(2006) 02 GAU CK 0018

Gauhati High Court

Case No: Matrimonial Appeal (C) No. 6 of 2002

Nazrul Islam		APPELLANT
	Vs	
Mustt. Sajeda Begum		RESPONDENT

Date of Decision: Feb. 22, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125

Citation: AIR 2006 Guw 159

Hon'ble Judges: H.N. Sharma, J; A.H. Saikia, J

Bench: Division Bench

Advocate: D. Choudhury and P. Das, for the Appellant;

Final Decision: Allowed

Judgement

A.H. Saikia, J

1. Heard Mr. D. Choudhury, learned Counsel for the appellant. None appears for the respondent despite notice.

2. This appeal assails the judgment and order dated 13-12-2001 rendered by the leamed principal Judge, Family Court, Guwahati in Case No. F. C. (Civil) No. 42/ 98 by which the application filed by the wife- respondent praying for setting aside the Talaknama'' dated 15-2-1998 and for a decree of restitution of conjugal right, was accepted by the learned Judge and accordingly the aforesaid ''Talaknama'' was set aside and decree for restitution of conjugal right was passed.

3. Being aggrieved by the aforesaid findings of setting aside the ''Talaknama'' as well as passing the decree for restitution of conjugal right, the husband appellant has filed this matrimonial appeal alleging herein precisely that once the wife already accepted the Talaknama'' by way of receiving the letter of Talak sent by the appellant under registered post, in the premises of the attending facts and circumstances of the case, now the same cannot be questioned under the Muslim

Law.

4. Alleging the impugned judgment, Mr. Choudhury has contended that admittedly the wife respondent was living separately from her husband /appellant staying at her parental house since 1996 though the marriage was solemnized on 3-12-1989. It is also submitted that the said factum is clearly proved from the filing of an application for maintenance u/s 125 Cr.P.C. by the wife respondent before the Family Court itself in the year 1997 which was registered as F. C. (Crl.) 219/97 and the Court also directed the husband petitioner to pay Rs. 500/- per month to each of the two daughters of the parties who were residing with the wife respondent. Since she was living separately for such long time as mentioned above, their marriage is dead for which the husband appellant had no option but to send the Talaknama'' dated 15-2-1998 divorcing her as per Muslim Law. That apart, the wife respondent also filed an application on 25-2-2000 before the Family Court seeking disposal of the divorce case as expeditiously as possible on condition of payment of Mehar amount of Rs. 20,101/-. However, later on, the same was, as submitted by the learned Counsel for the petitioner, allowed to be withdrawn by the learned principal Judge, Family Court on request of the respondent. According to him, the fact remains that wife-respondent is not at all willing to lead their conjugal marital life. That being so, in terms of Muslim Law she was divorced by the appellant by issuing the ''Talaknama'' in question, being valid in the eye of law.

5. On close perusal of the pleadings exchanged by and between the contesting parties including the impugned judgment and order, we are of the firm view that the learned Principal Judge, Family Court failed to address the basic fact situation arisen in this case as disclosed from the material evidence on record. Concededly, both the parties are living separately since 1996 and from consideration of the facts and circumstances of the case in its totality, it can be safely held that the purpose and object of marriage between the concerned parties has been rendered frustrated. The marriage is, in all practical sense, is dead. On overall consideration of the fact situation, it appears that there is no chance of marriage being retrieved and it is, therefore, better to bring it to an end. That apart, we do not find any cogent or plausible reason to dislodge the Talaknama'' dated 15-2-1998 and accordingly the same is accepted.

6. In view of the above, the interference with the impugned judgment is, in the interest of justice, warranted and accordingly the same stands set aside.

7. At this stage, Mr. Choudhury, learned Counsel for the appellant has submitted that appellant is agreeable to make the payment of the entire Mehar money which was admittedly fixed at Rs. 20,201/-. Besides this amount of Mehar, Mr. Choudhury has stated that his client is, as a token of respect to her womanhood and a gesture of goodwill recalling his past conjugal relationship with the respondent as husband and wife, ready to pay a further amount of Rs. 30,000/- (rupees thirty thousand) only.

8. We do gladly accept the above submission and accordingly Mehar money is fixed at Rs. 50,201/- (Rupees fifty thousand two hundred and one) only. The appellant husband is directed to make the payment of the above amount to the respondent-wife in three equal instalments within a period of three months from today. In deciding this matter we are guided by the proposition of law laid down by the Apex Court in Danial Latifi and Another Vs. Union of India,

9. In the result, the appeal stands allowed to the extent indicated above. No costs.