

**(2011) 07 MP CK 0040**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** Criminal Revision No. 241/10

Asif Saied

APPELLANT

Vs

Smt. S.M. Unnissan Rana and  
Others

RESPONDENT

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**Date of Decision:** July 8, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 127(1), 397, 401

**Citation:** (2012) 1 DMC 470 : (2011) ILR (MP) 2233 : (2011) 3 MPJR 129 : (2012) 1 MPLJ 134

**Hon'ble Judges:** Giriraj Das Saxena, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

G.D. Saxena, J.

This revision petition u/s 397/401 of the Code of Criminal Procedure, 1973 has been preferred against an order dated 2nd March 2010, passed in Criminal Revision No. 121/2009 (Smt. S.M. Unnissa @ Rana and Ors. v. Asif Saied) by the First Additional Sessions Judge Vidisha (M.P.), modifying thereby the Award dated 13th April 2009 passed in Criminal Case No. 08/2007 by the Court of Judicial Magistrate First Class, Kurwai, district Vidisha and enhancing the monthly maintenance amount from Rs. 2000/-to Rs. 3000/-to the Respondent No. 1 Smt. S.M. Unnissa and from Rs. 500/-to Rs. 1000/-to Respondent No. 3 Baby Bushra. However, the maintenance amount awarded to Respondent No. 2 Baby Madiha was not disturbed.

The brief facts just for the decision of this revision petition are that the Petitioner was married to Smt. S.M. Unnissa @ Rana and Babies Madiha and Bushra were born out of their wedlock. After sometime of marriage, due to unfortunate events, Respondent No. 1 S.M. Unnissa left her matrimonial home alongwith her infant

daughters and started living with her parents. On the request of the Respondent-wife, the Petitioner divorced her as per Muslim Shariyat law. On the application for maintenance u/s 125 of Code of Criminal Procedure, by the Respondent-wife, the trial Court awarded the monthly maintenance amount as mentioned earlier. Being aggrieved by the Award passed by the trial Magistrate, the revision petition was preferred seeking enhancement and eventually the maintenance amount awarded by the trial Magistrate was enhanced, as stated above.

The contention of the learned Counsel for the Petitioner is that on the request of the Respondent No. 1-wife, the Petitioner validly gave to her divorce. Hence, under the Muslim Personal Law, the liability of the husband-Petitioner to maintain a divorced wife is limited to the period of iddat. It is submitted that the Respondent No. 1 left her matrimonial house as per accord. She does not like the company of Petitioner's old and ailing parents, who are living at Bhopal and occasionally use to visit his house. She did not like that the Petitioner should spend money on their treatment. It is submitted that the Petitioner is working as teacher in Madarsa and is not capable to pay the enhanced amount of monthly maintenance as awarded by the Revisional Court. Therefore, it is requested that by allowing the present revision petition, the award passed by the Revisional Court be set aside.

On the other hand, learned Counsel for the Respondents in response to the said arguments, contended that the Respondent No. 1 is the legally wedded wife of the Petitioner and out of their wedlock, Respondents No. 2 and 3 were born. It is submitted that the Petitioner is bound to maintain them as per his status and income. It is submitted that the marriage of the Respondent No. 1 was performed by her parents as per their capacity and they had gifted each and every items but due to unending desire, the Petitioner was not happy and he used to harass and torture his wife for raising his demands. It is argued that the Respondent No. 1 has no independent source of income to maintain the Respondent No. 1 and her children and she is solely dependent upon the Petitioner. Looking to her condition, the trial court was not justified in granting monthly award to the Respondents, which mistake had been rectified by the Revisional Court in revision by enhancing the amount of maintenance. Therefore, it is prayed that the revision be dismissed maintaining the Award passed under the impugned order.

Heard the learned Counsel for the Petitioner and the learned Counsel appearing for the Respondents and also perused the record of the trial Magistrate and of the Revisional court with the law applicable to the case in hand.

Recently, the Hon. Apex Court in the case of [Shabana Bano Vs. Imran Khan](#), has resolved the controversy raised in this case in the following manner:

The Appellant's petition u/s 125 of the Code of Criminal Procedure would be maintainable before the Family Court as long as Appellant does not remarry. The

amount of maintenance to be awarded u/s 125 of the Code of Criminal Procedure cannot be restricted for the iddat period only. Cumulative reading of the relevant portions of judgments of this Court in Danial Latifi, ( AIR 2001 SCW 3932) (supra) and Iqbal Bano, (AIR 2007 SCW 3880) (supra) would make it crystal clear that even a divorced Muslim woman would be entitled to claim maintenance from her divorced husband, as long as she does not remarry. This being a beneficial piece of legislation, the benefit thereof must accrue to the divorced Muslim women. It is held that even if a Muslim woman has been divorced, she would be entitled to claim maintenance from her husband u/s 125 of the Code of Criminal Procedure after the expiry of period of iddat also, as long as she does not remarry.

Further, a Constitution Bench of this Court in the case of Danial Latifi and Anr. v. Union of India 2001 (7) SCC 746 observed as follows:

A careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. It was stated that Parliament seems to intend that the divorced woman gets sufficient means of livelihood after the divorce and, therefore, the word "provision" indicates that something is provided in advance for meeting some needs. In other words, at the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provision for her residence, her food, her clothes, and other articles. The expression "within" should be read as "during" or "for" and this cannot be done because words cannot be construed contrary to their meaning as the word "within" would mean "on or before", "not beyond" and, therefore, it was held that the Act would mean that on or before the expiration of the iddat period, the husband is bound to make and pay maintenance to the wife and if he fails to do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in Section 3(3) but nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the iddat period and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time.

In the case of Hazi Farzand Ali v. Neerjahan 1988 CriLJ.142 the High Court of Rajasthan held in this manner:

Having read the petition, I am of the opinion that the amount of I maintenance has been claimed by the non-Petitioner for herself as well as for her three minor children. This is a joint application moved by her on her behalf and on behalf of her children and a prayer has been made for the award of maintenance to the tune of Rs. 500/-for her minor children and herself. Thus, the application can be treated as an application for maintenance by each of her minor children u/s 125, Code of Criminal Procedure .

In the light of the decisions extracted above, in the opinion of this Court, on the expiration of the period of iddat the wife's right to maintenance does not cease to operate and she is entitled to claim maintenance under any circumstances. Hence, the petition for monthly maintenance by the divorced wife after divorce till her remarriage against her husband and the petition for monthly maintenance for minor children against their father is maintainable. So far as the quantum of maintenance amount is concerned, the standard of life enjoyed by her during her marriage and in the present scenario of the sky rocketing prices, the basic need of the grownup children and the liabilities of the Respondent-wife, all these factors should be kept in mind at the time of determining the amount of monthly maintenance. Looking to the evidence adduced before the trial Magistrate, it appears that the Petitioner/husband is working as teacher in Madarsa and getting regular income with annual increments on salary and there is further provision of timely revision of pay-scales by the State under the relevant rules. Hence, there appears to be no illegality committed by the Revisional court in passing the impugned Award.

For these reasons, the revision petition is dismissed confirming the order passed by the Revisional court. It is needless to add that it would be open to the parties to make an application u/s 127(1) of Code of Criminal Procedure on proof of a change in the circumstances as envisaged by that Section.