

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 992 OF 2005

1. Gousoddin Waliahmad Peerjade,
Age: 39 years, Occ: Labour,
R/o. Jakekur, Tq. Omerga,
Dist. Osmanabad. ..APPLICANT..
(Org. Petitioner/Opponent)

VERSUS

1. Bismilla divorced W/o Gousoddin Peerjade,
Age: 33 years, Occ: Household,
R/o. Achaler, Tq. Omerga,
Dist. Osmanabad.
2. Billal S/o Gousoddin Peerjade,
Age: 7 years, Minor U/g of at present
Real Mother Bismilla i.e Respondent No. 1
3. State of Maharashtra.
Copy to be served on P.P.
High Court Bench at
Aurangabad. ...Respondents..
(Org. Respondents)

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Advocate for Applicant : Mr G R Syed
Advocate for Respondents 1,2 :Mr A A Mukhedkar h/f
Mr G S Patil/L C Patil
APP for Respondent 3 : Mr A R Kale

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CORAM : V.K. JADHAV, J.

Dated: September 22, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the judgment and order passed
by the Judicial Magistrate First Class, Omerga dated

12.4.2002 in Cri. Misc. Appln. No.16/2001 and confirmed by the Additional Sessions Judge, Omerga by order dated 30.10.2004 in Criminal Revision Application No.12/2004 with certain modifications, original respondent husband in the maintenance proceedings preferred this Criminal Application.

2. Brief facts, giving rise to the present criminal application are as follows :-

Original applicant no.1 Bismilla married with opponent husband 10 years prior to 2001 and applicants no.2 and 3 are their son born to them from their marital wedlock. She was treated well for about one year after marriage, thereafter, subjected to ill-treatment on account of unlawful demand of certain cash amount of Rupees 25,000/- for construction of the house by the opponent-husband. Even after birth of applicant no.2 Sohail, on one occasion opponent husband poured kerosene on her and attempted to set her on fire on account of non-fulfillment of said demand. Thereafter, certain amount was paid to the opponent-husband by the parents, however, on

20.6.2000 opponent husband driven out her from his house alongwith her children for non-fulfillment of unlawful demand of cash amount. Thereafter, on two to three occasions, efforts for compromise were made however, the opponent husband did not give any positive response. Despite having sufficient means, the opponent husband has refused and neglected to maintain the applicant-wife and his children. The applicant-wife alongwith her children thereafter constrained to file Criminal M.A No.16/2001 for grant of maintenance @ Rs.1,500/- each.

The opponent husband has strongly resisted the said application by filing his say at Exh.10. He has denied the entire averments made in the application. He has admitted the relations, however, stated that in the year 1998 he gave Talaq to her. He has admitted paternity of applicant nos. 2 and 3, however, it has contended that, both sons are in his custody and they are taking education at Murum and he is spending for their education. It has also contended that the applicant-wife left the house on her own choice and

therefore, she has no right to claim maintenance. It has also contended that, oral Talaq was given to her in the year 1998 and it was also communicated to her by ordinary post as well as R.P.A.D., however, she has refused to accept the said communication. Even maintenance amount during Iddat period was also sent to her by Money order and she has accepted the same. It has further contended that, the applicant-wife has filed the application to extract money and just to cause harassment.

3. Both the parties lead their oral and documentary evidence in support of their rival contentions. The learned Magistrate by order dated 12.4.2002 partly allowed the said application and thereby directed the opponent-husband to pay Rs.1,000/- p.m. towards maintenance of applicant no.1 wife and Rs.500/- p.m. to minor applicant nos. 2 and 3. Being aggrieved by the same, the opponent husband had preferred criminal Revision Application No.12/2004 and the learned Additional Sessions Judge, Omerga by order dated 30.10.2004 confirmed the order of maintenance passed

in favour of the applicant no.1-wife and applicant No.3 Bilal and set aside the order of grant of maintenance passed in favour of applicant no.2 Sohel. Aggrieved by the same, original applicant husband has preferred present Criminal Application.

4. The learned counsel for the applicant submits that, applicant has examined one Kazi before whom divorce had taken place and the applicant-husband also sent Meher amount to respondent-wife and the same has been accepted by her. Learned counsel submits that the Court below have not considered the provisions of Section 3 of the [Muslim Women \(Protection of Rights on Divorce\) Act, 1986](#). The Courts below have also not considered that both sons are staying with the applicant-husband and he is spending for their education.

5. Learned counsel for respondent-wife submits that considering the oral and documentary evidence placed on record both the courts below rightly held that opponent-husband willfully refused and neglected to

maintain the applicants though having sufficient means. There is no substance in the criminal application and criminal application is thus liable to be dismissed.

6. On careful perusal of the evidence as discussed by the courts below in their respective judgments, it appears that, there is enough evidence on record to show that the applicant no.1-wife was subjected to ill-treatment on account of non-fulfillment of unlawful demands. Consequently, the applicant no.1-wife has just cause to live separate and claim maintenance. The applicant-wife has also examined her brother and one independent witness. It has been brought on record that on one or two occasions efforts on her part for cohabitation were made, but opponent-husband has not given response to it. It is a part of the record that opponent-husband has not paid any amount to the applicants even during the pendency of proceedings. He has only stick up to his defence that he has given Talaq to the applicant-wife and, therefore, he is not liable to pay the maintenance.

7. The applicant wife adduced the evidence to show that she cohabited with her husband till 20.6.2000 and thereafter she was driven out alongwith her minor children by the opponent-husband from his house. It is the case of opponent-husband that he pronounced traditional Talaq first on 29.7.1998 and again gave Talaq in presence of Kazi and two witnesses. Though, opponent has produced on record xerox copies of the said Shiyanama, but, he has failed to prove the same. The learned judge of the trial court has rightly observed that burden is on the opponent husband to prove that he gave talaq to her and opponent husband has failed to discharge said burden properly. The learned Additional Sessions Judge also upheld said finding. I do not find any reason to interfere in those concurrent findings recorded by both the courts below. The learned Additional Sessions Judge in the light of the observations made in Dagadu Chotu Pathan Vs. Rahimbi Dagadu Pathan reported in 2002 (3) Mh.L.J. Page 602 rightly observed that, opponent husband has failed to establish valid Talaq given to the applicant wife Bismilla.

8. In view of the above discussion, I do not find any merit in the criminal application. Hence, order.

ORDER

- I. Criminal application is hereby dismissed. Rule discharged.
- II. Criminal Application stands disposed off.

sd/-
(**V.K. JADHAV, J.**)

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aaa/-