
(2009) 05 JH CK 0100
In the Jharkhand High Court
Case No : Criminal Revision No. 14 of 2003

Yasin Quaraishi

APPELLANT

Vs

Noorjahan Khatoon and Another

RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Muslim Women (Protection of Rights on Divorce) Act, 1986 — Section 5, 5(3)

Citation : (2009) 2 DMC 559 : (2010) 6 RCR(Criminal) 2472

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : S.N. Rajgarhia, for the Appellant; M.I. Khan, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kumar, J.—The revision is directed against the judgment/order dated 10.10.2002 passed in Maintenance Case No. 7 of 1999 by Sri Chandra Bhushan Singh, A.C.J.M., Lohardaga, whereby the learned Magistrate directed the petitioner to pay Rs. 300/- per month to the opposite party No. 1- wife and to pay Rs. 200/- per month to her children till their majority of age from the date of judgment/order.

2. It appears that the opposite party No. 1-wife, Noorjahan Khatoon filed an application u/s 125 Cr.P.C. before the court below stating therein that she was married with petitioner, Yasin Quaraishi in the year 1987 as per Muslim Custom & Rites and gave birth to two daughters and one son. She lived with petitioner as husband and wife, but since 1993 (Moharram) the petitioner-husband neglected to maintain his wife and children, since the opposite party-wife is helpless lady and unable to maintain herself and her children, hence she claimed maintenance for herself and on behalf of her children. She also stated that the petitioner-husband is presently living with one Tetri Khatoon and more demand of dowry for keeping her and her children.

3. The petitioner-husband appeared in this case and filed show-cause stating that the application u/s 125 Cr.P.C. was not maintainable. However, he admitted that he was married with applicant, Noorjahan Khatoon as per Muslim Custom & Rites, but denied allegation of torture against him. The petitioner submitted that the case has been filed after divorce in order to harass him. The petitioner also submitted that he was maintaining his wife and children after the birth of son, who is aged about six years in 1993. The wife left the company of the petitioner and her own children. The petitioner also submitted that he is ready to give the maintenance of Iddat period @ Rs. 300/- and also to pay amount of Dain Mehar of Rs. 5000/- and 2600/- and all dowry articles as per the list given during marriage. The petitioner also submitted that in view of Section 5 of Muslim Women (Protection of Rights on Divorce) Act, 1986 the application for maintenance u/s 125 Cr.P.C. is not maintainable.

4. Both the parties led evidence considering the evidences and claimed of the parties, the learned trial court came to a finding that the petitioner-husband has contacted second marriage, in that view of the matter, the wife is entitled to claim maintenance and separate residence and also claimed maintenance for her children, accordingly allowed the application.

5. It is submitted by the learned Counsel for the petitioner that the specific case of the petitioner before the trial court that after divorce of Muslim wife cannot claim maintenance u/s 125 Cr.P.C. and her only remedy is to claim maintenance u/s 5 of Muslim Women (Protection of Rights on Divorce) Act, 1986. Learned Counsel relied on a decision reported in 2002 (3) ECC 148 in the case of Sahebkhani K. Malek v. Jamilasrani S. Malek.

6. On the other hand, learned Counsel for the opposite party No. 1 has submitted that it is admitted by the petitioner raised in his show-cause that the opposite party is legally wedded wife. It is also admitted that he is not maintaining her and she is living with her children in a precarious condition. Learned Counsel further submitted that the petitioner-husband for the first time, has taken a plea of divorce in his written statement, which he has pronounced Talaque in the past and it cannot be accepted as Talaque, it is only for the sake of opposing the demand of maintenance by the wife and no Talaque has been proved, hence the order u/s 125 Cr.P.C. is fit and proper and provision of Sub-section 3(b) and 5 of the Muslim Women (Protection Right on Divorce) Act, 1986 will not apply in the instant case. Learned Counsel also relied on a decision reported in Shamim Ara Vs. State of U.P. and Another,

7. After hearing both the parties and going through the record, I find that the petitioner-husband for the first time, in his show cause, stated at para 11 that he had given divorce to his wife by oral Talque and requested the Anjuman Islamia, Lohardaga to send the notice to the wife-petitioner and her parents to come to Anjuman Islamia, Lohardaga to receive the maintenance of Iddat period, but they did not come, in that view of the matter, it is important to discuss the evidence given by the opposite party to prove the factum of divorce, if any, given

orally in the past.

8. In order to prove the factum of divorce the petitioner has examined the following opposite party witnesses:

Opposite party witness No. 1 is Toufique Qureshi stated that in 1996 in a Panchyati the petitioner-husband gave oral Talaque on 19.3.1996 at Lohardaga.

In his cross-examination, he stated that the wife, Noorjahan Khatoon was not living at Lohardaga since last 4-5 years.

Opposite party witness No. 2 is Kamrujama Qureshi, he stated in para 3 of his statement that in a Baithak a Talaque was given by the petitioner-husband, but he does not know as to whether any information to Anjuman Islamia, Lohardaga was given or not?

Opposite party witness No. 3 is Salic Parwej Quereshi, he also stated three or four years back in a Baithak in the house of Seraja Quereshi the petitioner-husband gave Talaque to his wife.

In his cross-examination, he stated that he does not know what was the amount of Denmohar and he does not know that the brother of Yasin Ahmad has got house in Quareshi Mohalla.

Opposite party witness No. 4 is Ahmad Ali, he stated in para 3 that a Panchyati was held in the house of Toufique where the petitioner-husband gave a Talaque to his wife.

Opposite party witness No. 5 is Md. Azad Qureshi, he stated that a meeting was held in the house of Toufique Qureshi in which the petitioner-husband had given Talaque to his wife, which look place three or four years back.

Opposite party witness No. 6, is Md. Shahid Fidai, who claims to be the member of Anjuman Islamia, stated that he had issued a notice and proved a photo copy of the said notice as Ext. C.

In his cross-examination, he stated that no Talaquenama came in the Anjuman Islamia nor he had seen any Talaquenama. He stated that no Talaquenama was shown to him by the petitioner-husband. Lastly, the petitioner was examined us opposite party witness No. 7, in his statement at para 15 he stated that he cannot say the date when he gave Talaque at Quarashi Mohalla.

9. Thus, from the evidences as discussed above, it is clear that petitioner has failed to prove that he had given Talaque to his wile. The evidence of the opposite party witnesses, are contradictory to each other. Opposite party witness No. 1 stated that Talaque was given in 1996 in a Baithak, which was held in Quarashi Mohalla while P.W.3 stated that Baithak was held three or four years back in the house of Seraja Quereshi. The witness was examined on 30th March, 2000 that means three years back i.e. 1996-97. The opposite party-petitioner submitted that notice was issued that Anjuman was informed, but opposite party

witnesses No. 2 stated that he does not know that any information was given to the Anjuman or not? When a man was brought from Anjuman in Court as P.W. 6, he wanted to prepare a photocopy of notice, which was objected to and in his cross examination, he stated that no Talaquenama came in the Anjuman nor he had seen any Talaquenama between the petitioner-husband and opposite party-wife and no decision was taken with regard to their cases in the Panchyati. The petitioner-husband himself when examined as P.W.7, had stated that he does not know the date on which he had given oral Talaque to his wife.

10. Thus, after considering the evidence and claim of the petitioner-husband as given Talaque, I find it is only a plea taken by him, in his written statement, none of the witness had been able to give exact date and place and in whose presence a Talaque was granted and when they informed Anjuman the person examined from Anjuman P.W.6 denied that any Talaque was made in the Anjuman nor any Talaquenama was signed by the petitioner-husband in his presence. He also denied that any decision was taken by the Anjuman, with regard to Talaque.

11. In that view of the matter, as decided by Supreme Court in the case of Shamim Ara Vs. State of U.P. and Another, that mere plea taken in the written statement of a divorce having been pronounced sometime in the past cannot by itself be treated as effectuating Talaq. A plea of previous divorce taken in the written statement cannot at all be treated as pronouncement of Talaq by the husband. Hence, I also find that a plea of the petitioner-husband that he had given Talaq to his wife in the year 1996 has not been proved and the marriage has not dissolved and since the petition is not maintaining his wife, Section 125 Cr.P.C. was rightly invoked by the trial court for granting maintenance in absence of any divorce and the provisions of Section 5 of Muslim Women (Protection of Rights on Divorce) Act, 1986, does not apply in the present case.

12. I find no merit in this revision application, accordingly, the same is dismissed.