

Anwar Ahmad Vs Sabida and Another

Court: Allahabad High Court

Date of Decision: Aug. 8, 1995

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 125
Muslim Women (Protection of Rights on Divorce) Act, 1986 â€” Section 3(1)

Citation: (1996) 1 DMC 177

Hon'ble Judges: N.B. Asthana, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

N.B. Asthana, J.

Smt. Sabida filed an application u/s 125, Code of Criminal Procedure claiming maintenance allowance for herself and her

two minor daughters. During the pendency of Ink; application one of the daughters died. The revisionist did not dispute the paternity of these

daughters but alleged that he has divorced Smt. Sabida and thereafter under the provisions of Muslim Women (Protection of Rights on Divorce)

Act, 1986 (for short Act) she is not entitled for maintenance that she is herself earning and is in a position to maintain herself and the two daughters,

that he is only a labourer earning about Rs. 600 per month and is not in position to pay maintenance.

2. The learned Judge, Family Court, Meerut up-held the contention of the revisionist that Smt. Sabida was not entitled to maintenance under the

provisions of the Act. He granted maintenance allowance to the surviving daughter Km. Reshama at the rate of Rs. 300 per month from the date of

application. Aggrieved by it the revisionist has come to this Court in revision.

3. Two points have been taken in this revision. The first is that the amount of maintenance granted is excessive and that under the provisions of the

Act even the surviving daughter was not entitled to maintenance.

4. The maintenance allowance granted is only Rs. 300 per month. It cannot be said to be excessive in these hard days. He was maintaining his wife

and two daughters before she started living separately. The trial court rightly come to the conclusion that his monthly Income is not less than Rs.

1000-1200 per month. Rs. 300 per month as maintenance allowance is not excessive.

5. Reliance has been placed upon Section 3(1) of the Act to argue that the surviving daughter was not entitled to maintenance. This provision

provides that a divorced woman shall be entitled after the divorce to get maintenance allowance for children for a period of 2 years from the date

of birth. It does not deal with the right of the children to obtain maintenance from their father upon the divorce of their mother. The Act has been

enacted to protect the rights of Muslim women who have been divorced from their husbands and to provide for matters connected therewith or

incidental thereto. The Act does not supersede the provisions of Section 125, Code of Criminal Procedure insofar as they relate to the grant of

maintenance allowance to the children. Admittedly the surviving daughter was of more than two years of age on the date of alleged divorce.

6. Both the points are without any force.

7. The revision is dismissed. The stay order dated 8.9.1993 is vacated. The Family court, Meerut be informed accordingly.