

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 442 of 2013**

1. Ibtesar Ahmed Khan S/o. Haji Iftekhar Ahmed, aged about 29 years.
2. Haaji Iftekhar Ahmed S/o Haji Eltefat Ahm3ed, aged about 74 years.
3. Smt. Abrar V. W/o. Haji Iftekhar Ahmed, aged about 65 years.
4. Mohd. Abdul Khair Khan, S/o Haji Iftekhar Ahmed, aged about 32 years.

All are residents of Village Kharmora, Dadar, P.S. Balco, Civil and Revenue District Korba, District Koraba and applicant No. 1 is R/o Pendra Road, Near Telephone Exchange, Civil & Revenue District- Bilaspur, P.S. Pendra Road, District Bilaspur (C.G.)

---- Applicants

Versus

1. Smt. Shabana Khan, D/o Mo. Hanif Khan, aged about 30 years.
2. Ku. Sumaila parveen, D/o Ibtesar Ahmed Khan aged about 2 and a half years, through mother Shabana Khan.

Both are R/o. Rajendra Path Roshani Manjil, Vaishali Nagar in front of Petrol Pump Kusmunda, Civil and Revenue District Korba, P.S. Kusmunda Tahsil Katghora, District Korba.

---- Respondents

For Applicants	:	Mr. Aditya Khare, Adv.
For Respondents	:	Mr. Vikas Pandey, Adv.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****26.08.2019**

1. The applicants have preferred this revision against the order dated 03.06.2013, passed by learned Additional Sessions Judge, Kathghora, in Criminal Appeal No. 05/2013 whereby the appeal filed by the petitioners, Registered as MJC No. 2/2012 has been dismissed.
2. Brief facts of the case are that, respondent No. 1 is legally

married wife of applicant No. 1 and their marriage was solemnized on 12.10.2009 by Muslim Customs and, other applicants are father-in-law, mother-in-law and brother-in-law of respondent No. 1 and after marriage, Respondent No. 1 came to his father-in-law's house, ESEB Colony, Korba (East). After few days of marriage, a quarrel started between them, as a result of which, applicants ousted respondent No. 1 from their house. At present, she is living separately with her daughter at her parental house. Thereafter, she filed an application under Section 23 of Domestic Violence Act before the JMFC, Korba and demanded Rs. 8,000/- per month as maintenance amount.

3. In his reply, petitioner, in MJC No. 02/2012, denied all the allegations made against him and stated that respondent/wife has already been divorced and therefore, she can avail the remedies under the Muslim Women (Protection of Rights on Divorce) Act of 1986.

4. Learned Judicial Magistrate, after hearing both the parties, by its order dated 24.11.2012, granted Rs. 1,500/- per month as maintenance in favour of respondent No. 1. This order was appealed by petitioners before the Sessions Court and learned Sessions Judge on 03.06.2018, dismissed the appeal of petitioners. Hence, this revision.

5. Learned counsel for the applicant submits that, the learned Judicial Magistrate committed error in allowing the maintenance against the petitioners and also the same is confirmed by the learned Additional Sessions Judge, Katghora ignoring the fact that, the Domestic Violence Act, 2005 is not applied upon the respondent No.-1. The respondent and applicant No. 1 has already been divorced and the divorced Muslim woman is not entitled for maintenance in accordance with Section 125 of the Code, she can avail the remedy under the Muslim Women (Protection of Rights on divorce) Act of 1986. He next submitted that the respondent has been residing separately since 01.10.2010 with her own will and she filed the case for maintenance on 12.04.2012, after one and a half years. He also added that the learned Court below committed error by ignoring the fact that the respondent herself is

well educated and is working women, therefore, she is not entitled for any maintenance. As per Muslim Law, *Iddat* and *Mehar* has already been given to the respondent No.-1, therefore, order dated 03.06.2013 is liable to be set-aside and MJC No. 02/2012 pending before the Judicial Magistrate First Class is not maintainable under Section 12/23 of Domestic Violence Act.

6. During argument, learned counsel for the petitioners filed copy of the order dated 08.08.2017 of MJC No. 236/2016 and submitted that, learned Family Court also enhanced the maintenance in favour of respondents and now they are getting 11,500/- Rs. Per month.

7. On the other hand, supporting the impugned judgment, learned counsel for the respondent submits that the Court below was fully justified in awarding the maintenance and placed reliance in the case of *Sheikh Israfil Mohammad vs. Anwari Begum* passed in [2009(2) C.G.L.J. 239].

8. Heard learned counsel for the parties and perused the material on record including the impugned order.

9. Before the trial Court, it is an admitted fact that applicant No.1 and respondent No.1 were husband and wife and, at present, respondent No. 1 is divorced and is living separately. Learned Judicial Magistrate First Class, prima-facie finds that the earning of petitioner No.-1 is Rs. 20,000/- per month and, Family Court granted Rs. 3,500/- per month as maintenance, and granted only 1,500 Rs. Per month as interim maintenance.

10. This High Court in the case of *Sheikh Israfil Mohammad* (supra) held in para 11 in its judgment as under:-

“Right of maintenance of divorced Muslim women after the period of iddat from her husband and liability of the husband has been elaborately interpreted by the Apex Court in the matter of Danial Latifi and Another⁴ (supra) and in the matter of Iqbal Bano² (supra). Thus, in the light of aforesaid declaration of law by the Apex Court a divorced

4 (2001) 7 SCC 740, *Danial Latifi and another Vs. Union of India*.

2 (2007) 6 SCC 785, *Iqbal Bano Vs. State of U.P. and another*

Muslim woman is entitled for future maintenance from her former husband and the former husband is under obligation to maintain her even after the period of iddat."

11. In view of above, this Court is of the considered opinion that the Court below has awarded future maintenance to the respondent No.1 from her former husband and Provision of Section 3 is a special provision for maintenance of the divorced Muslim women, according to which, the divorced Muslim women is entitled for maintenance from the date of divorce. Thus, learned Court below has not committed any illegality or infirmity in awarding the maintenance in favour of respondent No.-1, order dated 03.06.2013 passed by the Court below being fully justified, do not call for any interference in revision petition.

12. Accordingly, this revision being without substance is liable to be dismissed and it is hereby dismissed.

**Sd/-
(Rajani Dubey)
JUDGE**

Vijay Sahu