



2024:DHC:9407



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 26th NOVEMBER, 2024

IN THE MATTER OF:

+ **CRL.REV.P. 797/2022**

NAZIA HABEEB

.....Petitioner

Through: Ms. Reema Roy and Md. Arif,
Advocates with Petitioner in person.

versus

MOHD NAJAM KHAN

.....Respondent

Through: Respondent in person

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging an Order dated 22.09.2022 whereby the learned Additional Sessions Judge, Patiala House Courts has set aside the summons issued to the Respondent herein in proceedings initiated under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as 'Domestic Violence Act'*). The learned Additional Sessions Judge by the impugned judgment has held that the proceedings under the Domestic Violence Act could not have been initiated by the Petitioner herein against the Respondent for the reason that the Respondent had already divorced the Petitioner and since the marriage between the Petitioner and the Respondent does not subsist, the proceedings under the Domestic Violence Act cannot be initiated.

2. Shorn of unnecessary details, the facts of the case reveals that the *nikah* between the parties was solemnized according to the Muslim rites and ceremonies on 29.12.2007. It is stated that two children were born out of the



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said wedlock. The elder child is a son who was born on 11.02.2009 and the younger child is a daughter born on 13.02.2019.

3. It is stated that the Petitioner gave a complaint against the Respondent to the Crime Against Women Cell on 22.10.2019 which resulted in filing of FIR No.712/2020 for offences under Section 498A, 406 & 34 IPC at Police Station Sagarpur.

4. The Petitioner thereafter has filed a petition under Section 125 CrPC for grant of maintenance and an interim maintenance for the sum of Rs.13,000/- has been awarded to the Petitioner. It is the case of the Petitioner that the Respondent is not paying the monthly maintenance.

5. It is pertinent to mention that despite the said proceedings, the Petitioner was residing at the residence of the Respondent and apprehending that the Petitioner would be evicted from the shared household, the Petitioner herein filed a petition under Section 12 of the Domestic Violence Act.

6. It is the case of the Respondent that after the proceedings under Section 125 CrPC were initiated, the Respondent has divorced the Petitioner through *talaq-e-ahsan* over three months through three separate notices. The three separate notices are dated 03.09.2020, 03.10.2020 and 03.11.2020. It is also stated that a sum of Rs.1,16,270/- which is the *Mehar* amount has also been given by the Respondent and therefore the divorce is complete.

7. The Order dated 24.03.2021 passed by the learned Metropolitan Magistrate, Mahila Courts issuing summons to the Respondent was challenged by the Respondent/husband by filing CA No.62/2021 stating that since the Respondent has divorced the Petitioner, no matrimonial relationship existed between the parties and since no relation existed



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between the parties, which could be covered under the Domestic Violence Act to invoke jurisdiction, there was no jurisdiction to entertain the said petition.

8. The Petitioner has raised a contention that the said divorce was not a valid divorce under Section 3 & 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019. The First Appellate Court has entered into the correctness or otherwise of the divorce as to whether the divorce pronounced was *talaq-e-ahsan* or *talaq-e-biddat* as contended by the wife. The Trial Court held that the Petitioner herein had nowhere specifically argued that the divorce pronounced by the Respondent herein was *talaq-e-biddat* or any such similar form of *talaq* having effect of instantaneous and irrevocable divorce pronounced by a Muslim husband.

9. The First Appellate Court held that the correctness or otherwise of the divorce cannot be decided by the First Appellate Authority but after holding that it does not have the jurisdiction to decide on the correctness or otherwise on the divorce which was sought to have been given by the Respondent. The First Appellate Authority also held that the summons issued to the Respondent was not proper and there is no sufficient material to summon the Petitioner under Section 12 of the Domestic Violence Act, meaning thereby, the First Appellate Court was of the opinion that since the parties had been divorced, i.e., rejected the contention of the Petitioner herein that the divorce was a *talaq-e-biddat* or any other form of divorce which had the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband, the First Appellate Court directed the Petitioner herein to approach the competent authority to seek a declaration regarding the divorce pronounced by the Respondent herein. It is this order which is



under challenge in the present petition.

10. Material on record discloses that the Petitioner had already filed a complaint on 22.10.2019 before the CAW Cell, Delhi upon which an FIR being FIR No.712/2020 dated 09.09.2020 was registered at Police Station Sagarpur for offences under Section 498A, 406 & 34 IPC, which is before the grant of divorce.

11. Material on record discloses that even after the registration of FIR, the Petitioner and Respondent were living together. As per the Respondent, three notices for divorce were given to the Petitioner on 03.09.2020, 03.10.2020 and 03.11.2020. The Petitioner has therefore approached the criminal courts prior to the divorce.

12. In Juveria Abdul Majid Patni v. Atif Iqbal Mansoori & Anr., **2014 (10) SCC 736**, while dealing with the proceedings initiated under the Domestic Violence Act after the wife had obtained *khula* from the husband, the Apex Court has held as under:-

"19. For determination of such issue, it is desirable to notice the relevant provisions of the Domestic Violence Act, 2005, as discussed hereunder:

19.1. Section 2(a) of the Domestic Violence Act, 2005 defines "aggrieved person" as follows:

"2. (a) 'aggrieved person' means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;"

Therefore, it is clear that apart from the woman who is in a domestic relationship, any woman who has been, in a domestic relationship with the respondent, if alleges to have been subjected to act of domestic



violence by the respondent comes within the meaning of “aggrieved person”.

19.2. *Definition of “domestic relationship” reads as follows:*

“2. (f) ‘domestic relationship’ means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;”

From the aforesaid provision we find that a person aggrieved (wife herein), who at any point of time has lived together with husband (first respondent) in a shared household, is also covered by the meaning of “domestic relationship”.

19.3. *Section 2(s) defines “shared household”:*

“2. (s) ‘shared household’ means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;”

Therefore, if the “person aggrieved” (wife herein) at



any stage has lived in a domestic relationship with the respondent (husband herein) in a house, the person aggrieved can claim a “shared household”.

19.4. *Definition of “domestic violence” as assigned in Section 3 reads:*

“3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purposes of this section—

(i) ‘physical abuse’ means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;



(ii) *'sexual abuse' includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;*

(iii) *'verbal and emotional abuse' includes—*

(a) *insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and*

(b) *repeated threats to cause physical pain to any person in whom the aggrieved person is interested.*

(iv) *'economic abuse' includes—*

(a) *deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;*

(b) *disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and*

(c) *prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic*



relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes ‘domestic violence’ under this section, the overall facts and circumstances of the case shall be taken into consideration.”

Therefore, apart from “physical abuse” and “sexual abuse”, “verbal and emotional abuse” and “economic abuse” also constitute “domestic violence”.

20. *Chapter IV of the Domestic Violence Act, 2005 deals with “procedure for obtaining the orders of reliefs”. Section 12 relates to the application to Magistrate, which reads as follows:*

“12.Application to Magistrate.—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as



compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.”

21. *As per proviso to sub-section (1) of Section 12, the Magistrate before passing any order under Section 12 is required to take into consideration any domestic incident report received by him from the protection officer or the service provider.*

22. *The reliefs which can be granted by the Magistrate under the Domestic Violence Act, 2005 are as follows:*

(i) Right to reside in a shared household - Section 17;

(ii) Protection orders - Section 18;



- (iii) Residence orders - Section 19;*
- (iv) Monetary reliefs - Section 20;*
- (v) Custody orders - Section 21;*
- (vi) Compensation orders - Section 22; and*
- (vii) Interim and ex parte orders - Section 23.*

23. In the instant case, the appellant sought relief under Sections 18 to 23 of the Domestic Violence Act, 2005. It includes protection order under Section 18, monetary relief under Section 20, custody orders under Section 21, compensation under Section 22 and interim relief under Section 23. The relevant provisions read as follows:

“20.Monetary reliefs.—(1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to—

- (a) the loss of earnings;*
- (b) the medical expenses;*
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and*
- (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance*



under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent."

The monetary relief as stipulated under Section 20 is different from maintenance, which can be in addition to an order of maintenance under Section 125 CrPC or any other law. Such monetary relief can be granted to meet the expenses incurred and losses



suffered by the aggrieved person and child of the aggrieved person as a result of the domestic violence, which is not dependent on the question whether the aggrieved person, on the date of filing of the application under Section 12 is in a domestic relationship with the respondent.

24. “22.Compensation orders.—In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

23.Power to grant interim and ex parte orders.—(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent.”

Therefore, it is well within the jurisdiction of the Magistrate to grant the interim ex parte relief as he deems just and proper, if the Magistrate is satisfied that the application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic



violence.

25. It is not necessary that relief available under Sections 18, 19, 20, 21 and 22 can only be sought for in a proceeding under the Domestic Violence Act, 2005. Any relief available under the aforesaid provisions may also be sought for in any legal proceeding even before a civil court and Family Court, apart from the criminal court, affecting the aggrieved person whether such proceeding was initiated before or after the commencement of the Domestic Violence Act. This is apparent from Section 26 of the Domestic Violence Act, 2005 as quoted hereunder:

“26. Relief in other suits and legal proceedings.—(1) Any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, Family Court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

26. The appellant has filed an FIR against the first respondent for the offence committed under Section 498-A IPC. The High Court refused to quash the FIR qua first respondent on the ground that prima facie case has been made out. Even before the criminal court



where such case under Section 498-A is pending, if allegation is found genuine, it is always open to the appellant to ask for reliefs under Sections 18 to 22 of the Domestic Violence Act and interim relief under Section 23 of the said Act.

27. In V.D. Bhanot v. Savita Bhanot [(2012) 3 SCC 183 : (2012) 2 SCC (Civ) 53 : (2012) 2 SCC (Cri) 102] , this Court held that the conduct of the parties even prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. The wife who had shared a household in the past, but was no longer residing with her husband can file a petition under Section 12 if subjected to any act of domestic violence. In V.D. Bhanot [(2012) 3 SCC 183 : (2012) 2 SCC (Civ) 53 : (2012) 2 SCC (Cri) 102] this Court held as follows: (SCC pp. 186-87, para 12)

“12. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005.”

28. In Inderjit Singh Grewal [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] the appellant Inderjit Singh and Respondent 2 of the said case got married on 23-9-1998. The parties to the marriage could not pull on well together and decided to get divorce and, therefore, filed a case for divorce by



mutual consent under Section 13-B of the Hindu Marriage Act, 1955. After recording the statement in the said case, the proceedings were adjourned for a period of more than six months to enable them to ponder over the issue. The parties again appeared before the Court on second motion and on the basis of their statement, the District Judge, Ludhiana vide judgment and order dated 20-3-2008 allowed the petition and dissolved their marriage. After dissolution of marriage, the wife filed a complaint before the Senior Superintendent of Police, Ludhiana against Inderjit Singh under the provisions of the Domestic Violence Act alleging that the decree of divorce obtained by them was a sham transaction. It was further alleged that even after getting divorce both of them had been living together as husband and wife. In the said case, the Superintendent of Police, City I conducted the full-fledged inquiry and reported that the parties had been living separately after the dissolution of the marriage. Hence, no case was made out against Inderjit Singh. In this context, this Court held that Section 12 “application to Magistrate” under the Domestic Violence Act challenging the said divorce was not maintainable and in the interest of justice and to stop the abuse of process of court, the petition under Section 482 CrPC was allowed. The law laid down in the said case is not applicable for the purpose of determination of the present case.

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30. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, child custody under Section 21, compensation under Section 22 and interim or ex parte order under



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Section 23 of the Domestic Violence Act, 2005."
(emphasis supplied)

13. The said judgment applies to the facts of the present case on all force. The First Appellate Court therefore ought not to have held that there is no jurisdiction to entertain the petition. The Respondent herein is seeking divorce stating that he had sent three notices dated 03.09.2020, 03.10.2020 and 03.11.2020 to the Petitioner. The said fact has to be proved. At the stage of issuing summons, the court only looks at the complaint to come to the conclusion as to whether there was sufficient material to issue summons.

14. A Division Bench of the Kerala High Court in Asbi v. Hashim M.U., **2021 SCC OnLine Ker 3945** has observed as under:-

"4. The Division Bench of this Court in X v. Y (2021 (2) KHC 709) has held that the Family Court in exercise of the jurisdiction under Explanation (d) of S.7 of the Act is competent to endorse an extrajudicial divorce to declare the marital status of a person. It was made clear in the said judgment that in the matter of unilateral dissolution of marriage invoking khula and talaq, the scope of enquiry before the Family Court is limited and in such proceedings, the Court shall record the khula or talaq to declare the marital status of the parties after due notice to other party. In the matter of mubaraat, the Family Court shall declare the marital status without further enquiry on being satisfied that the dissolution was effected on mutual consent. It was observed that such matter shall be disposed treating it as uncontested matter without any delay by passing a formal order declaring the marital status. It was further held that if any person wants to contest the effectiveness of khula or talaq, it is open for such person to contest the same in appropriate manner known under the law.

5. The unilateral extrajudicial divorce under Muslim



Personal law is complete when either of the spouse pronounce/declare talaq, talaq-e-tafweez or khula, as the case may be, in accordance with Muslim Personal Law. So also extrajudicial divorce by mubaaarat mode is complete as and when both spouses enter into mutual agreement. The seal of the Court is not necessary to the validity of any of these modes of extra judicial divorce. The endorsement of extrajudicial divorce and consequential declaration of the status of the parties by the Family Court invoking S.7(d) of the Act is contemplated only to have a public record of the extrajudicial divorce. Hence, detailed enquiry is neither essential nor desirable in a proceeding initiated by either of the parties to endorse an extrajudicial divorce and to declare the marital status. The Family Court has to simply ascertain whether a valid pronouncement/declaration of talaq or khula was made and it was preceded by effective attempt of conciliation. In the case of khula, it has to be further ascertained whether there was an offer by the wife to return the “dower”. It could be ascertained by perusal of the recitals in talaq nama/khula nama or its communication (if it is in writing) or by recording the statement of the parties. No further enquiry as in the case of an adversarial litigation like chief examination and cross-examination of the parties are not at all contemplated in such a proceedings. If the Court is prima facie satisfied that there was valid pronouncement of talaq/khula/talaq-e-tafweez, it shall endorse the same and declare the status of the parties. In the case of mubaaarat, if the Court is prima facie satisfied that mubaaarat agreement has been executed and signed by both parties, it shall endorse the same and declare the status of the parties. The Court shall pass formal order declaring the marital status without any delay. If any of the parties want to challenge the extrajudicial divorce by talaq, khula, mubaaarat or talaq-e-tafweez mode, he/she is free to challenge the same in accordance with law in appropriate forum.



The declaration granted by the Family Court u/s 7(d) endorsing the extrajudicial divorce shall be subject to the final outcome of such proceedings, if any. We consider it desirable to formulate the following guidelines to be followed by the Family Court in a petition filed u/s 7(d) of the Act to endorse an extrajudicial divorce under Muslim Personal Law and to declare the marital status of the parties to the marriage.

(i) On receipt of the petition, the Family Court shall issue notice to the respondent.

(ii) After service of summons or appearance of the respondent, as the case may be, the Family Court shall formally record the statement of both parties. The parties shall also be directed to produce talaq nama/khula nama (if pronouncement/declaration is in writing)/mubaarat agreement.

(iii) The Family Court shall thereafter on perusal of the recitals in talaq nama/khula nama/communication of talaq, khula or talaq-e-tafweez (if available) and the statement of the parties, ascertain whether there was valid pronouncement of talaq/khula/talaq-e-tafweez. In the case of mubaarat, the Family Court shall ascertain whether the parties have executed and signed mubaarat agreement.

(iv) On prima facie satisfaction that there was valid pronouncement of talaq, khula, talaq-e-tafweez, as the case may be, or valid execution of mubaarat agreement, the Family Court shall proceed to pass order endorsing the extrajudicial divorce and declaring the status of the parties without any further enquiry.

(v) The enquiry to be conducted by the Family Court shall be summary in nature treating it as an



uncontested matter.

(vi) The Family Court shall dispose of the petition within one month of the appearance of the respondent. The period can be extended for valid reasons.

(vii) If any of the parties is unable to appear at the Court personally, the Family Court shall conduct enquiry using video conferencing facility."

15. A Single Judge Bench of the Madras High Court in M.A. Rafi Ahamed v. Vaseela Banu, **CRP(MD)2255/2023**, has observed as under:-

"10. This Judgment has been holding the field and has been approvingly referred to in several subsequent decisions of the Hon'ble Supreme Court. Talaq thus involves a certain procedure. In the very nature of things, strict compliance has to be insisted upon. If the husband claims that he had divorced the first wife by properly pronouncing talaq three times, and it is disputed by the wife, the question arises if the marriage has been validly dissolved. The issue cannot be left to the unilateral determination of the husband. That would amount to the husband becoming a judge of his own cause. The only appropriate and legally permissible course would be to call upon the husband to obtain a judicial declaration that the marriage has been validly dissolved. So long as such a declaration has not been obtained from the jurisdictional court, the resultant effect is that the marriage is deemed to subsist. The burden is entirely on the husband to satisfy the Court that he had pronounced the talaq in the manner approved by law. It is he who must go to the court and obtain declaration. This of course would be necessary only if the wife disputes the validity of the talaq pronounced by the husband. "

(Emphasis supplied)



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16. A perusal of the aforesaid judgments indicates that it was for the Respondent herein to approach the competent courts to get the declaration of divorce before taking the contention that the court under the Domestic Violence Act does not have the jurisdiction. In any event, in light of the judgment passed by the Apex Court, the summons could not have been set aside by the First Appellate Court on the statement of the Respondent that the Respondent has already given the divorce to the Petitioner herein.

17. In view of the above, this Court has no hesitation to set aside the judgment passed by the First Appellate Court. Resultantly, the Judgment impugned herein is set aside. The court under the Domestic Violence Act is directed to proceed ahead in accordance with law.

18. The petition is allowed. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

NOVEMBER 26, 2024

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