

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

CRIMINAL WRIT PETITION NO. 255 OF 2004

Mohd.Rabbani s/o Mohd.Ismail,
Age : 40 years, Occupation : Nil,
R/o Ardhapur, District Nanded.

...PETITIONER

-VERSUS-

1 Raisabee d/o Shaikh Sadulla,
Age : 30 years, Occupation : Tailor
and Typist,
R/o C/o Shaikh Sadulla Shaikh Lal,
Chotti Galli, Kandhar,
District Nanded.

2 Mohd. Imran s/o Mohd. Rabbani,
Age : 7 years, Minor u/g of
Respondent No.1.
R/o As above.

3 The State of Maharashtra.
Through P.S. Ardhapur,
District Nanded.

...RESPONDENTS

...
Advocate for Petitioner :Mrs.Ranjana D. Reddy.
APP for Respondent No.3/State : Shri S.G.Karlekar.
Advocate for Respondents 1 and 2 : Shri P R Katneshwarkar.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th June, 2016

Oral Judgment:

1 The Petitioner is aggrieved by the order dated 08.12.2003

passed by the learned Judicial Magistrate First Class, Kandhar by which Miscellaneous Criminal Application No.51/2000 for maintenance filed by Respondent Nos.1 and 2 under Section 125 of the Code of Criminal Procedure, has been allowed. The Petitioner is also aggrieved by the judgment and order dated 17.04.2004 passed by the learned Additional Sessions Judge, Kandhar dismissing his Criminal Revision No.1/2004.

2 This petition was admitted on 21.09.2004 and interim relief was not granted to the Petitioner. The application for stay was rejected by order dated 13.04.2005.

3 Mrs.Reddy, learned Advocate for the Petitioner, has strenuously submitted that the Petitioner has now lost his job as a teacher and has no source of income and as such, he is not able to pay Rs.500/- as monthly maintenance to Respondent No.1 and Rs.250/- to Respondent No.2, who is the son of the Petitioner.

4 It is further submitted that Respondent No.2 has now become an adult and therefore, the maintenance is not required to be paid to him. The Petitioner had divorced Respondent No.1/wife by uttering the word “Talaq” and hence, unless Respondent No.1 seeks permission of the Petitioner for seeking maintenance, the application under Section 125 of

the Code of Criminal Procedure could not have been filed.

5 The learned Advocate for Respondent Nos.1 and 2 submits that presuming that the contention of the Petitioner is accepted as a truth, without admitting the same, he has an independent source of income as has been observed by the Trial Court in paragraph 7 of the impugned order. He submits that the Petitioner having uttered the word “Talaq”, was not mentioned in his Say to the application filed by the wife. Later on, it is sought to be contended that he had uttered the word “Talaq” on a subsequent occasion. The Trial Court has dealt with this aspect and has concluded that there was no pleading by the Petitioner as regards the uttering of the word “Talaq” on the first occasion and insofar as the second occasion is concerned, in his cross-examination, he has admitted that he is not aware about the date on which he had uttered the word “Talaq” for the second time.

6 He further points out that the issue with regard to the Talaqnama at Exhibit-39 was dealt with by the Trial Court and it was established that the said Talaqnama has not been issued by any authorized person who is competent and empowered to issue such a document.

7 I have considered the submissions of the learned Advocates

and have gone through the impugned judgments.

8 Insofar as the issue as to whether, a Muslim woman can claim maintenance under Section 125 of the Code of Criminal Procedure or as to whether, she is relegated to Sections 3 and 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, has been dealt with by the Honourable Supreme Court in the case of *Pyla Mutyalamma @ Satyavathi Vs Pyla Suri Demudu and another*, (2011) 12 SCC 189. The Honourable Apex Court has thus, settled the issue that a Muslim woman can seek maintenance from her husband under Section 125 of the Code of Criminal Procedure.

9 The amount of maintenance granted by the Trial Court is at the rate of Rs.500/- per month for Respondent No.1 and Rs.250/- per month for Respondent No.2. The said order was passed on 08.12.2003. Considering the passage of time and the devaluation of the Indian currency, I do not find that the said amount could be said to be exorbitant. I do not find any perversity in the impugned judgments passed by the Trial Court as well as the Revisional Court. This Criminal Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.