

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 484 OF 2018

Mr. Parvez Akhtar Rais Ahmed Momin	.. Petitioner
Vs.	
Dr. Nayyarein d/o. Mohammad Amin	
Momin W/o. Dr. Iftekhar Ahmed Momin & Anr.	.. Respondents

Mr. Firoz Ansari for the Petitioner.
Ms. Anita Bhaktwani for Respondent No. 1.
Mr. S.R. Shinde, APP for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 26th July, 2018.

P.C.:

1. The petitioner is aggrieved by order dated 22nd March, 2016 passed by Judicial Magistrate First Class in MA No. 181 of 2011 as well as the order dated 23rd January, 2017 passed by Sessions Judge, Thane in Criminal Revision Application No. 82 of 2016.

2. The respondent No. 1 had preferred an application under Section 3 of Muslim Woman's (Protection of Rights on Divorce) Act. In the said application it was contended by respondent No. 1 that, her marriage was solemnized with the petitioner on 5th January, 2008 according to Sunni Muslim rites and rituals. After the marriage and out of the said wedlock one son was born namely Ziyan. After the marriage the respondent No. 1 and the petitioner started residing

together. It was also contended that, since beginning the opponent and his family members had given ill treatment and cruelty on the point of dowry and Dahez to the respondent No. 1. She was mentally tortured. In the marriage her parents and relatives had given sufficient dowry, household articles, gift articles and ornaments to her but the opponents started giving ill treatment and cruelty to her on the point of dowry and demand of Rs. 1,00,000/- for purchasing office for him. She also referred to several instances of harassment cause to her by the petitioner. The respondent No. 1 filed proceedings under Section 125 of Cr.P.C. bearing No. 145 of 2009 and during the pendency of the said proceedings she learned that the petitioner had given divorce to her on 7th August, 2009 without any sufficient reason and cost. After receipt of Talaqnama the father and brother of the respondent No. 1 went to the house of the petitioner and requested him to hand over all the articles and ornaments given in the marriage and also pay the Iddat expenses by way of fair and reasonable maintenance amounting to Rs. 5,00,000/-, however, the petitioner refuse to do so and did not pay any amount of Iddat period. The respondent No. 1 lodge the complaint with the police for offences under Section 498A, 406 of the Indian Penal Code. The police seized household articles as per the list filed by her and return some ornaments however the ornaments weighing 11 tolas was still in the

custody of her husband. It was further contended that without any just and reasonable cause the petitioner had divorced her and spoiled her life due to the divorce she has to suffer great mental torture. The respondent No. 1 further contended that, she had no source of income and unable to maintain herself and on the other hand the opponent is having sufficient means of income being a Civil Engineer and he is working in Bombay Municipal Corporation having monthly income of Rs. 30,000/- per month.

3. The opponent (petitioner) appeared before the Court and filed his say vide Exhibit-6 and contended that, the application preferred by the applicant (respondent No.1) is false, frivolous, baseless, null and void and is not maintainable in law and prayed that the application be dismissed. He denied all the contentions raised by the respondent no. 1 in her application. It was also contended that to harass and pressurize him the respondent No. 1 has filed the said application with intention to grab money from the petitioner and she is not entitled for any maintenance under Section 3 of Muslim Woman's (Protection of Right on Divorce) Act. It was also contended that, the respondent No. 1 is suffering from skin disease and she was undergoing treatment for the same. He had approached various doctors with her for treatment but there was no relief and lastly the petitioner was informed that the disease is inherited from her family

and could not be cured. It was also contended that the respondent No. 1 had previously filed an application under Section 125 of Cr.P.C. bearing M.A. No. 145 of 2009 which was withdrawn on 3rd March, 2010 and the application under the Domestic Violence Act was also dismissed. It was also stated that the respondent No. 1 is doctor and is earning 25,000/- per month and is able to maintain herself. It was further stated that, the respondent No. 1 has filed a false complaint under Section 498A, 406 of IPC against the opponent (petitioner) and no ornaments are lying with him.

4. The Judicial Magistrate First Class, Bhivandi by order dated 22nd March, 2016 partly allowed the application preferred by respondent No. 1. The petitioner was directed to pay lump sum amount Rs. 2,20,000/- to the respondent No. 1 as fair and reasonable provisions and maintenance under Section 3 (1) (a) (b) of Muslim Woman (Protection of Rights on Divorce) Act, 1986. The petitioner was also directed to pay Rs. 2000/- to the respondent No. 1 towards the cost of the said application.

5. The petitioner then preferred Criminal Revision Application No. 82 of 2016 before the Sessions Court, Thane challenging the aforesaid order dated 22nd March, 2016. The learned Sessions Judge by order dated 23rd January, 2017 partly allowed the

revision application. The impugned order dated 22nd March, 2016 passed by learned JMFC in M.A. No. 181 of 2011 was modified and the petitioner was directed to pay lump sum amount of Rs. 1,50,000/- to respondent No. 1 under the provisions of the said Act.

6. Learned Advocate for the petitioner submitted that, respondent No. 1 is the former wife of the petitioner who was married to him on 5th January, 2008. The petitioner had divorced her on 7th August, 2009. As per Muslim law fixed Maher of Rs. 5001/- was paid to her in cash which shows the standard of living of the parties to the marriage and after the divorce thereof the relationships of the parties to marriage has come to an end. It is further submitted that the respondent No. 1 is remarried to another person during the pendency of this case. As per Muslim law husband's right is limited till the Iddat period i.e. for the period of 4 months which ought to be reasonable and sufficient means as per the standard of living of the parties as the marriage is a civil contract which comes to an end on the completion of Iddat period after the divorce as per the customary law and husband cannot be penalized for pronouncing divorce to his partner. The respondent No. 1 was suffering from incurable skin disease, which was not disclosed to the petitioner at the time of marriage. She failed to reside peacefully with the petitioner at her matrimonial home. She is qualified experienced and practicing doctor. The respondent No. 1

had filed M.A. No. 145 of 2009 under Section 125 of Cr.P.C. for maintenance which was withdrawn by her. She also filed OMA 599 of 2009 under Section 12 of the Domestic Violence Act for maintenance which was not pursued by her and the same is dismissed for want of prosecution. She also lodged First Information Report under Section 498A, 406 read with 34 of IPC which was investigated by the police and the charge sheet was filed and subsequently the said complaint was dismissed by the Court. It is further submitted that the respondent No. 1 has falsely claimed the recovery of gold ornaments. Respondent No. 1 also filed M.A. No. 178 of 2011 under Section 125 of Cr.P.C for maintenance of son who is in her custody and the petitioner is regularly paying an amount of Rs. 4,000/- per month to respondent No. 1 towards maintenance of his son. The respondent No. 1 has thus initiated multiple proceedings against the petitioner. The Sessions Judge has committed an error in passing the impugned order. The trial Court has also passed erroneous order which is required to be set aside. On the other hand the learned Advocate for the respondent submitted that the subordinate Court has passed the orders after analyzing the evidence on record. There is no reason to disturb the said order. It is submitted that, the Sessions Court has modified the order of the trial Court by reducing the lump sum amount from Rs. 2,20,000/- to Rs. 1,50,000/-. In spite of reduction of the amount, the

petitioner has challenged the said order in this Court. It is submitted that, the reasons assigned by the trial Court for grant of relief sought by the petitioner were satisfactory and the same were considered by the Sessions Court except the fact that the amount was reduced. In these circumstances, the petitioner has not made out any case for setting aside the impugned order.

7. The respondent No. 1 had filed the application under Section 3 of the said Act for maintenance and reasonable and fair provision to be made by the petitioner and her child. The said application was resisted by the petitioner by filing say. The respondent No. 1 filed her evidence on affidavit vide Exhibit-7 and specifically stated that she was ill treated by the petitioner and his family members. Several instances of harassment were referred to by the respondent No. 1. It was prayed that fair and reasonable provision to the amount of Rs. 5,00,000/- be directed to be made by the petitioner. The petitioner deposed vide Exhibit-17 and stated in his affidavit of evidence that the application was preferred by respondent No. 1 with an intention to cause harassment and pressurize him with a view to grab exorbitant amount and thus has filed said application. Learned Advocate for petitioner relied on decision of Supreme Court in the case of **Noor Saba Khatoon Vs. Mohd. Quasim.** In the said decision it is observed that, Section

3 of the said Act deals with 'Maher' or other properties of Muslim woman to be given at the time of divorce. It lays down that reasonable and fair provision has to be made for payment of maintenance to her during period of Iddat by her former husband. The respondent No. 1 had relied upon the decisions referred to by the trial Court. Wherein it was observed that former husband is bound to make and pay maintenance such as fair and reasonable provision to the wife beyond Iddat period and thereby she is entitled for the said amount. The trial Court also recorded that the case of the petitioner is that the applicant/respondent No. 1 is only entitled for the maintenance amount for Iddat period of 3 months and 15 days. Thereafter, the petitioner was not under obligation to provide such maintenance as the respondent No. 1 is well qualified and has capacity of earning and that she has been remarried. It was also contended that, the respondent No. 1 has admitted in her cross-examination that, she obtained B.H.M.S. degree from Dugad Phata Homeopathy College and she was having dispensary previously at Bhivandi. Thus, she is able to maintain herself and therefore, the petitioner is not under obligation to provide fair and reasonable provision and maintenance to the respondent No. 1. The trial Court analyzed the submissions advanced by both the parties and also the evidence on record. It was observed that the magistrate under the 'Act' has the power to grant

maintenance in favour divorced Muslim woman and the parameters and the considerations are the same as stipulated in Section 125 of the Code. The learned magistrate referred to the decision in the case of ***Chaturbuj Vs. Sitabai, Appeal (Cri.) 1627 of 2017*** wherein the Apex Court held that, woman who has been deserted or divorced can claim maintenance from her husband in spite of her efforts to earn a monthly income. If the money is not enough to provide for lifestyle she enjoyed before their separation. Even, where the personal income of wife is insufficient she can claim maintenance under Section 125 of Cr.P.C. It was further observed that, the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of family. The expression 'unable to maintain herself' does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 of Cr.P.C. The learned magistrate further observed that, the applicant is qualified and able to maintain herself and there is no reason why she chooses to remain idle, but this is not a ground to reject the claim for the maintenance as this is a statutory relief and fair and reasonable provision. The respondent No. 1 was compelled to reside with her parents after the divorce. Thus, she is entitled to get fair reasonable provision and maintenance from petitioner, even for son as petitioner and her son as he was maintained by her. The Court also took into

consideration the fact that, the petitioner is employed with Bombay Municipal Corporation. The petitioner has suppressed the true fact regarding his income and he has not filed any documentary evidence to show his income. The Court referred to Sections 106 of the Indian Evidence Act. The income of the petitioner is to his knowledge and he should have brought it on record when he claim that the respondent No. 1 is qualified and earning Rs. 25,000/- per month. The Court therefore gave finding that the maintenance of Rs.3,000/- to the respondent No. 1 as fair and reasonable provision and maintenance from the date of divorce till her remarriage and a son Ziyan is also entitled to get maintenance for 16 months i.e. Rs. 2,20,000/-. The petitioner was thereby directed to pay lump sum amount of Rs. 2,20,000/- to the respondent No. 1 as fair and reasonable provision and maintenance under Section 3 (1) (a) (b) of Muslim Woman (Protection of rights on divorce) Act, 1986. The Sessions Court in the revision application preferred by the petitioner had observed that, the application was preferred by the respondent No. 1 on 9th December, 2011. She got married to another person on 10th December, 2013 and certainly she laid her life as a divorcee during the said period. Hence, she is entitled for fair and reasonable provision and maintenance for Iddat period under the provisions of the said Act. The Court however, observed that considering the marital status of both the parties Rs.

1,50,000/- would be fair and reasonable amount for the maintenance of the respondent having considered the income of both the parties. The Sessions Court therefore modified the order and directed the petitioner to pay lump sum amount of Rs. 1,50,000/- to respondent No. 1 under the provisions of the said Act. Having gone through the reasons assigned by both the Courts in the impugned orders, I do not find that, there is any reason to disturb the findings of the Court. Although the trial Court had directed the petitioner to pay an amount of Rs. 2,20,000/- the same was reduced by the Sessions Court. However, the respondent No. 1 has not challenged the order of the Session Court. In the light of the circumstances hereinabove and for all the reasons stated by the Courts below, I do not find any reason to set aside the said orders. The respondent No. 1 is entitled for the relief granted by the Court below. Hence, I passed the following order.

ORDER

- (i) Criminal Writ Petition 484 of 2018 is dismissed.

(PRAKASH D. NAIK, J.)