

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Revision Case No.614 of 2015

ORDER:

The revision petitioner is the father of revision 2nd respondent and husband of revision 1st respondent and he divorced her by pronouncement of Talaq through MOU said to have been executed by referring the same therein. It is impugning the order in M.C.No.120 of 2010 on the file of the Addl.Family Court—cum—XXIII Addl.Chief Judge, City Civil Court, Hyderabad, dated 06.05.2013 granting maintenance of Rs.1,500/- per month to the M.C.petitioners 1 and 2(respondents herein) each from date of the order supra, to pay every month by 10th of next month, he maintained the revision.

2. The contentions in the grounds of revision vis-à-vis oral submissions are that by virtue of the outside the Court agreement including in compounding the offences under Section 498-A of IPC and Sections 4 and 6 of the Dowry Prohibition Act, filed against him by the M.C.1st petitioner, there was a settlement of Rs.2,00,000/- to pay in the name of minor child and the wife relinquished all her right for maintenance claim, having considered thereunder, a sum of Rs.26,150/- as Mehar amount-cum-Iddat period amount in the value of Dinars and thereby she is not entitled to maintenance so also for the child the amount of 2lakhs deposited is invested in S.B.H., Nampally branch for the maintenance and welfare of the child and consequently he pronounced already talaq/ divorce on 28.03.2009 and the MOU dated 17.03.2012 thereby binding and awarding of maintenance thereby unsustainable and is liable to be set aside.

3. It is also his contention that he already married another woman and blessed with 5 children in between 2005 to 2012 whom he has also

to maintain with his meager income being an auto driver and awarding such huge sum is thereby unsustainable and liable to be set aside.

4. The learned counsel for the revision petitioner reiterated the same including by invoking section 127 CrPC, and by referring the judgments of the Madhya Pradesh High Court in Nirpath Singh Vs. Kiranbai¹, Bombay High Court of Nagapur Bench in Shrivankumar sakharam Ubhale Vs. Sau.Durga Shrawan Ubhale² and of the Apex Court in Mohd.Shamim Vs.Nahid Begum³ in impugning the order awarding maintenance by the learned Judge, Family Court including on the quantum.

5. Whereas, it is the submission of the learned counsel for the revision respondents/ MC petitioners that the order granting maintenance by the lower Court no way requires interference and the same is within the legal parameters and well considered one and thereby sought for dismissal of the revision in saying expressions placed reliance have no application and there is no relinquishment of maintenance claim of the wife(divorcee) and for the minor child, the mother of the child cannot relinquish.

6. Heard and perused the material on record.

7. From the evidence adduced before the lower Court, P.W.1-the 1st petitioner, R.W.1-respondent (Revision petitioner) with reference to Exs.P.1 to P.4, R.1 to R.3, the Ex.R.1 copy of settlement, dt. 17.03.2012 which is the material document, wherein pages 2 and 3 out of 5 pages there is a mention that after the marriage between the couple dated 28.02.1998, they were blessed with female child by then aged about 8

¹ 2004 Lawsuit MP 700

² 1989 CrI.L.J.211

³ 2005 1 ALT CrI.224 SC

years and under the care and custody of mother and from the misunderstandings marital life could not succeed, the 2nd party-wife filed dowry harassment and maintenance cases against the 1st party-husband which are pending and by the intervention of elders and well wishers, there was a settlement amicably under which the 1st party-husband agreed to pay and deposit an amount of 2lakhs in the name of the minor child for her future maintenance and welfare and as the 1st party already pronounced talaq to the 2nd party-wife on 28.03.2009 and intimated same to the 2nd party-wife which she received and accepted divorce and withdrew her mehar amount and maintenance of Iddat period of Rs.26,150/- from the office of the Qazi, Salibanda, Hyderabad, by executing a receipt and assured to withdraw her cases against the 1st party-husband and also received her Jahaj articles and belongings from the 1st party. From the above, it is settled that the said amount of 2lakhs to be deposited in the name of the minor child in SBI, Nampally branch for the future maintenance and welfare of the child and the 2nd party (wife) shall withdraw the M.C.No.120 of 2010 (against which the present revision preferred) by then pending and also a criminal case in C.C.No.898 of 2010 and the custody of the minor child shall remain with the mother.

8. In this there is nothing to say the 1st party-husband paid any amount to the 2nd party-wife in consideration of relinquishing her maintenance claim other than pittance which is of Rs.26,150/- as Mehar amount or Iddat period maintenance, the Apex Court referring to the Constitutional Bench expression in *Shabano Bano Vs. Imran Khan*⁴ categorically held that it is not suffice to pay by a divorced-husband to divorced-wife by pronouncement of Talaq, the maintenance only for the

⁴ AIR 2010 SC 305

three months but for the whole of the remaining life at best to pay within the Iddat period either in lumpsum or to agree to pay even in installments to meet the requirement unless shown there is a re-marriage of her to the disentitlement for further claim in case of installments. When such is the case, there is nothing to show she relinquished her right within the statutory meaning of Section 127(3)© CrPC, for nothing expressed and nothing to infer even and the contention contra is untenable, so also the expression relied upon in Nirpath Singh and Shrawan of Bombay High Court have no application so also of the Apex Court expression in Mohd. Shamim supra. Even the expressions when clear so also from the settled law of the mother of the minor child cannot relinquish the right of the minor child and even any such agreement which is opposed to public policy including prohibiting to maintain any legal proceeding is unenforceable and void under law. Thereby so far as the child concerned in addition to the interest yielding out of the 2 lakhs when it is shown not sufficient, the child is further entitled to maintenance during her minority or till the marriage, as the case may be, within the scope of Section 125 of CrPC. Even from the interest yields from the amount invested in the bank on FDs, mother of the child to maintain the child could not get more than Rs.900/- to Rs.1000/- per month, the interest to withdraw and to spend. When such is the case, for the further requirement of the child, some more amount apart from it is required, The M.C.^{1st} petitioner though mentions to withdraw when there is no consideration much less relinquishment under Section 127 of CrPC, even by virtue of the agreement, once the Apex Court expression supra has no application and as per the settled expression of the Apex Court in Shabana Bano supra even a divorced Muslim-wife is entitled to claim maintenance from her ex-husband till

she re-marries and once Section 127 CrPC is not a bar, she is entitled to maintenance.

9. Here, whether with the quantum of Rs.1500/- each to the two petitioners, awarded by the learned Judge, Family Court, is excessive and unsustainable or not concerned, the evidence on record no doubt shows including from the admission of P.W.1, the respondent-husband got second wife and children through second wife that is also discussed in para-7 of the lower Court's order. Once such is the case and the factum not in dispute of through second wife, he got 5 children whom also to maintain when personal law subject to his wisdom permits more than one wife however he cannot treat all equally which is otherwise no doubt not possible, operates as restraint even from the Quran tenets, for not to marry more than one wife for no one can treat more than one wife equally. That factum also of he got burden to maintain 5 more minor children to second wife being an auto driver out of that earnings that requires to take, what the learned Magistrate awarded of Rs.1500/- each to the divorced-wife and the minor child each because 2lakhs already invested in the name of the minor child, yields interest therefrom for maintenance of the child, so far as the child is concerned, what is awarded further of Rs.1500/- required to reduce to Rs.500/- and what is awarded to the wife of Rs.1,500/- to reduce to Rs.1,000/-.

10. Accordingly and in the result, the revision is allowed in part by reducing the maintenance awarded by the lower Court to the minor child of Rs.1500/-p.m. is reduced to Rs.500/- p.m. and to utilize the interest yields from the bank on Rs.2,00,000/- deposited for the maintenance and welfare of the child from the date of order of the lower Court dated 06.05.2013 and to pay all arrears pending if any within four equal monthly installments and Rs.1500/- p.m. granted to 1st

petitioner-wife is also reduced to Rs.1,000/-p.m. In other respects, the impugned order herein of the learned Judge, Family Court holds good. There is no order as to costs. Pending miscellaneous petitions, if any in this revision, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:13.02.2017.
Vvr.

