11.2004 because of his ignominious treatment of her, and went to her parent's house, which was not situated very far from her in-laws' house, and few months thereafter she moved an application u/s 125 Code of Criminal Procedure claiming maintenance from her husband.

3. In response to the maintenance petition, Mr. Javed took the plea before the court below that he had already pronounced "Talaq" as per the Shariat Law and, therefore, Smt. Praveen Rao no more remained his wife and, as such, she is not entitled to any maintenance u/s 125 Code of Criminal Procedure. The court below accepted the contention of the husband-Respondent and decided the matter in his favour and against Smt. Praveen Rao, observing that she may claim maintenance u/s 3 of the Muslim Women (Protection of Rights on Divorce), 1986 (for short, the Act). Feeling aggrieved, Smt. Praveen Rao (wife) has filed this revision.

4. It can significantly be noted here that she was awarded rupees two thousand per month as an interim measure by the Family court, which was challenged by the husband before this Court in Writ Petition No. 617/2005, and this Court modified the order of interim maintenance from Rs. 2000/- to Rs. 1500/- vide order dated 12.10.2007. She was getting the same from her husband, but ultimately the Judge, Family Court, by the impugned judgment and order dated 5.11.2008, finally adjudicated the matter holding that Mr. Javed pronounced "talaq" three times and the parties being strictly "Sunni" Muslims, the divorce was effected then and there in the intervening night of 19/20.11.2004, the moment it was uttered by Mr. Javed.

5. I have heard learned Counsel for the parties and have re-appreciated the evidence available on the crucial point whether the divorce between the parties was effected, as claimed by Mr. Javed. Before the lower court, Mr. Javed examined himself as DW1 and reiterated his averments as have been made by him in the written statement filed against the application of maintenance. He has also examined Sharafat Ali, Advocate, as DW2, who has only proved the issuing of a notice on behalf of his client Mr. Javed. This notice was given by Sharafat Ali on 20.11.2004 i.e. just on subsequent day of the intervening night of 19/20.11.2004. In the said notice, the same assertion regarding the utterance of the word "talaq" by Mr. Javed to his wife Smt. Praveen Rao has been mentioned thereby adverting the intention of Javed to have had divorced his wife. The notice also mentions the name of two witnesses Amjad Ali (landlord of the house where the couple resided) and Asgar Ali (resident of the same Mohalla), before whom the divorce was given by Mr. Javed to his wife, but none of these witnesses have been examined in the court to corroborate the factum of divorce

(if any). Smt. Praveen Rao has categorically denied that any such divorce took place between them.

6. The learned Counsel for the revisionist has argued that husband Mr. Javed has taken the plea of divorce only in response to the maintenance petition in order to avoid the payment of maintenance, but he failed to prove by showing the sufficient evidence that he had divorced his wife and, therefore, Smt. Praveen Rao still enjoys the status of his wife and, as such, she is entitled for maintenance u/s 125 Code of Criminal Procedure. In support of his argument, the learned Counsel relied upon a catena of precedents, which are being discussed one by one in the subsequent paragraphs.

7. Muneer Ahmed Vs. Safia Mateen alias Shaheen, : It was a similar controversy before the Karnataka High Court, wherein it has been held that neither the legal notice nor the certificate were the testimony of the divorce in the absence of proof of the act divorce having been witnessed by any person and such persons having not been examined before the court to the factum of the divorce, then the divorce between the parties is not valid one in view of the relevant provisions of the Act. This way the status of the woman as wife and the man as husband remains and the question of not maintaining the wife u/s 125 Code of Criminal Procedure does not arise.

8. Rashid Nazfi alias Rashid Najfi Vs. Shahin Gulab : In this case, the Hon'ble Patna High Court has observed that if the plea has been taken only in the written statement/rejoinder to the maintenance petition that the Petitioner has been divorced and no documentary or oral evidence has been produced to hold this fact, then in that eventuality it will not be a valid divorce because the mere plea in the written statement is not sufficient to hold that Talaq is valid. Besides there should be something on record to show that preceding to pronouncement of Talaq, there was an attempt of reconciliation, when the plea of divorce taken and as such, the claim of the Petitioner that opposite party has been divorced cannot be held to be valid and as such the opposite party is entitled to interim maintenance.

9. Barik Seikh Vs. State of West Bengal and Others, : In this case, the Hon'ble Calcutta High Court was of the view that no valid pronouncement of "Talaq" by the husband was found, so she was entitled to get the maintenance as provided u/s 125 Code of Criminal Procedure without exercising such option (under Section 5 of the Act).

10. Shamim Ara Vs. State of U.P. and Another, : The Hon'ble Apex Court in this Case has dealt with this controversy elaborately and while observing that the pronouncement of "Talaq" has to be proved by the husband in evidence. Merely taking a plea in the written statement before the trial court in reply to an application for maintenance, that the non-applicant has divorced the applicant sometime in the past, held, would not have the effect of effectuating a divorce on the date of delivery of the copy of the written statement to the applicant, nor

could a similar statement made in an affidavit by the non-applicant filed in some other case, to which the applicant was not a party, be of any evidentiary value in this regard.

11. Moreover, there is an of late pronouncement of Hon''ble Apex Court rendered in case of Shabana Bano Vs. Imran Khan, , wherein the Hon''ble Court was of the view that Section 125 Code of Criminal Procedure is a beneficial piece of legislation and the Muslim women is entitled to claim the maintenance u/s 125 Code of Criminal Procedure even after the divorce provided she has not remarried and the amount of maintenance cannot be restricted for the Iddat period only.

12. In view of the proposition of law laid down in the aforesaid precedents, it is abundantly clear that Muslim women cannot be forced to claim maintenance under the Act only. She is well entitled to claim maintenance u/s 125 Code of Criminal Procedure irrespective of the fact whether she has been divorced or not, provided she has not remarried herself.

13. It has been contended on behalf of the learned Counsel for Respondent-husband that Smt. Praveen Rao, in her cross-examination conducted on 4.1.2007, has herself admitted that the marriage was not consummated till 19.11.2004 ever since the date of her wedding. Learned Counsel on this score has contended that if the marriage itself has never been consummated, as accepted by Smt. Praveen Rao in her cross-examination, then it is no longer a valid marriage in the eyes of law and the same is void ab initio. This contention advanced on behalf of Mr. Javed is not acceptable for the reason that Mr. Javed has not divorced his wife on this ground, nor Smt. Praveen has stated that she left the house of her husband because of non-consummation of the marriage. Mr. Javed, as alleged by him, divorced her on the ground of maltreatment and assault made to him by his wife in the intervening night of 19/20.11.2004.

14. The learned Counsel for the revisionist-husband has drawn the attention of this Court to the cross-examination of Smt. Praveen Rao, conducted on 8.1.2007, where in response to a question she has stated that "this is wrong to say that opposite party Javed is not impotent". Learned Counsel interprets this sentence as an acceptance on the part of Smt. Praveen Rao that her husband Javed is an impotent person and is unable to consummate the marriage. Even if it is assumed so for the sake of argument, that too is of no avail to Mr. Javed, and he cannot take the benefit of any answer given by Smt. Praveen Rao in response to a suggestion put forth to her by the learned Counsel of Mr. Javed in the lower court. Besides Smt. Praveen Rao, as is adverted from the various papers on record, appears to be a quite illiterate and rustic woman, not much exposed to the modern education. When such a lady faces a gruelling cross-examination at the hands of a Senior Counsel in the dock of the court, then it is very much natural on her part that sometimes she, willingly or unwillingly, may answer the questions without understanding the real nature and meaning thereof, particularly when the words "Dampatya Sambandh" have been used as a part of

the question put forth to her by an experienced counsel. These words are purely Sanskrit language words, and Smt. Praveen Rao, being a Muslim lady, born and brought up in an orthodox Muslim culture, is not supposed to understand the real meaning of these words.

15. Furthermore, after the pronouncement of the verdict by the Apex Court in Sabana Bano case (supra), the dispute, whether she still has the matrimonial status of a wife or the status of a divorced one vis-?-vis to the claiming of maintenance u/s 125 Code of Criminal Procedure, becomes irrelevant.

16. It takes me to decide the question as to what should be the optimum amount of maintenance, the revisionist-wife is worthy of getting from her husband. Mr. Javed has said that he was in the Government service and was a Cleaner in the U.P. Roadways, but for some reason in 1998, his services were terminated by the department. So, he is hardly having any means to survive himself. This contention is not acceptable, firstly, because there has been ample evidence on the record that he runs a milk dairy, secondly, this Court, taking into consideration his source of income, vide order dated 12.10.2007, awarded an interim maintenance to the tune of Rs. 1500/- per month to Smt. Praveen Rao, and thirdly, it is a settled law that a healthy and able-bodied person is bound to maintain his wife irrespective of the fact whether he has any worldly means of earning or not. Mr. Javed is an adult person and is not suffering from any physical ailment. In these circumstances, this Court is of the view that his wife Smt. Praveen Rao cannot be deprived from getting maintenance from her husband. In such view of the matter, maintenance to the tune of rupees two thousand per month will cater to the interest of justice.

17. In view of the foregoing facts and circumstances of the case and the settled legal proposition, the revision is allowed. The impugned judgment and order dated 5.11.2008, passed by the Judge, Family Court, Haridwar in Case No. 200/2005 Smt. Praveen Rao v. Javed, is hereby set aside. Application of Smt. Praveen Rao for maintenance u/s 125 Code of Criminal Procedure is accepted and she is awarded rupees two thousand per month as maintenance with effect from the date of institution of this application before the court below. Arrears, excluding the amount of interim maintenance already paid to her, shall be calculated accordingly and will be paid to Smt. Praveen Rao within two months from today.

18. Let the lower court record be sent back.