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

CRIMINAL REVISION APPLICATION NO. 127 OF 2011

Syed Akram Ali s/o Syed
Sultan Ali,
Age: 24 years, Occu: Labour,
HUDC, Aurangabad ..APPLICANT

VERSUS

Rubinabegum d/o Shaikh
Abdul Rasheed,
Age: 24 years, Occu: Household,
Resident of c/o Shaikh Rasheed
s/o Shaikh Hameed, Plot No. B-1,
SBH Colony, Himayatbagh,
Aurangabad ..RESPONDENT

Ms. A. N. Ansari, Advocate for applicant;
Mrs S. G. Chincholkar, Advocate h/f Mr G. N.
Chincholkar, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 31st August, 2016

ORAL JUDGMENT :

Heard learned respective Counsel.

2. Present revision is questioning the judgment and order delivered by the learned Family court, Aurangabad, in Petition No. E-98 of 2008

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preferred by the respondent-wife claiming maintenance. Learned Judge, Family Court, Aurangabad, awarded maintenance of Rs. 1,200/- p.m. to the respondent-wife w.e.f. 26th March, 2008 i.e. from the date of application.

3. The facts as are necessary for deciding the present revision application are as under :

4. The applicant claimed to have married with respondent on 6th May, 2007, which fact is not in dispute. It is then claimed that the petition No. E-98 of 2008 came to be moved by respondent-wife and Petition No. A-310 of 2009 filed by respondent-wife for dissolution of marriage under Section 2(2) of Dissolution of Muslim Marriage Act, 1939.

5. It is the case of applicant that on 26th May, 2008, a compromise was entered into between the parties vide compromise pursis dated 26th May, 2008. It is alleged that the proceedings for

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restitution of conjugal rights were initiated pursuant to the notice dated 12th March, 2008 issued by the applicant.

6. It is also claimed that 'Khulanama' was executed between the applicant and respondent on 25th August, 2008 and as such, the petition for dissolution of marriage being Petition No. A-310 of 2009 does not survive.

7. The learned Family Court awarded maintenance to the present respondent-wife vide its judgment which is impugned herein, after considering the relationship of the applicant and respondent as that of husband and wife, source of the income of the husband, neglect to maintain attitude on the part of the applicant.

8. The above referred judgment is questioned in the present proceedings by the husband on the ground that once it is held that in view of 'Khulanama' dated 25th August, 2008, the relations

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between the applicant and respondent as husband and wife are severed legally, no right could be conferred on the respondent-wife to claim the maintenance under Section 125 of the Code of Criminal Procedure. Learned Counsel then would urge that, in absence of any matrimonial relationship being divorced wife, the remedy under the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986 are available and not under the provisions of Code of Criminal Procedure. She would then submit that the present application as such, needs to be allowed.

9. Mrs. Chincholkar, learned Counsel for the respondent would support the order and submits that the issue is no more *res integra* as regards the claim of entitlement for maintenance of muslim wife after divorce. She would invite my attention to the judgment of the Apex Court in the matter of **Shabana Bano vs. Imran Khan** reported in **2010(1) Mh.L.J. (Cri.) 250**, particularly paragraph Nos. 20 to 22 thereof.

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"20. Section 20 of the Family courts Act appearing in Chapter VI deals with overriding effect of the provisions of the Act. The said section reads as under :

"20. Act to have overriding effect. - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

21. Bare perusal of section 20 of the Family Courts Act makes it crystal clear that the provisions of this Act shall have overriding effect on all other enactments in force dealing with this issue.

22. Thus, from the abovementioned provisions it is quite discernible that a Family Court established under the Family Act shall exclusively have jurisdiction to adjudicate upon the applications filed under section 125 of Criminal Procedure Code."

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10. Having bestowed my thoughts to the submissions made, it is required to be noted that there is no 'khulanama' as is claimed to have been executed between the parties, was formed to be basis for rejection of the proceedings initiated vide Petition No. A-310 of 2009 for dissolution of the muslim marriage. The said proceedings were initiated by respondent-wife.

11. It is then to be noted that learned Family Court, while dealing with the claim brought before it, has framed the issues at Exhibit-9 and after considering the evidence of respective parties, has ordered payment of maintenance. In support of the claim, the respondent-wife has examined herself and her father, whereas the applicant-husband has examined himself. DW-2 Qazi Jamil Ahmed was also examined in support of the claim for 'khulanama'.

12. In view of the contents of 'khulanama' dated 25th August, 2008, which is consent divorce

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deed, the respondent could be treated as divorced wife of the present applicant. Once it is brought on record that she is divorced wife, the fact remains that the applicant has not provided any maintenance to her and rather neglected to maintain. In view thereof, her entitlement for maintenance could be easily inferred by relationship of husband and wife. The entitlement of divorced muslim woman for maintenance from her husband could be rightly inferred from the judgment of **Shabana Bano** (supra).

13. Learned Family Court has taken into account the income of the applicant and has ordered the payment of maintenance. In view thereof, in my opinion, no case for interference, in revisional jurisdiction, is made out. As such, criminal revision application fails and stands rejected.

(N.W. SAMBRE, J.)