

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO.848 OF 2013**

|                              |     |             |
|------------------------------|-----|-------------|
| Abdul Malik Mohd. Hussein    | ... | Petitioner  |
| Versus                       |     |             |
| Mrs. Zakiya Bano Abdul Malik |     |             |
| And Others                   | ... | Respondents |

.....

Mr. Amey C. Sawant I/b Suresh M. Sabrad for the Petitioner.  
None for the Respondents.

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**CORAM : M.S. SONAK, J.**

**DATE : 22 DECEMBER 2018**

**P. C. :**

. Heard Mr. Amey Sawant, learned Counsel for the Petitioner.

2 The challenge in this petition is to an order dated 15 January 2013, made by the Sessions Judge, awarding maintenance amount of Rs.1,000/- per month to Respondent No.1. The learned Single Judge has granted some time to the Petitioner to clear the arrears and also provided that in case the Petitioner commits two consecutive defaults in payment of installments of arrears of maintenance amount, the Petitioner is to pay interest at the rate of 6 per cent per annum.

3 Mr. Sawant, learned Counsel for the Petitioner-husband submitted that the Trial Court in the present case had correctly rejected Respondent No.1's claim for maintenance, since the Respondent was Muslim divorcee woman. He submits that taking into consideration the provisions of Muslim

Women (Protection of Rights on Divorce) Act, 1986, (the said Act), Respondent No.1 was obviously not entitled to a petition under Section 125 of the Criminal Procedure Code. He submits that the learned Sessions Judge, therefore, erred in reversing the Trial Court order and granting maintenance to Respondent No.1. He submits that the directions for payment of interest was also not justified in the facts and circumstances of the present case.

4 Upon due consideration, contentions raised by Mr. Sawant, learned Counsel and upon perusal of some material on record as well as the impugned judgement and order of the learned Sessions Judge, I am satisfied that this is not a fit case to interfere with in the exercise of extraordinary jurisdiction under Section 227 of the Constitution of India. The learned Single Judge has relied on several rulings, including rulings in the cases of **Danial Latifi Vs. Union of India**<sup>1</sup>, **Banobee W/o. Babbu Garve Vs. Babbu S.o. Hiru Garve**<sup>2</sup> and **Hashim Sayyed Vs. Goribi Sayeed**<sup>3</sup>, to hold that Respondent No.1 was not entitled to maintenance.

5 The view taken by the learned Single Judge is also quite consistent with the law laid down by the Apex Court in the case of **Shabana Bano Vs. Imran Khan**<sup>4</sup>. There is no error whatsoever in requiring the Petitioner to pay the interest at the rate of 6 per cent per annum, in case the Petitioner commits default in payment of entailment of the arrears of maintenance. For all aforesaid reasons, there is no case made out to interfere with the impugned order. This petition is, therefore, dismissed. There shall be no

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1 2001 (3) Mah. L.R. 601

2 2004 All MR (Cri) 673

3 2009 (3) Mh.L.J. 217

4 2010 All MR (Cri.) 278 (S.C.)

order as to costs.

6      Learned Counsel for the Petitioner points out that during pendency of the present petition, the learned JMFC by an order 12 April 2018, has enhanced the amount of maintenance by resort to the provisions of Section 127 of the Criminal Procedure Code. He submits that the Petitioner desires to challenge such enhancement and therefore, liberty may granted for the said purpose. The Petitioner will obviously has right to challenge the order dated 12 April 2018 before the appropriate forum. If such challenge is instituted, there is no doubt that the same will be decided on its own merits and in accordance with law.

7      With the aforesaid clarification, this petition is dismissed. There shall be no order as to costs.

**(M.S. SONAK, J.)**