

(2006) 11 KAR CK 0114

Karnataka High Court

Case No: Revision Petition Family Court No. 1 of 2006

Muneer Ahmed

APPELLANT

Vs

Safia Mateen alias
Shaheen

RESPONDENT

Date of Decision: Nov. 13, 2006

Acts Referred:

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

Citation: (2007) CriLJ 919 : (2007) 1 DMC 550

Hon'ble Judges: D.V. Shylendra Kumar, J

Bench: Single Bench

Advocate: Ameet Kumar Deshpande, for the Appellant; Manjula N. Tejaswi and
Seetharam, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.V. Shylendra Kumar, J.

This revision petition by an unwilling husband who is not prepared to pay maintenance amount of Rs. 1,000/- awarded in favour of the respondent-wife from the date of the order in Cri. Misc. No. 76 of 2001 on the file of the Presiding Officer, Family Court, Gulbarga and during the pendency of the petition at Rs. 800/- per month.

2. The husband has brought the matter to this Court contending that the claim petitioner before the Family Court was not his wife as he had already divorced her; that in view of the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short, "the Act"), the wife-present respondent could not have maintained a petition u/s 125 of the Criminal Procedure Code for seeking maintenance, but should have taken recourse to the provisions of only the Act and therefore the Family Court is in error in awarding maintenance.

3. Sri Ameet Kumar Deshpande, learned Counsel for the petitioner has vehemently urged that the learned Judge of the Family Court has fallen into serious error in not noticing the correct legal position as to the provisions under which a divorced Muslim woman can seek maintenance; that it is not open to such a lady to invoke the provisions of Section 125 of the Criminal Procedure Code, particularly, on and after the coming into force of the provisions of the Act.

4. I have heard Smt. Manjula N. Tejaswi, learned Counsel for the respondent-wife who has urged that there is no merit in the petition; that the revision petitioner is not right in contending that there was a divorce; that the respondent continues to be the wife of the petitioner and was definitely entitled to claim maintenance; that the petitioner had virtually driven her away from the house seeking for more dowry and had also subjected her to great physical and mental strain resulting in the birth of a still born baby to the respondent-wife; that the amount awarded is a very nominal amount; that in view of the pendency of this revision petition, the petitioner has not paid this amount also; that the petition deserves to be dismissed with costs.

5. Sri Ameet Kumar Deshpande, learned Counsel for the petitioner has urged that the learned Judge of the Family Court is wrong in answering the point No. 2 i.e., whether the present petitioner who was the respondent before the Family Court proves that the claim petitioner was a divorcee on the date of the petition in the negative and answering against the husband.

6. In this regard, learned Counsel for the petitioner has drawn my attention to the material placed before the Family Court, particularly, in the form of Exhibit R. 2-the legal notice that had been caused at the instance of the revision petitioner and Exhibit R. 6 a certificate of divorce issued by Sardar Quazi, Gulbarga, and urges that the legal notice dated 28-7-2001 quoting the divorce on 27-7-2001 as also the certificate indicating that the revision petitioner had divorced the respondent-wife on 27-7-2001 are conclusive proof of this fact and therefore urges that the learned Judge of the Family Court should have answered this issue in the positive in favour of the revision petitioner in which event the claim petition would have automatically fallen to ground having regard to the legal provisions in the light of the Act.

7. Perhaps the question as to whether the petition u/s 125 of the Cri. P.C. for claiming maintenance as had been done before the Family Court was maintainable or otherwise could have arisen if the revision petitioner was able to prove that he had divorced the respondent in a valid and recognisable manner known to law. But, unfortunately for the revision petitioner, he had not done so and the finding is that he had failed to prove the same. The learned Judge had held so because neither the legal notice nor the certificate were the testimony of the divorce in the absence of proof of the act of divorce having been witnessed by any person and such persons having not been examined before the Court to the factum of the divorce. Ultimately, the legal notice and the certificate of divorce have all been issued at the instance of the petitioner himself and on his statement or assertion. A statement of the

petitioner once, twice, thrice does not amount to corroborating the same through witnesses, particularly, when the legal notice as well as the certificate of divorce did claim that the divorce had been given in the presence of the witnesses. In the absence of such witnesses having been examined, there is no way of the learned Judge of the Family Court concluding that there was a valid divorce. As the petitioner had not made good his own version, the status of the respondent as wife of the petitioner remains and the question of not maintaining the petition u/s 125 of the Criminal Procedure Code does not arise. The Trial Court has rightly answered this point against the petitioner and the same is confirmed.

8. However, with regard to the quantum, the learned Counsel for the petitioner would urge that the petitioner is a person who carries on welding work and is not earning as much as had been pleaded or contended by the respondent-wife and therefore the amount is on the higher side etc.

9. The amount awarded is at Rs. 1,000/- per month. In the present day cost of living, a sum of Rs. 1,000/- if at all is a bare minimum for keeping the body and soul together as in the present case, it appears that the respondent-wife is suffering from various diseases and even mentally as pleaded by the petitioner himself in which event she may need medical attention etc. The amount is not on the higher side. It is for the petitioner to earn sufficiently not only to maintain himself but also provide Rs. 1,000/- per month to the respondent-wife.

10. Though it is sought to be urged by learned Counsel for the petitioner that the learned Trial Judge has not answered the point regarding the husband having not proved divorce correctly and that it may affect the petitioner in future proceedings, while the learned Judge of the Trial Court found on the material placed before the Trial Court, the revision petitioner was not able to make good his case of divorce on 27-7-2001, the apprehension that it may affect him in future also is not real as it is the well-settled law that the findings recorded in proceedings u/s 125 of the Criminal Procedure Code are for the purpose of awarding maintenance and cannot at any rate be conclusive or determinative of the rights of the parties even in civil proceedings. Therefore, the apprehension is misplaced. The findings is confined to the liability towards providing maintenance.

11. I do not find any scope for interference in this revision petition, which is hereby dismissed.

12. The petition failing, the petitioner is bound to make good the cost to the respondent in this revision petition which is quantified at Rs. 1,000/-. The amount to be paid within four weeks from today, failing which the amount can be realised by the respondent-wife as part of arrears of maintenance amount before the Family Court.