

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO. 178 OF 2010

Sau Kausar @ Jaslin Hasan Tamboli .. Applicant

vs.

Hasan Rahmanbhai Tamboli and anr. .. Respondents

None for both the parties.

CORAM : M. S. SONAK, J.
DATE : 26 AUGUST 2016.

P.C. :-

1] Neither the applicant nor her advocate are present. Similarly, neither respondent No.1 nor his advocate are present.

2] Since the matter relates to payment of maintenance, it will not be appropriate to adjourn the same taking into consideration the observations of the Hon'ble Apex Court in ***Bhuwan Mohan Singh Vs. Meena and others - (2015) 6 SCC 353.***

3] The challenge in this revision application is to the order dated 24 December 2009 made by the Additional Sessions Judge, Baramati. By the impugned order, the Additional Sessions Judge has set aside the order dated 4 July 2009 (incorrectly referred to as

4/9/2009) made by the Judicial Magistrate First Class (JMFC), Baramati directing the respondent No.1- Hasan to pay maintenance at the rate of Rs.1200/- per month to the applicant-Kausar from the date of filing the application seeking maintenance.

4] The Additional Sessions Judge, by the impugned order, has set aside the JMFC's order dated 4 July 2009 mainly on the ground that respondent No.1 had already divorced the applicant upon pronouncement of '*Talak*'. Relying upon the provisions contained in Muslim Woman (Protection of Rights on Divorce) Act, 1986, the Additional Sessions Judge has held that the proceedings under Section 125 of Cr.P.C. were not maintainable and on the said ground, non-suited the applicant.

5] In my judgment, the impugned order made by the Additional Sessions Judge is unsustainable and is therefore, required to be set aside. The defence of *Talak* had been raised before the learned JMFC, who made the order dated 4 July 2009. The JMFC had, however, on the basis of material on record, rightly held that the ingredients of a valid *Talak* had not been proved in the matter. The Additional Sessions Judge in the exercise of revisional jurisdiction

was not justified in reassessing the material on record and disturbing the finding of fact recorded by the JMFC, particularly, since such finding of fact was not demonstrated as being perverse.

6] In *Dilshad Begaum Ahmadkhan Pathan Vs. Ahmadkhan Hanifkhan Pathan and anr. - 2007 ALL MR (Cri.) 432*, this Court has held that mere pronouncement of Talak by itself is not sufficient to conclude a valid divorce. Appointment of arbiters, conduct of conciliation proceedings to bring about reconciliation and failure of such proceedings, all matters which are required to be established before divorce is said to have become effective upon pronouncement of Talak. In the present case, there is no material on record to establish all these aspects. In absence of establishment of all such aspects, the revisional court was not justified in interfering with the well reasoned order made by the learned JMFC.

7] In the context of divorce by '*Khula*' method, the Hon'ble Apex Court in case of *Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori and anr. - (2014) 10 SCC 736*, has held that definite pleading and evidence is required to prove that *khula* become effective. In absence

of definite pleading and evidence, it cannot be concluded with certainty that divorce had indeed taken place.

8] In *Shamima Farooqui Vs. Shahid Khan - (2015) 5 SCC 705*, the Hon'ble Apex Court did not approve the exercise of revisional jurisdiction by the High Court in a case where findings of lower court were neither perverse nor erroneous but instead based upon proper appreciation of the evidence on record and endeavour to do substantial justice. Interference, only on the ground that some different view was possible, was not upheld by the Hon'ble Apex Court. Applying this principle, it is not possible to uphold the order made by the Additional Sessions Judge, in the facts and circumstances of the present case.

9] In *Parvati Rani Sahoo and anr. Vs. Bishnupada Sahoo – (2002) 10 SCC 510*, the Hon'ble Apex Court has held that section 125 of Cr.P.C. is intended to curtail destitution and also to ameliorate orphanage. The High Courts should be slow to interfere with a positive finding in exercise of revisional jurisdiction. The High Court in the exercise of revisional jurisdiction should not reevaluate or reassess the evidence on record. In this case, the Additional Sessions

Judge, in the exercise of revisional jurisdiction has purported to reevaluate and reassess the material on record.

10] Applying the aforesaid principles to the facts and circumstances of the present case, the impugned order will have to be set aside and is hereby set aside. Rule is therefore, made absolute in terms of prayer clause (b).

11] The respondent No.1 is directed to pay maintenance to the applicant in accordance with the order dated 4 July 2009 made by the JMFC, Baramati. The respondent No.1 directed to clear the arrears within a period of three months from today. In case, the arrears are not cleared or maintenance amount is not paid regularly, the applicant will be entitled to institute execution proceedings before the appropriate Court.

12] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)