

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 87/2012

Sau. Noorjahan w/o Salim Geegani,
aged about 42 years, Occ. Household,
R/o. Mehkar, Tq. Mehkar, Dist. Buldana.

... **PETITIONER**

VERSUS

Mohd. Salim Haji Shakur,
Geegani, aged about 52 years,
Occ. Legal Practitioner & Trade,
Tq. & Dist. Nanded.

... **RESPONDENT**

Mr. Sibghatullah Jagirdar, Advocate for petitioner.
None for respondent – sole.

CORAM : **VINAY JOSHI, J.**
DATE OF JUDGMENT : **20.07.2022.**

ORAL JUDGMENT :

Despite appearing in the proceeding, respondent/husband chooses to remain absent. The matter was adjourned time to time with a hope that respondent/husband would appear and contest the matter, but he failed.

2. Heard learned counsel for the petitioner/wife and gone through the record and proceeding. The petitioner/wife has raised a limited challenge to the order dated 30.11.2011 in Criminal Revision No. 118/2011, by which the maintenance was awarded from 17.03.2011 i.e. when fresh notice after remand, was served on husband. In other words, it is petitioner's grievance that maintenance has not been awarded from the date of application, which is the limited challenge

3. The litigation has checkered history. The couple married on 09.05.1983, whilst petitioner/wife was divorced by the respondent/husband on 22.08.1983. Since the petitioner/lady was neglected and refused by her husband, she filed maintenance application No. 94/1986 in terms of Section 125 of the Code of Criminal Procedure ('Code') which was dismissed. The revision against said order was equally dismissed, but this Court held that the application was maintainable as regards to the rights of children.

4. Though in first round of litigation, the maintenance was refused to the wife, however she has again filed maintenance application No. 47/2000 claiming change in legal position. Perhaps, she has applied afresh in view of the decisions of the Supreme Court in various cases holding that divorced Muslim woman is entitled for

maintenance under Section 125 of the Code as long as she does not remarry. In said application, reliance was placed on the decision of the Supreme Court in case of *Shabanabano Vs. Imrankhan, 2010 (1) Bom. C. R. (Cri) 57*. The said application was dismissed, however the Revisional Court vide order dated 29.09.2010 remanded matter back for fresh consideration. Latter on, the Magistrate after considering the settled legal position vide judgment and order dated 08.08.2011 has awarded maintenance @ Rs. 1500/- from the date of application i.e. from 22.03.2000. Aggrieved by said order, respondent/husband filed Criminal Revision No. 118/2011, in which the quantum of maintenance was not disturbed, but it was directed to be paid from 17.03.2011 which is impugned herein.

5. In-short, in second round, maintenance application was filed on 22.03.2000 and it was awarded from the date of application. The Revisional Court has observed that since maintenance application was earlier dismissed, then remanded and therefore, it is quite harsh to direct respondent/husband to pay maintenance from the date of application. With such analogy, the Revisional Court held that after remand, a fresh notice was served on 17.03.2011 and therefore, awarded maintenance from that date.

6. It reveals from the record that earlier dismissal was not on merits. During pendency, husband had moved an application Exh. 33 for dismissal on account of divorce and the plea of *res judicata* was raised, that is why the Revisional Court interfered by holding that divorced Muslim woman is entitled for maintenance. Thus, apparently, there was no mistake on the part of the petitioner/lady in the dismissal of application.

7. Learned counsel appearing for petitioner relied on the decisions of Supreme Court in cases of ***Shabana Bano Vs. Imran Khan, 2009 LawSuit (SC) 1524*** and ***Danial Latifi and another Vs. Union of India, (2001) 7 SCC 740***, wherein the Supreme Court has crystallized the law in the field reiterating the position that divorced Muslim woman is entitled for maintenance with reference to the Muslim Women (Protection of Rights on Divorce) Act, 1986 and rights of Muslim women were recognized. Thus, there would be no justification for denial of maintenance from the date of application which is normal course. There is no resistance to the position as canvased by the petitioner/lady nor respondent has shown that he has paid the maintenance during the pendency.

8. Having regard to the above facts, a case of interference is made out. In view of that, petition is allowed. The impugned order

dated 30.11.2011 passed in criminal revision No. 118/2011 is modified to the extent of grant of maintenance as awarded therein from the date of application i.e. from 22.03.2000. Petition stands disposed accordingly.

(VINAY JOSHI, J.)

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