

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on : 05th July, 2018
Judgment delivered on: 24th September, 2018

+ **CRL.REV. P.172/2015 & Crl. M.A. 4220/2015 & 3871/2017**

MINNI CHAUDHARY

..... Petitioner

versus

IQBAL SINGH @ IQBAL AHMED

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Medhanshu Tripathi, Mr. Satish Rana, Mr. Ashiwan Mishra and Mr. A.K. Singh, Advs.

For the Respondent : Mr Sunil Mittal, Sr. Adv. with Mr. Anupam S. Sharma and Mr. Parkash Aran, Advs.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns order dated 19.01.2015, whereby the family court has rejected the application filed by the petitioner under Section 125(3) Cr. P.C. and held that she has waived and surrendered her right to maintenance on permanent footing.

2. It is contended by the petitioner that she got married with respondent on 31.12.1992 as per Hindu rites and ceremonies. On joining the matrimonial home, she realized that it was the second marriage of her husband and the first wife was alive and he had not yet divorced from her. It is alleged that both the parties embraced Islam and got married as per the Muslim Law on 02.01.1993. The

Mehar amount fixed for the marriage was Rs. 2 lakhs.

3. It is contended that on 27.06.2001, parties were divorced in accordance with Muslim Law after declaring Talaq; respondent paid the Mehar amounts of Rs. 2 lakhs and Rs. 7 lakhs to the petitioner, which was received by the petitioner in the form of cash at the time of execution of the Talaqnama.

4. The petition under Section 125 Cr.P.C. was filed by the petitioner for herself as well as for her daughter. Later, the daughter by her statement dated 28.05.2014 withdrew her petition on the ground that she had attained majority and was residing with her father-the respondent, who was maintaining her well.

5. The family court by order dated 25.03.2013 declined to grant any maintenance to the petitioner on the ground that she was not the legally wedded wife of the respondent and that the respondent had made sufficient provisions for her maintenance at the time of Talaq. Said order was taken up in Revision by the petitioner and by order dated 21.07.2014, order of the family court was set aside by holding that the petitioner was covered under Section 125 Cr. P.C. and the question as to whether she has already settled her dues with the respondent was remitted to the family court to be considered and decided.

6. By impugned order dated 19.01.2015, the family court has held that the petitioner has duly waived and surrendered her right to

maintenance on permanent footing and accordingly declined to grant any maintenance to the petitioner.

7. Nikahnama of the parties dated 01.01.1993 records the Mehar amount as Rs. 2 lakhs. Parties were divorced on 27.06.2001 and deed of divorce by mutual consent - Talaqnama dated 27.06.2001 and agreement dated 28.06.2001 was executed between the parties.

8. The terms of deed of divorce dated 27.06.2001, inter-alia, read as under:

“5. That the party of the Second Part i.e. wife received in cash the amount of Mehr i.e. Rs. 2,00,000/- and Rs. 7,00,000/- i.e. for the maintenance of the wife during the Iddat period as per Muslim Rites and Customs and she hereby admits the same received in cash.

6. It is hereby agreed that there is no surviving claim, dispute or demand between the parties from each other since both the parties have received their respective ornaments valuable goods and articles, Mehr Iddat and the parties of the Second Part hereby acknowledge the amount so received in cash.

7. That the right of maintenance, if any, under Section 125 of the Code of Criminal Procedure of 1974 has been duly waived or surrendered on permanent footing by the parties under Section 127 (3) (C) of the Code of Criminal Procedure of 1974.”

9. Terms of agreement dated 28.06.2001, inter-alia, read as under:

“3. That second party has already retained with all

her jewellery and personal belongings consisting of her istridhan. The second party has received, Vide two Account Payee Cheques numbering 290676 and 290677 drawn on Standard Chartered Bank, Vasant Vihar, new Delhi cheque dated 01.09.2001, the Mehr amount of Rs. 2,00,000/- and a sum of Rs. 7,00,000/- as amount for settlement of all future claims against the first party with regard to the marriage between the parties. That this permanent settlement is with regard to the second party and not for the minor daughter of the parties.

That a sum of Rs. 6.00 Lacs is being paid in lumpsum as far as the minor daughter Baby Divyanshi is concerned, who was born as a result of a consummation between the parties. The first party will utilize the said 6.00 Lacs for taking steps for education, maintenance, and up bringing of the said child. Although the child will remain in the custody of the second party but the first party will be entitled to meet and maintain the child and from time to time as the biological father of the said child. The child can be brought by the first party if required at his home in case of any vacations, festivals or religious functions.

The child will be brought up in a loving and congenial atmosphere and both the parties will take care that their personal conflicts do not impress upon the child. When the child is of an age that she can avail the option of selecting her guardian, she would be free to choose with whom she wants to live and the manner of life she wants to adopt.”

10. Sections 127 Cr. P.C. 1973 read as under

“127. Alteration in allowance.

(1) *.On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife, child, father or mother, as case may be, the Magistrate may make such alteration in the allowance he thinks fit: Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded.*

(2) *****

(3) *Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-*

(a) *****

(b) *the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,-*

(i) *in the case where, such sum was paid before such order, from the date on Which such order was made,*

(ii) *in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband by the woman;*

(c) *the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof.*

(4) *****”

11. As noticed hereinabove, the eligibility of the petitioner to receive maintenance under Section 125 Cr. P.C. has already been settled in between the parties in the earlier round of litigation, by order dated 21.07.2017 in Crl. Rev. P. 308/2013. This Court had held that the petitioner was covered under the provisions of Section 125 Cr.P.C. to receive maintenance and the matter was remitted to the family court to ascertain as to whether in the facts of the present case, she had already settled her dues with her husband.

12. Section 127(3) (b) Cr. P.C. stipulates that where any order has been made under Section 125 Cr. P.C. in favour of a woman who has been divorced by, or has obtained a divorce from her husband and that she has received whether before or after the date of said order the whole of the sum which under any customary or personal law was payable under such order cancelling such order under Section 125 Cr. P.C. and further, Section 127(3) (c) stipulates that where a woman has obtained a divorce from her husband and she has voluntarily surrendered her right to maintenance or interim maintenance after her divorce, the order under Section 125 be cancelled from the date thereof.

13. In the facts of the present case as noticed above, two agreements were entered into between the parties; one on 27.06.2001 i.e. deed of divorce by mutual consent/*Talaqnama* and agreement dated 28.06.2001 which, *inter-alia*, record that the petitioner has received the Mehar amount of Rs. 2 lakhs which was agreed under the

nikahnama and Rs. 7 lakhs at the time of the execution of the Talaqnama. Parties have specifically agreed that the said amount is the maintenance amount of the wife during the *Iddat* period as per Muslim Rites and Customs and it specifically records that the petitioner has waived and surrendered, on permanent footing, her right to maintenance under Section 125 Cr. P.C. in accordance with Section 127(3) Cr. P.C.

14. Petitioner had agreed to accept the sum of Rs. 7 lakhs as amount for settlement of future claims for herself towards maintenance. Petitioner specifically waived and surrendered her right in terms of Section 173 Cr. P.C. on permanent footing to claim maintenance under Section 127 Cr. P.C.

15. Argument of learned counsel for the petitioner that since Section 127 Cr. P.C. deals with alteration of allowances granted under Section 125 Cr. P.C., for an order under Section 127 Cr. P.C. to be passed, there has to be an order under Section 125 Cr. P.C., does not have any merit.

16. It would be preposterous to hold that if a wife, on obtaining divorce has specifically waived her right to maintenance, then the family court would be entitled to cancel an order passed under section 125 but where no order has been passed under section 125 Cr.P.C., then the family court would have to first pass an order under Section 125 Cr. P.C. granting maintenance and then simultaneously in the next breath pass an order under Section 127 (3) (C) Cr. P.C.

cancelling the order under Section 125 Cr. P.C.

17. Therefore, even in a case where no order has been passed under Section 125 Cr. P.C., by applying the principles of Section 127(3)(c) Cr. P.C., family court can decline to pass an order under Section 125 Cr. P.C., if it is shown, as in the present case, that the wife has obtained divorce and has voluntarily surrendered her right to maintenance or interim maintenance as the case may be after her divorce.

18. Judgment of the Supreme Court in *Bai Tahira Vs. Ali Hussain 1979 (2) SCR 75*, cited by the learned counsel for the petitioner to contend, that payment of illusory amounts by way of customary or personal law requirement would be considered in the reduction of maintenance rate but cannot annihilate that rate, is not applicable in the facts of the present case. The petitioner has not only received the Mehar amount, which is the customary and personal law requirement but has also received an amount of Rs. 7 lakhs towards maintenance and specifically given up her right under Section 127 (3) (C) Cr. P.C.

19. Judgment in the case of *Nagendrappa Natikar Vs. Neelamma 2014 (14) SCC 452* relied on by the learned counsel for the petitioner is once again not applicable in the present case, in as much as, the same was in the context of Hindu Adoption & Maintenance Act. It has been held that proceedings under Section 125 Cr. P.C. being summary in nature and intended to provide a speedy remedy to wife, any order passed under Section 125 Cr. P.C. by a compromise could not

foreclose the remedy of the wife under Section 18(2) of Hindu Adoption & Maintenance Act. Waiver or surrender of right under Section 127(3) (c) was not in consideration in the said case.

20. Judgment in the case of *Maria Abhishegam Vs. Joyce Ebenezer & Anr.* 2005 CrL. L.J. 4182 (5) of the Karnataka High Court is also not applicable in the facts of the present case, in as much as, in the said case wife had surrendered her right to maintenance as she was gainfully employed and thus the Court held that in view of the changed circumstances she could maintain a petition under Section 125 Cr. P.C. Unlike the present case where the petitioner has received maintenance amount and has specifically waived her rights under section 127(3) Cr.P.C.

21. I find no infirmity in the view taken by the family court holding that the petitioner has waived and surrendered her right to maintenance on permanent basis.

22. In view of the above, I find no merit in the petition. The petition is accordingly dismissed with no order as to costs.

23. Order *Dasti* under the signatures of Court Master.

SANJEEV SACHDEVA, J

SEPTEMBER 24, 2018

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