

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.12.2017

(Orders reserved on 18.08.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.228 of 2011

and

M.P.No.1 of 2011

K.M.Kadhar

... Petitioner

... Vs ...

1.Tmt.Mumthaj

2.Minor K.Tafeya Rehanah

3.Minor K.Humayun Kabeer

Minors represented by next
friend mother namely the
1st respondent Mumthaj

... Respondents

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., praying, challenging the order dated 09.11.2010 in M.C.No.58 of 2005 on the file of the Family Court, Salem.

For Petitioner : Mr.D.Shivakumaran

For Respondents : Mr.D.Balachandran

ORDER

The husband has preferred this Criminal Revision Case under Sections 397 r/w. 401 of Cr.P.C., challenging the order dated 09.11.2010 in M.C.No.58 of 2005 on the file of the Family Court, Salem.

2. The husband is the revision petitioner herein.

3. The respondent-wife along with her minor son and daughter filed M.C.No.58 of 2005 under Section 125 of Cr.P.C, claiming maintenance for a sum of Rs.20,000/- per month. After contest, the learned Judge, Family Court, Salem has awarded Rs.2,000/- to the first respondent-wife and Rs.2,000/- each for the minor. Against the award passed for the wife, the petitioner-husband has filed this Criminal Revision.

4. The learned counsel for the petitioner-husband could contend that the trial Court has committed an error without seeing the fact that by pronouncement of talaq the marital relationship between the petitioner and the respondent has come to an end and erred in passing maintenance award under Section 125 of Cr.P.C and further contended that the maintenance amount awarded is excessive.

5. Per contra, the learned counsel for the respondent has made a submission in support of the judgment of the trial Court.

6. Points for consideration is that:-

i) Whether the trial Court has erred in awarding maintenance under Section 125 of Cr.P.C?

ii) Whether the maintenance award is excessive?

7. The case of the wife before the Family Court is that:

i) The petitioner and the respondent got married on 04.08.1996 as per the customs of Muslims. Two children by name Jumauin Kabeer and Jaffia Rohana were born, who are the 2nd and 3rd petitioners before trial Court. After deserting the wife, the husband unlawfully married another lady by name Haseena Banu under the guise of the religious privilege with the help of one Fazuludheen, Muthavalli of Lal Majid, Mettu Street, Salem. The present petition is filed seeking Rs.20,000/- per month towards maintenance of the wife and two children.

ii) The petitioner herein has filed his counter. He has also denied his monthly income of Rs.50,000/-. According to him he earns Rs.7,000/- only per month. According to the petitioner the marriage between him and the 1st respondent was dissolved by the customary mode of divorce called "Mutalaq" (Triple talaq) on 15.05.2004.

iii) After divorcing the 1st respondent-wife on 15.05.2004 by pronouncing "Mutalaq" and a sum of Rs.1,500/- was sent by Money Order to her on 30.06.2005. However the 1st respondent refused to receive it. According to the revision petitioner after divorcing the 1st respondent as per his religious custom on 15.05.2004 he married Haseena Banu as per the Islamic rites and living with her. Since she is capable of maintaining herself through her income so she is not entitled for any maintenance as claimed. The revision petitioner also expressed his readiness to take back the custody of 2nd and 3rd petitioners. Hence, he sought for dismissal of the petition.

iv) Before the Family Court below, the 1st petitioner and the respondent have examined themselves as P.W.1 and R.W.1. On behalf of the petitioners 10 documents were marked. On behalf of the respondent 11 documents were marked.

Heard both sides and perused the records.

8. The solemnization of the marriage between the parties and begotten of two children are admitted. Parties belonged to Muslim religion. According to the revision petitioner-husband, the marriage between the parties which taken place on 4.8.1996 was duly dissolved by way of pronouncement of triple talaq on 15.05.2004 and the factum of talaq pronounced by the respondent is reflected in the notice issued on 30.04.2005 (Ex.P4). However, the same was disputed by the first respondent-wife.

9. The reliance is placed on Ex.P4 and Ex.P5 namely, legal notice and reply notice between the parties, wherein, the revision petitioner-husband alleged that the first respondent-wife was disobedient and failed to follow the customs followed by a Muslim Woman particularly she avoided to wear "Pardha" while she was going out of the home and hence, forced him to pronounce talaq in the presence of 3 witnesses and the said talaq was heard by her. She accepted the same and went to her parents' house with children. It is also mentioned in the notice issued by the respondent that the 1st petitioner attempted to make use of the respondent name for securing the job and when the same came to the knowledge of the respondent he gave a complaint to the President of Shariath Court, Periya Pallivasal, Suramangalam Junction, Salem. In the notice the revision petitioner has reiterated that on 15.05.2004 he pronounced talaq in the presence of witnesses.

10. In the maintenance claim petition while denying his allegation regarding the disobedience and disrespect, the respondent-wife has also denied the averment that talaq was pronounced in the presence of witnesses and was heard by her. It is the case of the wife that only through Ex.P4 dated 30.04.2005 she came to know about that talaq was pronounced on 15.05.2004.

11. From the documents filed before the trial Court, it appears that the first respondent-wife filed O.S.No.4 of 2006 for a declaration that the marriage solemnized between the revision petitioner and first respondent herein on 4.8.1996 is not dissolved and for Mandatory Injunction, directing the respondent herein to come and live with the petitioner. It is submitted by the members of the bar that after trial, the Family Court, Salem has held that, the marital relationship between the petitioner and husband does not exists and held the pronouncement of talaq by the revision petitioner on 15.05.2004 is true and valid. However, Civil Miscellaneous Appeal filed by the wife is said to be pending with the Hon'ble this Court.

12. In other words, the short points that needs to be addressed is that:-

i) After enactment of Muslim Women (Protection Rights and

Divorce Act 1986) the application of Section 125 of Cr.P.C is outside the scope for a divorced Muslim Woman. Relying upon the judgment of Allahabad High Court pronouncement in "Shahid Jamal Ansari Vs.State of U.P and another reported in II(2009)DMC 653".

ii) The revision petitioner has submitted that after pronouncement of talaq the Iddat amount was sent to the 1st respondent-wife as contemplated under Section 3(i) of the Muslim Women Protection Act 1986 and therefore no further maintenance need to be paid by the revision petitioner.

iii) He also relied upon the

(a) Judgment of Hon'ble Madras High Court rendered in "Mr.K.Mohammed Ayub Khan Vs.1.Shahanaaz Naazni, 2.Miss. Nisha Fathma"reported in "2006-2-L.W.(Crl) 747".

(b) Judgment of Hon'ble Bombay High Court rendered in "Shaikh Mohamed Vs.Naseembegum and another"reported in "I(2007) DMC 226"

(c) Judgment of Hon'ble Chhattisgarh High Court rendered in "S.Taj Ali (Dr.) Vs.Shabana Ali and another"reported in "II (2008) DMC 768".

iv) Per contra, the 1st respondent has referred the Judgment of Hon'ble Supreme Court rendered in

a) "Daniel Latifi and another Vs.Union of India"reported in "AIR 2001 Supreme Court 3958"

b) "Iqbal Bano Vs.State of U.P and another"reported in "(2007) 3 Supreme Court Cases (Cri) 258"

c) "Sabra Shamim Vs.Maqsood Ansari"reported in "(2007) 3 Supreme Court Cases (Cri) 265" and 4) "Shabano Bano Vs.Imran Khan"reported in "(2010) 1 MLJ (Crl) 701 (SC) "

v) The provisions of Muslim Women (Protection of Rights on Divorce) Act 1986, which is the outcome of Shah Bano's Case was tested by the Constitution Bench of Hon'ble Supreme Court in "Daniel Latifi and another Vs.Union of India reported in "AIR 2001 Supreme Court 3958".

wherein it was held:-

a) The judicial enforceability of the Muslim divorced Women's right to provision and maintenance under Section (3)(1) (a) of the Act has been subjected to the condition of husband having sufficient means which, strictly speaking, is contrary to the principles of Muslim law as the liability to pay maintenance during the iddat period is unconditional and cannot be circumscribed by the financial means of the husband. The purpose of the Act appears to be to allow the Muslim husband to retain his freedom of avoiding payment of maintenance to his erstwhile wife after divorce and the period of iddat.

b) A careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. At the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provision for her residence, her food, her clothes and other articles.

c) While upholding the validity of the Act, we may sum up for conclusions:-

Court holds that

i) A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1)(a) of the Act.

ii) Liability of Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to iddat period.

iii) A divorced Muslim woman who has not remarried and who is not able to maintain herself after iddat period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance....".

iv) The Hon'ble Supreme Court in its judgment in "Shabano Bano Vs. Imran Khan" reported in "(2010) 1 MLJ (Cr1) 701 (SC)" relying upon Danial Latifi case (cited supra) has held as follows:

"That even if a Muslim Woman has been divorced, she would be entitled to claim maintenance from her husband under Section 125 of Cr.P.C. After the expiry of period of iddat also, as long as she does not remarry".

a) From the reading of the above judgments, it is clear that under the Muslim Women Protection Act 1986 a divorced Muslim woman shall be entitled to a reasonable and fair provision for maintenance and such provisions has to be made and paid to her within the iddat period by her husband.

b) If we consider whether the provision made by the respondent is reasonable and fair and whether it was made within the iddat period as contemplated under Section 3 of the Muslim Women Protection Act 1986, we find that a sum of Rs.1500/- has been rendered by way of money order and it was made not within iddat period but after one year from the alleged pronouncement of talaq. The amount Rs.1500/- can by no stretch of imagination be construed as provision for maintenance. In the counter filed by the respondent he has stated that he tendered Rs.1500/- on 30.06.2005 towards the maintenance amount for the iddat period.

c) Under the Muslim Women Protection Act a divorced Muslim woman is entitled for a reasonable and fair provision, maintenance, Mahr amount and return of wedding presents. The amount tendered by the respondent after one year from the alleged divorce does not fit in any of the above said category. If really the respondent wants to take advantage of the personal law, he should have acted meticulously and honestly in accordance to the provisions of the personal law. He cannot take coverage under the personal law when he has not acted in accordance to his personal law by letter and spirit. Therefore this Court concludes that the provision made was neither fair and reasonable nor made within the iddat period hence the respondent is liable to pay maintenance to his wife and children.

13. The points for consideration is that:-

Whether the revision petitioner-husband is liable to pay maintenance under Section 125 of Cr.P.C or not? and Whether divorced Muslim Woman is entitled for maintenance for herself and her children from the husband under Section 125 of Cr.P.C?

14. In view of the proposition of law laid down by the Hon'ble Supreme Court, the above referred case even if the Muslim Women has been divorced. She could be entitled to claim maintenance from her husband under Section 125 of Cr.P.C., after expiry of period of iddat also until so long as she remains not re-married.

15. In the case in hand, there is no allegation that the first respondent-wife has re-married and hence, the learned Family Court Judge, Salem has correctly held that the revision petitioner is liable to pay maintenance under Section 125 of Cr.P.C., based upon the Ex.R9, Ex.R10 and Ex.P10 documents and also taking note of the education of the respondents 2 and 3 as could be seen from Ex.P6 to Ex.P9, the learned trial Judge, Salem has come to the conclusion that not lesser than Rs.2,000/- is required for the maintenance for the minor boys namely respondents 2 and 3 and also taking note of the financial position of the husband and incidental expenses that could be necessary and to meet the ends of justice, has also ordered Rs.2,000/- to be paid to the first respondent-wife herein cannot

be termed as excessive and hence, the quantum of the maintenance award passed by the learned Family Court Judge, Salem is on the just and reasonable and does not call for any interference. Accordingly, this Criminal Revision Petition is devoid of merits and liable to be dismissed.

16. In fine, when the husband has sufficient means but neglect and refused maintain and even the divorce to Muslim Women can maintain petitioner under Section 125 of Cr.P.C, even after the expiry period of iddat, however so long as, she does not re-married and the petition filed by the first respondent-wife under Section 125 of Cr.P.C is held to be maintainable and the husband is liable to pay maintenance and the quantum of the maintenance awarded by the trial Court is just and reasonable and same is hereby confirmed.

17. In the result, this Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Judge
Family Court Salem

2.The Section Officer
Criminal Section High Court,
Madras

+1 cc to Mr.D.Balachandran Advocate sr 88809

+1 cc to Mr.D.Sivakumar Advocate sr 88828

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