

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 230 OF 2023

Javed Khan s/o Abdul Hameed Khan
& others

Petitioners

Versus

Firdous d/o Aziz Ahmed

Respondent

Mr. A. S. Barlota, Advocate for the petitioners.
Mr. Y. G. Somani, Advocate for the respondent.

WITH
CRIMINAL WRIT PETITION NO. 1341 OF 2021

Abdul Wajid Khan s/o Abdul Hameed Khan

Petitioner

Versus

The State of Maharashtra & another

Respondents

Mr. N. E. Deshmukh, Advocate for the petitioner.
Mr. V. S. Badakh, APP for the State.
Mr. A. S. Barlota, Advocate for respondent No. 2.

CORAM : R. M. JOSHI, J.
RESERVED ON : 6th SEPTEMBER, 2023.
PRONOUNCED ON : 8th SEPTEMBER, 2023.

ORDER :

1. Criminal Writ Petition No. 230/2023 has been filed by Javed to challenge the order dated 11th January, 2023 passed by the Revisional Court in Criminal Revision Application No. 106/2022

whereby the judgment and order passed by the Judicial Magistrate First Class, Aurangabad in Criminal Misc. Application No. 468/2016 is confirmed. Learned Judicial Magistrate First Class allowed the said application by respondent and directed the petitioner to return gold ornaments and dahej articles to her within a period of one month. Parties are referred to as 'ex-husband' and 'ex-wife' for convenience.

2. Writ Petition No. 1341/2021 is filed by Wajid against order dated 7th March, 2019 passed by learned Judicial Magistrate First Class, Aurangabad, below Exhibit 28 rejecting application for discharge filed in RCC No. 1279/2013 and order dated 20th October, 2021 passed by learned Additional Sessions Judge in Criminal Revision Application No. 155/2019 confirming the said order.

3. Facts which led filing of these petitions can be narrated in short as under :-

Petitioner Javed is ex-husband of respondent Firdous whose marriage was solemnised on 8th July, 2013 as per Muslim Personal Law. It is the case of Firdous, wife that at the time of marriage her parents had given gold ornaments along with other

essential articles as dowry. It is further contended that prior to the marriage, her uncle Wajid Khan i.e. petitioner in Criminal Writ Petition No. 1341/2021 has purchased dahej articles in her name and the same were given to the petitioner and she had also received gifts from the relatives. She filed application being Criminal Misc. Application No. 468/2016 under the provisions of Muslim Women (Protection of Rights of Divorce) Act, 1986 (for short "Muslim Women Act") claiming return of those articles. Prior thereto, she had filed proceedings against husband and in-laws on the allegations that they abused, harassed and ill-treated her. In the said proceeding, compromise was arrived at between the parties. It is the contention of the petitioner-husband that as per the compromise before the Mediator, an amount of Rs. 2,75,000/- was agreed to be paid as permanent alimony including dahej articles and gold ornaments. Whereas, it is the contention of wife that by entering into agreement as well as Khulanama it was agreed to pay one time alimony of Rs. 2,75,000/- and dahej articles were kept with third party and they were to be received by her after fulfilment of the conditions of agreement between the parties.

4. In the said proceeding filed under Muslim Women Act, though petitioner appeared however, did not file defence nor led any evidence in order to rebut the contentions of ex-wife. Ex-wife examined herself and also led evidence of Wajid Khan to support her contention apart from placing reliance on the documents on record. Learned Judicial Magistrate First Class passed order directing return of gold ornaments and dahej articles as claimed by respondent within a period of one month. Revision preferred against the said order came to be rejected.

5. Learned counsel for petitioner submits that the learned Magistrate as well as the Revisional Court have failed to take into consideration compromise between the parties more particularly report of Mediator which in specific terms records that one time alimony being decided at Rs. 2,75,000/- which includes dahej articles and gold ornaments. It is further grievance of the petitioner that respondent-wife did not adhere to the compromise terms and though she was expected to withdraw the proceeding, she infact contested the same. By referring to the relevant documents, the submission is sought to be supported. In support of his submissions, he placed reliance on judgment of Hon'ble Apex Court

in case of Mohd. Shamim and others vs. Nahid Begum and another,
2005 Cri.L.J. 889.

6. Learned counsel for ex-wife opposed the said contention by submitting that there are two documents which indicate that the parties were fully cautious of the fact that apart from amount of Rs. 2,75,000/-, gold ornaments and dahej articles were to be returned to the wife. He drew attention of the Court to compromise terms dated 18th November, 2013 and Khulanama. It is his submission that it was agreed between the parties that dahej articles are kept in the custody of Jamilbhai and after the compromise takes place in criminal proceeding under Section 498A of Indian Penal Code, the said articles shall be received by her. It is submitted that if there was no understanding to return articles, question of keeping them with Jamilbhai does not arise. He argued that in facts and circumstances of case, it cannot be held that claim over dahej articles and gold ornaments was given up by her. To support his submissions, he placed reliance on judgments in case of Daxaben vs. State of Gujarat and others, **2022 DGLS(SC) 925** and Dayawati vs. Yogesh Kumar Gosain, 2017 SCC OnLine Del 11032.

7. Perusal of record indicates that Javed and Firdous were married on 8th July, 2023 as per Muslim Personal Law. This marriage is dissolved by virtue of Khulanama dated 18th November, 2013. The parties had filed criminal proceedings against each other. There is no dispute about the fact that compromise dated 18th November, 2013 was executed between them in presence of their advocates wherein it was agreed that the articles given in the marriage as dowry are kept in the custody of Jamilbhai and that after compromise arrived at in the proceeding under Section 498A of Indian Penal Code, she is entitled to receive the same. Khulanama also mentions about these agreed terms. However, in Mediator's report, there is a reference about amount of Rs.2,75,000/- to have been agreed to be paid as permanent alimony including dahej articles and gold ornaments. It is pertinent to note that the Mediator's report though is dated 19th November, 2013, apparently it is based upon the agreement between the parties dated 18th November, 2023. There is nothing on record to show that any separate agreement was entered into between them which has been incorporated in the Mediator's report. Thus, in the light of two documents independently showing husband agreeing to share the dahej articles and ornaments with wife, it cannot be said that wife intended not to claim these articles.

8. In any case, it is a contention of both sides that the said agreement has not been complied with by both parties. It is the grievance of petitioner that as agreed in the said compromise, wife did not co-operate for disposal of proceeding under Section 498A of Indian Penal Code and on the contrary, she contested the same. Whereas the grievance of wife is that the proceeding filed against Wajid was to be withdrawn by Nazneen Khan i.e. the sister of petitioner. However, she did not compromise and withdrew the said proceeding. Having regard to case sought to be made out by both sides, with regard to non-compliance by them, it would always be open for them to adopt appropriate remedies as provided by law to redress their grievance. In the manner husband and his family filed quashment proceedings, applying same rule, it is always open for the ex-wife to invoke provisions of Muslim Women Act.

9. As far as proceeding filed before learned Judicial Magistrate First Class under provisions of Muslim Women Act is concerned, admittedly, applicant is 'divorced woman' as defined by Section 2(d) of Act. Section 3 thereof provides that a divorced woman is entitled to receive all properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the

husband or even any relatives of husband or his friends. This provision is absolute and mandatory in nature. The said right is notwithstanding anything contained in any other law for the time being in force. The purpose of said enactment is to protect the right of Muslim women who have been divorced by or even to those who have obtained divorce from their husband.

10. Section 3(3) of Act provides for making an application to Magistrate for seeking reliefs contemplated under the Act. Ex-wife, satisfies the requirements to be a divorced woman to maintain an application validly before Judicial Magistrate First Class. Once such application is so made, it is open for the ex-husband to resist the same. In the instant case, there is no dispute about the fact that due notice was issued to him and he appeared in the said proceeding. However, admittedly, no specific written plea was taken by him nor any evidence is led on his behalf. The only point of consideration before the Trial Court was as to whether there is substance in the contention of wife that during marriage, she received dahej articles as well as gold ornaments and she is entitled to claim the same from ex-husband.

11. Perusal of application shows that a specific case is made out before the learned Magistrate in this regard. Admittedly, the husband did not contest the said proceeding effectively. No reply was filed thereto nor any evidence was led in order to rebut the evidence led by the wife. Record further shows that the contention raised by the wife was not for the first time in this application or by way of improvement or new claim, but even in the earlier application filed under Protection of Women from Domestic Violence Act, she had specifically pleaded about the gold ornaments being gifted to her or received by her by way of dowry in the marriage. Not only gold ornaments but other articles are also specifically recorded therein. Apart from this, the terms of agreement dated 18th November, 2013 and Khulanama also shows acknowledgment of this fact by ex-husband. Had it been not so, there was no reason to keep the dahej articles with Jamilbhai. Thus, there was more than enough material available to show that ex-wife had lawful claim under the provisions of Muslim Women Act.

12. In the proceeding before Magistrate, initial burden was on the wife to plead and prove her case and substantiate her claim under the Act. She has discharged the said burden by examining

herself and also leading evidence of Wajid Khan. The onus, therefore, shifted upon the husband to rebut the said evidence. Admittedly, no evidence is led by the husband. Even from cross examination of applicant, no case is made out to discard her claim. No fault can be found with the order passed by learned Magistrate directing the husband to return dahej articles as well as gold ornaments to the wife, as her claim has practically gone unrebutted for want of any evidence led by ex-husband. This Court, therefore, finds no merit to the challenge to the order impugned in Criminal Misc. Application No. 468/2016.

13. As far as Criminal Writ Petition No. 1341/2021 is concerned, it is the contention of learned counsel for the said petitioner Wajid that compromise dated 18th November, 2013 provides for the clause of withdrawal of the proceedings against him filed at the instance of sister of Javed and as such said proceeding i.e. RCC No. 977/2013 cannot be proceeded further. Learned counsel for this petitioner, on instructions, restricts his prayer to the extent of challenge to the order of refusal of discharge and seeks discharge of present petitioner from the proceeding in question.

14. The law on the point of discharge is fairly settled to say that unless there is no reasonable ground to proceed with the trial or charge against accused is found groundless then it is open for the Court to discharge the accused. Prima facie, perusal of the complaint Wajid clearly indicates that offences are alleged against him. There is more than enough material on record to frame charge against him. Merely because there is failure on the part of the parties to comply with the compromise terms, it cannot become a ground for discharge. Similarly, just for the reason that the ex-husband of respondent and other relatives were successful in getting the proceeding quashed against them, it will not lead to acceptance of case of Wajid. Having regard to facts and circumstances of the case, complaint and statements of witnesses, this is not fit case for discharge. Hence, no interference in the impugned order of refusal of discharge is called for.

15. In the result, both the petitions stand dismissed.

(R. M. JOSHI)
Judge