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

CRIMINAL WRIT PETITION NO.477 OF 2016

Ahmed Ratan Sayyad,
Age : 61 years, Occu. Retired,
R/o Kasar Pimpalgaon,
Tq. Pathardi, Dist. Ahmednagar

..PETITIONER

VERSUS

1. Lailabee Ahmed Sayyad,
Age : 57 yrs. Occu. Agril.
R/o Jatwad Manur,
Tq. Shirur (Kasar), Dist. Beed

2. The State of Maharashtra

..RESPONDENTS

Mr G.B. Rajale, Advocate for petitioner;
Mr C.V. Dharurkar, Addl. Public Prosecutor for respondent no.2

CORAM : N.W. SAMBRE, J.

DATE : 6th October, 2016

ORAL ORDER :

In Criminal Misc. Application No.147 of 2002, preferred under section 125 of the Code of Criminal Procedure, the learned Judicial Magistrate First Class, Pathardi, by order dated 3rd March, 2011, ordered payment of maintenance of Rs.700/- per month in favour of respondent no.1 – wife, which was confirmed in Criminal Revision Application No.68 of 2011 by learned Additional Sessions Judge, Ahmednagar, vide order dated 4th February, 2016.

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2. Mr Rajale, learned Counsel appearing on behalf of the petitioner – husband, while trying to invoke extraordinary jurisdiction of this court would urge that once the petitioner has divorced respondent no.1 – wife, his liability to pay maintenance has come to an end. He would then urge that the mehar was also paid before iddat period and as such, the divorce as was given through a notice, was duly executed and acted upon. According to him, in view of the provisions of Muslim Women (Protection of Rights on Divorce) Act, a divorced wife is not entitled to maintenance after the iddat period, if the mehar amount is already received. He would then submit that the petitioner is already remarried after the divorce to wife. It is the respondent – wife who keptt herself away from the petitioner since 1979 and as such, she is not entitled to maintenance pursuant to sub-section (4) of section 125 of the Code of Criminal Procedure. According to him, all these contentions are not gone into by both the courts below.

3. It is required to be noted that the relationship between the petitioner and respondent no.1 is not in dispute. What is disputed is the claim of respondent no.1 for maintenance pursuant to the provisions of Muslim Women (Protection of Rights on Divorce) Act. In my opinion, provisions of section 125 of the Code of Criminal Procedure are very much available to respondent no.1 wife and to that effect the law is also well settled. The law laid down by the Full Bench of this Court, in the matter of **Karim Abdul Rehman Shaikh vs. Shehnaz Karim Shaikh**, reported in **2000 (3) Mh.L.J. 555**, is worth referring to. In paragraph 63 of the said judgment, the Full Bench has observed thus :

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“63. We will now summarise our answers to the questions raised before us :

The 1st question

(i) Whether the Muslim husband's liability under [section 3\(a\)](#) of the Muslim Women Act to make a reasonable and fair provision and pay maintenance is only restricted to the iddat period or whether it extends beyond the iddat period?

Answer

(i) The husband's liability to pay maintenance to a divorced wife ceases the moment iddat period gets over. He has to pay maintenance to her within the iddat period for the iddat period. But he has to make reasonable and fair provision for her within iddat period, which should take care of her for the rest of her life on till she incurs any disability under the [Muslim Women Act](#). While deciding the amount regard will be had to the needs of the divorced women, the standard of life enjoyed by her during her marriage and the means of her former husband and the like circumstances. If the husband is unable to arrange for such a lumpsum payment he can ask for instalments and the Court shall consider granting him instalments. Till the husband makes the fair and reasonable provision, the Magistrate may direct monthly payment to be made to the wife even beyond the iddat period subject to the fixation of the amount of fair and reasonable provision.

The 2nd question

(ii) Whether the Muslim Women Act has the effect of invalidating the orders/judgments passed under [section 125](#) of the Code i.e. whether the [Muslim Women Act](#) operates retrospectively so as to divest parties of vested rights?

Answer

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(iii) The orders passed under [section 125](#) of the Code prior to the enactment of the [Muslim Women Act](#) are not nullified by reason of the coming into force of the [Muslim Women Act](#). Such orders are binding on both sides and can be executed under [section 128](#) of the Code. [The Muslim Women Act](#) does not divest the divorced women of the right to get maintenance under [section 125](#) of the Code vested in her by reason of orders of a competent Court passed prior to its coming into force.

The 3rd question

(iv) Whether after the commencement of the Muslim Women Act, a Muslim divorced wife can apply for maintenance by invoking the provisions of Chapter IX of the Code?

Answer

(ii) After commencement of the [Muslim Women Act](#), a Muslim divorced wife can not apply for maintenance under the provisions of Chapter IX of the Code. It is only under [section 5](#) of the Muslim Women Act by agreement can the husband and the divorced wife approach a Magistrate under Chapter IX of the code.

The 4th question

(iii) Whether the Family Court has jurisdiction to try applications of the Muslim divorced women for maintenance after coming into force of the [Muslim Women Act](#)?

Answer

(iv) After coming into force of the [Muslim Women Act](#), a Muslim Women can apply under [sections 3 and 4](#) of the said Act only to Magistrate of the First Class having jurisdiction under [the Code](#). The Family Court cannot deal with such applications.”

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4. In view of above, the fact remains that the petitioner, apart from payment of mehar, has not come out with a case that he has made any permanent arrangement of maintenance for respondent no.1 for rest of her life. In view thereof, in my opinion, respondent no.1 has rightly invoked the provisions of section 125 of the Code of Criminal Procedure.

5. So far as the quantum of maintenance and other aspects are concerned, once both the courts having concurrently held that respondent no.1 is entitled to maintenance of Rs.700/- per month, in my opinion, no case for interference in extraordinary jurisdiction of this court is made out. Criminal Writ Petition as such fails and stands rejected.

(N.W. SAMBRE, J.)

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