

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.1122 of 2018

ORDER :

Heard already and further in reply, Sri S.M.Rafee, learned counsel for the revision petitioner (respondent in CrI.M.C.No.41 of 2014, on the file of the learned Additional Metropolitan Sessions Judge for the trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, and Sri K.Ravinder Reddy, learned counsel for the 1st respondent (petitioner in the CrI.M.C. supra) and the learned Public Prosecutor representing the 2nd respondent State and perused the impugned order, dated 15.02.2018, and the grounds of revision.

2. The revision grounds, leave about nothing to interfere on other aspects, but for on Ground No.2 among the specific six grounds, raised in support of the prayer to set aside the order, dated 15.02.2018, in CrI.M.C.No.41 of 2014 supra are that even contended of a divorced Muslim woman is not entitled for maintenance by virtue of the provisions of the Special Act, 1986, for the 1st respondent to claim as if her marital relation is subsisting with the revision petitioner and the trial Court, having observed about the formalities of the divorce *prima facie* taken place went wrong saying as if the divorce is not valid and said order is liable to be set aside.

3. In the maintenance order supra, there are two witnesses examined, who is the maintenance claim petitioner and maintenance claim respondent, petitioner and 1st respondent to

the revision herein, the documents she placed reliance were Exs.P-1 to P-4, viz., xerox copy of Wedding Card; xerox copy of the Nikhanama; xerox copy of the marriage certificate along with English translation; and xerox copy of the Voter's Identity Card of the petitioner. The fact that the maintenance claim petitioner is wife of the maintenance claim respondent by virtue of that Nikhanama not in dispute, but for the contention of the maintenance claim respondent of there was subsequent dissolution of their marital tie by pronouncement of triple talaq as per the Quranic tenets. In support of his contention, he placed reliance on Exs.R-1 to R-5, viz., Ex.R-1-certified copy of the divorce certificate, dated 20.09.2010, issued by the Government Qazi, Ex.R-2-certified copy of the receipt i.e., proof of payment by the respondent so-called Iddath Period maintenance and receiving of Maher, dated 20.09.2010, Ex.R-3-certified copy of the Bank Account statement of the maintenance claim respondent in showing correlation between the payments covered by the receipt and the drawal from the Bank Account by cheque encashed, leave about Ex.R-4-certified copy of the charge sheet and order in STC.No.271 of 2014 and Ex.R-5-certified copy of the petition against him by her to the State Human Rights Commission and the order thereon.

4. The enquiry contemplated, as pointed out by the learned counsel for the 1st respondent to the revision, is summary in nature. It is practically a quasi-criminal proceeding for civil remedy of maintenance for quick enforcement and to prevent vagrancy and destitution of women and aged parents and dependent children, etc., to enforce through criminal process

expeditiously, thereby summarily. A summary proceeding finding is not binding ultimately in determining a dispute in relation to said status as to finding of still subsisting wife or the claim of already a divorced wife though *prima facie* finding is to be given on the application of the Special Act, 1986, or not, leave about the Constitution Bench expression of the Apex Court in **Daniel Latifi v. Union of India**¹, which provides even circumstances when a divorced wife also entitled, by the provisions of Family Courts Act, without resort to the Special Act, 1986, remedy under Section 125 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). Nothing more is required to be discussed herein, but for the two expressions on the scope of the revision *lis* on how far the finding given by the lower Court even not chosen to set aside, but for to clarify, if any, on bindingness for future *lis*.

5. The Apex Court in **Shamim Ara v. State of U.P. and another**², referring to Section 125 Cr.P.C. saying under Muslim Law, the condition precedent for effectiveness of divorce so as to disentitle a Muslim woman to claim maintenance under the provision is pronouncement of the divorce, which is to be proved on evidence and in the absence of which, mere written statement to plea in reply to application for maintenance that non-applicant had divorced the applicant some time in past would not have the effect of effectuating a divorce on the date of delivery of the copy of the written statement to the applicant nor could a similar statement made in an affidavit by the non-applicant in some other case, to which the applicant not party, be of any evidentiary value.

¹ AIR 2001 SC 3958

² (2002) 7 Supreme Court Cases 518

To speak about the talaq, in order to be effective, has to be pronounced to mean, to proclaim, to utter formally and rhetorically, to declare, to utter, to articulate and there is no proof of talaq on 11.07.1987, but for a mere plea to accept a mere mention in the absence of adducing evidence in proof of it cannot show the relationship is terminated by divorce. In fact, in the case on hand, the respondent came to the witness box and relied on the certificate, particularly Ex.R-1 and payment of the amounts claimed as Iddath Period maintenance and Maher amount respectively with reference to Exs.R-2 & R-3, receipt and bank account about encashment of the cheque entry.

6. The observation of the lower Court thereby at para 8 page 5 not sustainable to say respondent could not give cogent reasons for pronouncing divorce by his unilateral act with serious allegations without conducting pre-divorce counselling and thereby there is no validity to the divorce pronounced by him. In fact, it is observed of divorce pronounced by him by the proceedings supra.

7. Leave about the consequences of the latest expression of the Constitution Bench of the Supreme Court and any ordinance in force in this relation and its application how far to the facts on hand, for the limited purpose of revision, the Court need not go by dwell into, but for referring to **Daniel Latifi's case (2 supra)** to say the maintenance order unless sought by any separate proceeding shall continue. However, the observation of there is no valid divorce liable to be set aside if not to confine only to the limited extent of the summary disposal, which is not binding in future proceedings nor operate as *res judicata* or estoppel or orbital, that

too when the law is clarified by the Apex Court way back in **Dwarika Prasad Satpathy v. Bidyut Prava Dixit and another**³ in saying order under Section 125 Cr.P.C. does not finally determine the status, rights and obligations of the parties as to the validity of the marriage, but for *prima facie* satisfied about the relation, for the provision is meant to provide immediate succor and strict proof of the essential rituals in performance of disputed marriage not required. Thus, the principle laid down therein is a summary finding can be given to provide maintenance to prevent destitution. However, that summary finding is confined only to the case on hand and not binding in other proceedings and the same is clarified herein by disposal of the revision to the above extent and the finding is set aside, however, the maintenance is confirmed.

8. With these observations, the Criminal Revision Case is allowed in part.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

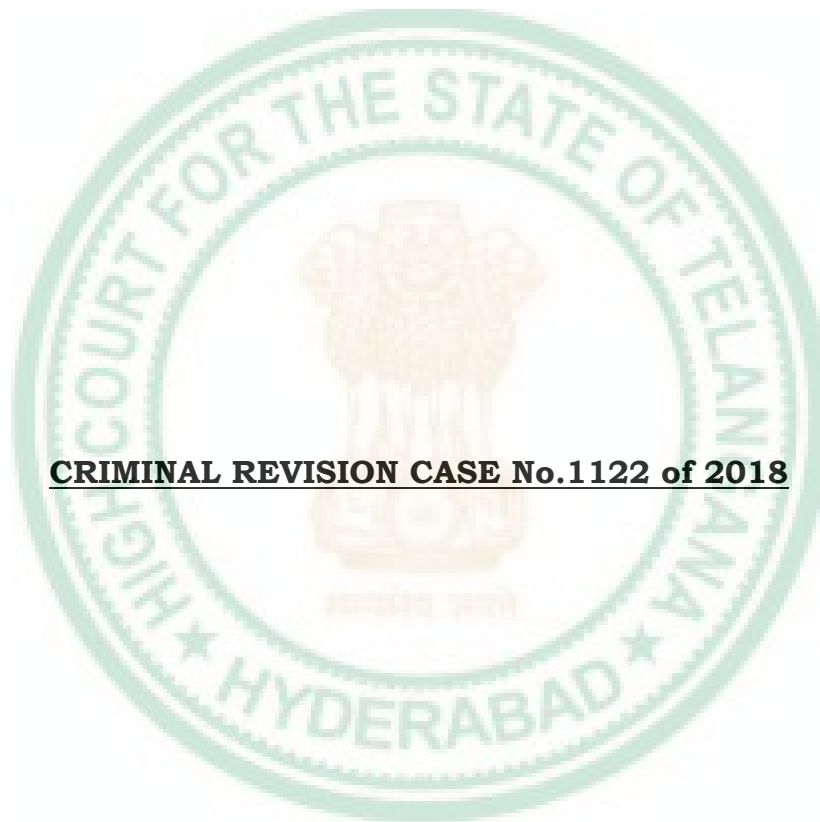
Date: 2nd April, 2019

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³ (1999) 7 Supreme Court Cases 675

104

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