

Md. Tajuddin Vs Quamarunnisa Begum and Others

Court: Andhra Pradesh High Court

Date of Decision: March 31, 1989

Acts Referred: Criminal Procedure Code, 1973 (CrPC) &" Section 125, 127, 127(3)

Citation: (1989) 1 APLJ 353

Hon'ble Judges: Bhaskara Rao, J

Bench: Single Bench

Advocate: Addepalli Suryanarayana, for the Appellant; Krishna Mohan Rao (Legal Aid), Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The twin questions that arise in this revision are :

(i) Whether a divorced muslim woman is entitled to the provision and maintenance for the IDDAT period only under S. 3 of the Muslim Women's (Protection of Rights on Divorce) Act, 1986, and

(ii) Whether the grant of maintenance made in an application filed under S. 125, Cr.P.C., subsequent to the coming into force of the Muslim Women's (Protection of Rights on Divorce) Act is a nullity ?

2. The brief facts in this revision are : The petitioner husband married the 1st respondent in 1968 and after the 2nd respondent was born he divorced her in 1971. In the year 1985 the respondents filed a petition under S. 125, Cr.P.C.,

for grant of maintenance. Pending that petition the Muslim Women's (Protection of Rights on Divorce) Act (hereinafter referred to as "the Act") came into force and in July, 1987 that petition was allowed by granting maintenance of Rs.

125/- per month to the 1st respondent and Rs. 75/- per months to the 2nd respondent. The contention of the husband is that the order made in July, 1987 without observing the transitional provision, viz. S. 7 of the Act, is a nullity. Even

otherwise also, it is next contended, as per S. 3 of the Act the husband is liable to pay maintenance to the divorced woman only for the IDDAT period of three months and not beyond that and therefore the maintenance granted is illegal.

3. Earlier to the advent of the Act, muslim divorced women used to move the Criminal Court for grant of maintenance under S. 125, Cr.P.C., and for its alteration under S. 127, Cr.P.C. sub-section (3) of S. 127, Cr.P.C. provides :-

127. Alteration in Allowance :

(3) Where any order has been made under S. 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that -

(a)

(b) the woman has been divorced by her husband and that she received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order.

Thus, S. 127(3), Cr.P.C. mandates that the order granting maintenance shall be cancelled if it is established that the divorced woman has received the full sum payable on such divorce as per the customary or personal law applicable to the parties. In Mohd. Ahmed Khan Vs. Shah Bano Begum and Others, one of the questions that fell for decision before the Supreme Court, was, whether Mahr is an amount payable on divorce to attract S. 127(3), Cr.P.C. while considering that question the Supreme Court held (Para 24) :

The fact that deferred Mahr is payable at the time of the dissolution of marriage, cannot justify the contention that it is payable "on divorce". Divorce may be a convenient or identifiable point of time at which the deferred amount has to be paid by the husband to the wife. But, the payment of the amount is not occasioned by the divorce, which is what is meant by the expression "on divorce" which occurs in S. 127(3)(b). If Mahr is an amount which the wife is entitled to receive from the husband in consideration of the marriage, that is the very opposite of the amount being payable in consideration of divorce.

Thus it is held that Mahr is not the amount payable by the husband to the wife on divorce so as to attract S. 127(3)(b), Cr.P.C.

4. The other important question before the Supreme Court was, the existence or otherwise of any conflict between the provisions of S. 125, Cr.P.C., and the Muslim Personal law on the question of Muslim husband's obligation to provide maintenance for a divorced wife who is unable to maintain herself. Adverting to this question, the Supreme Court held :

The statements in the text books viz. Mulla's Mahomedan Law (18th Edn.); Tyabji's Muslim Law (4th Edn.) are inadequate to establish the proposition that the Muslim husband is not under an obligation to provide for the maintenance

of his divorced wife who is unable to maintain herself. Section 125 deals with cases in which, a person who is possessed of sufficient means neglects or refuses to maintain, among others, his wife who is unable to maintain herself. Since

the Muslim Personal Law, which limits the husband's liability to provide for the maintenance of the divorced wife to the period of iddat, does not contemplate or countenance the situation envisaged by S. 125, it cannot be said that the

Muslim husband, according to his personal law, is not under an obligation to provide maintenance, beyond the period of iddat, to his divorced wife who is unable to maintain herself. The true position is that, if the divorced wife is able to maintain herself, the husband's liability to provide maintenance for her ceases with the expiration of the period of iddat. If she is unable to maintain herself she is entitled to take recourse to S. 125".

The Supreme Court, thus held that there is no conflict between the Muslim Personal Law and the provisions of S. 125, Cr.P.C., and that there is nothing in the personal law saying that the husband is not under an obligation to provide maintenance to his divorced wife beyond the iddat period, if she is not able to maintain herself. Consequent upon this decision, there arose a situation necessitating the Parliament to make the Act.

5. Section 3 of the Act enumerates different items which a Muslim woman is entitled to on her divorce. It runs thus :

Section 3. - Mahr or other properties of Muslim woman to be given to her at the time of divorce. - (1) Notwithstanding anything contained in any law for the time being in force, a divorced woman shall be entitled to,

(a) a reasonable and fair provision and maintenance to be made and paid to her within the IDDAT period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of Mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

6. Clause (a) of sub-section (1) of S. 3 refers to the entitlement to "a reasonable and fair provision and maintenance to be made and paid to her within the iddat period". The submission of the learned counsel for the petitioner is that the

husband is liable to pay to the divorced wife maintenance only for the iddat period and not beyond that. The provision and maintenance contemplated by Clause (a) mean the same and if they are reasonable and fair and paid for the Iddat period the liability of the husband thereunder ceases. I am not able to agree with this contention. The expression used is within the Iddat period and not "for the Iddat period". The crucial words is "within" and not "for". The word "within"

is quite plain and the contemplation of S. 3(1)(a) is to make the provision and to pay the maintenance within the iddat period. As held in Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, , Arvind Mohan Sinha Vs.

Amulya Kumar Biswas and Others, and The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, the intention of the legislature has to be gathered from the words used by it giving to the words their plain,

normal and grammatical meaning. The word "within" would mean "on or before", "not beyond", "not later than". It cannot be said that "within" means "for" so as to limit the liability of the husband to make the provision and pay the

maintenance only for the iddat period. The next rule, Simonds called it "elementary", Lord Bomervell of Nelbotow "compelling", Edumberjea J. "Settled", is to read the statute as a whole as to find out the true intention of the legislature. It

is interesting to note that Clause (b) of S. 3(1) in relation to the children is specific in saying "provision and maintenance to be made and paid by her former husband for a period of two years". The word used is "for" and it is not so in so

far as Clause (a) is concerned. Therefore, had the legislature wanted that the liability should be confined under Clause (a) to the Iddat period only it could have very well used the word "for" and not "within", more so when it so used the

word in the very succeeding Clause (b). This view further derives fortification, when we read sub-section (3) to S. 3. To the extent relevant it reads thus :

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he satisfied that -

(a)

(b)

Make an order, within one month of the date of filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard

to the needs of the divorced woman, the standard of life enjoyed by her during her marriage.

7. It is under sub-section (2) to S. 3, the divorced woman would file the application for non-compliance with S. 3(1). The making of such an application shall be only after the Iddat period since the husband had time till the expiry of the

Iddat period to comply with S. 3(1). While deciding that application u/s 3(3), the Magistrate determines the reasonable and fair provision and maintenance "having regard to the needs of the divorced woman" the standard of life enjoyed

by her during her marriage. These guiding factors for purposes of determining the fair and reasonable provision and maintenance do imply that the provision and maintenance is for a period far beyond as Iddat, lest the wording of the

factors as quoted would have been quite different specifically confining the needs of the divorced woman to the period of Iddat. The next source of interpretation to gather the true intention of the legislature are the preamble of the Act and

the objects and reasons of the enactment. The preamble of the Act reads :

An Act to protect the rights of Muslim women who have been divorced by or have obtained divorce from their husbands and to provide for matters connected therewith or incidental thereto.

The statement of objects and reasons as published in Gazette of India (extraordinary) Part-II S. 2 dt. 25-2-1985 reads :

This decision Mohd. Ahmed Khan Vs. Shah Bano Begum and Others, , has led to some controversy as to the obligation of Muslim husband to pay maintenance to the divorced wife. Opportunity has, therefore, been taken to specify the

rights which a Muslim divorced woman is entitled to at the time of divorce and to protect her interests.

Thus, the main intendment behind bringing in the legislation is protect the interests of the divorced Muslim women, a legislation beneficial to the interests of the Muslim divorced women. In Jnan Ranjan Sen Gupta and Others Vs. Arun

Kumar Bose, the Supreme Court held that :

In dealing with such a provision of law we cannot read into the definition something which is not already there and the introduction of which will lead to imposing a restriction upon the rights of this class of ...

In the present case, interpretation of word "within" to mean "for" would impose a restriction on the period for which the Muslim divorced woman is entitled to the provisions and maintenance and therefore it is not permissible. Again in

Rameshwar and Others Vs. Jot Ram and Another, the Supreme Court held that while interpreting the statutes, construction beneficent is to be preferred to the alternative interpretations available. Even as per this decision, the word

"within" cannot be understood to mean "for" since it is equally not beneficent to the divorced Muslim women for protecting whose interests the legislation has been brought in. Further the Supreme Court in Mahadeolal Kanodia Vs. The

Administrator-general of West Bengal, held :

The third rule is that if in any legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted.

Even conceding for a moment that the word "within" means "during" though not "for", this being a beneficial legislation since the meaning "during" if given would take away the otherwise available right, even according to personal law, for

maintenance beyond the Iddat period of a divorced wife who is unable to maintain herself. It is sound interpretation to hold that it means "on or before" "not beyond", "not later than", so that it preserves the right as per the decision of the

Supreme Court in Mohd. Ahmed Khan Vs. Shah Bano Begum and Others, and more so when the remedy available to a Muslim divorced woman under sections 125 and 127, Cr.P.C. in addition to the one under personal law is no more

open in view of the transitional provision enacted in the Act, namely S. 7, directing such pending applications to be disposed of in accordance with the provisions of the Act. The Supreme Court held that Mahr is not a consideration for

divorce as to attract Clause (b) of S. 127(3) and to deny maintenance under S. 125, Cr.P.C. It is also held that the statements in the text books are inadequate to establish that a Muslim husband is not under an obligation to provide

maintenance even beyond the Iddat period if the divorced wife is not able to maintain herself. The ruling touched a period far beyond the Iddat and thus conferred a right for maintenance and provision to the divorced woman, which the

Parliament intended to protect, and this has to be preserved.

The expression "a reasonable and fair provision and maintenance to be made and paid to her within the Iddat period", intends to stress more for immediate and early compliance with the obligation and in no event beyond the Iddat

period. This view also receives fortification, if we look at S. 3(3) directing the Magistrate to dispose of the application made under S. 3(2) "within one month" and to record reasons if it is not so disposed of within one month.

8. It is next contended that the Muslim Law provides payment of maintenance to divorced woman only for the Iddat period and therefore the interpretation of Clause (a) of S. 3(1) should be in consonance with this personal law. Even

assuming for a moment that the personal law limits the liability only to the Iddat period, still when once the law is codified and brought out as an Act it would have overriding effect on the texts, etc. This Court in *Paturi Veeranna and*

Another Vs. Pathuri Seethamma, dealing with a similar contention held (para 10) :

Where a statute is expressly said to codify the law the Court, as a general rule, is not at liberty to go outside the four corners of law simply because before the existence of the enactment, another law prevailed.

Further the previous state of law cannot influence the interpretation of the provisions of the Act. To the same effect is the decision of the Madras High Court in *Arumugha Udayar and Others Vs. Valliammal and Others*, . It is held therein

(at p. 76) :

In the case of codifying statutes, it is a settled rule of construction that in respect of matters specifically dealt with by the statute earlier law cannot be invoked for the purpose of adding to it something which is not there. The true meaning of the provisions of the Act ought not to be influenced by considerations derived from the previous state of law.

8A. Even otherwise also, it is to be noted that the Supreme Court has itself observed in *Mohd. Ahmed Khan Vs. Shah Bano Begum and Others*, that the statements in the text books, viz. Mulla's *Mahomedan Law* (18th Edn.) and

Tyabji's Muslim Law (4th Edn.) are inadequate to establish the proposition that the Muslim husband is not under an obligation to provide for the maintenance of his divorced wife, who is unable to maintain herself. Therefore, it cannot be

said that Muslim Law confines payment of maintenance to divorced women only for the Iddat period. In this context, it is also necessary to refer to some of the relevant Aiyats from the Holy Quran as has been done by the Supreme

Court in *Shah Bano Begum's* case thus :

15. There can be no greater authority on this question than the Holy Quran. ""The Quran, the Sacred Book of Islam, comprises in its 114 Suras or Chapters, the total of revelations believed to have been communicated to Prophet

Mohammed, as a final expression of God's will."" (The Quran - Interpreted by Arthur J. Arberry). Verses (Aiyats) 241 and 242 of the Quran show that there is an obligation on the Muslim husbands to provide for their divorced wives.

The Arabic version of those Aiyats and their English translation are reproduced below :

The correctness of the translation of these Aiyats is not in dispute except that the contention of the appellant is that the word "mata" in Aiyat No. 241 means "provision" and not "maintenance". That is a distinction without a difference.

Nor are we impressed by the shuffling plea of the All India Muslim Personal Law Board that in Aiyat 241, the exhortation is to the "Mutta Queena", that is, to the more pious and more God-fearing, not to the general run of the Muslims,

the "Muslimin". In Aiyat 242, the Quran says : "It is expected that you will use your commonsense."

16. The English version of the two Aiyats in *Muhammed Zafrullah Khan's "The Quran"* (page 38) reads thus :

For divorced women also there shall be provision according to what is fair. This is an

Aiyat No. 241 Arabic version English version -----

WA LIL MOTALLAQATAY For divorced women MATA UN BTL MAAROOFAY maintenance (should be HAQQAN ALAL MUTTA provided). On a QUEENA reasonable (scale). This is a duty. On the righteous

Aiyat No. 242 KAZAIEKA YUBAIYYANU- Thus doth God Make LLAHO LAKUM AYATEHEE clear His Signs LA ALLAKUM TAQULOON To you : in order that you may understand.

(See the Holy Quran by Yusuf Ali, page 96)

obligation binding on the righteous. Thus does Allah make His commandments clear to you that you may understand.

17. The translation of Aiyats 240 to 242 in ""The Meaning of the Quran (Vol. I Published by the Board of Islamic Publications, Delhi) reads thus :

240-241.

Those of you, who shall die and leave wives behind them should make a will to the effect that they should be provided with a year's maintenance and should not be turned out of their homes. But if they leave their homes of their own

accord, you shall not be answerable for whatever they choose for themselves in a fair way; Allah is All-Powerful, All-wise. Likewise, the divorced women should also be given something in accordance with the known fair standard. This

is an obligation upon the God-fearing people.

242.

Thus Allah makes clear his commandments for you : It is expected that you will use your commonsense.

18. In ""The Running Commentary of the Holy Quran"" (1964 Edn.) by Dr. Allamah Khadim Rahmani Nuri, Aiyat No. 241 is translated thus :

241

And for the divorced woman (also) a provision (should be made) with fairness (in addition to her dower); (This is) a duty (incumbent) on the reverent.

19. ""The meaning of the Glorious Quran Text and Explanatory Translation"" by Marmaduke Pickthal, (Taj Company Ltd., Karachi), Aiyat 241 is translated thus :

241

For divorced women a provision in kindness : A duty for those who ward off (evil)"".

20. Finally in ""The Quran Interpreted"" by Arthur J. Arberry, Aiyat 241 is translated thus :

241

There shall be for a divorced wife provision honourable - an obligation on the God-fearing.

So God makes clear His signs for you : Happily you will understand.

21.

22. These Aiyats leave no doubt that the Quran imposes an obligation on the Muslim husband to make provision or to provide maintenance to the divorced wife. The contrary argument does less than justice to the teachings of the

Quran. As observed by Mr. M. Hidayatullah in his introduction to Mulla's Mohomedan Law, the Quran is Alfurqan, that is, one showing truth from falsehood and right from wrong.

8B. Apart from Aiyats 240 to 242 referred to by the Supreme Court, it is also interesting to note that Aiyat 236

There is no blame on you if the divorced women before consummation or the fixation of their dower; but bestow on them (a suitable gift), the wealthy according to his means, and the poor according to his means; A gift of a reasonable amount is due from those who wish to do the right thing.

directs bestowing of suitable gift even if the divorce is before consummation, while

Aiyat 237

And if ye divorce them before consummation but after fixation of a dower for them, then the half of the dower (is due to them), unless they remit it or (the man's half) is remitted by him in whose hands is the marriage tie; and the

remission (of the man's half) is the nearest to righteousness. And do not forget liberality between yourselves. For God sees well all that ye do.

(The Holy Quran - Interpreted by Abdullah Yusuf Ali)

having contemplated fixation of dower directs half of it at least be paid even if the marriage is not consummated and reminds liberality in that matter.

9. A perusal of the above Aiyats do direct liberality and reasonableness in the matter of providing maintenance and no Aiyat is pointed out before me to show that the personal law confines the period for payment of maintenance only to Iddat.

Even accepting for a moment that payment of maintenance is confined only to the period of Iddat, it is be noticed that Clause (a) of S. 3(1) does not limit its scope only to maintenance. It also contemplates making of provision. The term

"provision" takes within its fold residence, food, clothing, etc., thus fairly contemplating all future needs. Therefore, the fair and reasonable provision and maintenance contemplated by S. 3(1)(a) cannot be confined to the period of Iddat only.

10. It is also useful to notice S. 4 of the Act, which runs as under :

Section 4. Order for payment of maintenance :

(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not remarried and is not able to maintain herself after

the Iddat period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and

proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they

would inherit her property and at such periods as he may specify in his order :

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate

the Magistrate may, by order direct the State Wakf Board functioning in the area in which the woman resides to pay such maintenance as determined by him under sub-section (1).

11. The whole attempt of the legislature, thus, is to see that no divorced muslim women is left out as a destitute or vagrant and therefore took all the cautions that if in spite of the fixation of fair and reasonable provision and maintenance

the woman is not able to maintain herself after expiry of the Iddat period then liability is switched on to her (i) children (ii) parents (iii) relatives that inherit the property of the woman as per Muslim law and (iv) wakf board. This precaution

in relation to time beyond the Iddat period cannot, as was sought to be, be misconceived to be providing a clue for interpretation of the term "within" in Clause (a) of S. 3(1) to be meaning "for" by saying that S. 4 looks after the divorced

Muslim woman beyond the Iddat period and therefore the liability of the former husband is confined only for the Iddat period.

12. Turning to the other point, viz., whether the maintenance granted in an application under S. 125, Cr.P.C. subsequent to the coming into force of Act 25 of 1986 is a nullity, it is to be noticed that S. 7 of the Act, which is a transitional

one, reads thus :

Section 7. Transitional provisions : Every application by a divorced woman under S. 125 or under S. 127 of the Code of Criminal Procedure, 1973 (2 of 1974) pending before a Magistrate on the commencement of this Act, shall,

notwithstanding anything contained in that Code and subject to the provisions of S. 5 of this Act, be disposed of by such Magistrate in accordance with the provisions of this Act.

Therefore, all applications under S. 125, Cr.P.C., pending before a Magistrate on the date of coming into force of the Act irrespective of anything said contrary in the Cr.P.C., but subject to S. 5 of the Act shall have to be disposed of in

accordance with the provisions of the Act. Section 5 of the Act provides for the option to be governed by the provisions of Sections 125 - 128 of Cr.P.C., if both the parties so desire. The transitional provision is thus directive in its

nature. To find out whether its non-observance would nullify the very proceedings, it is to be seen whether any prejudice is caused to the party making complaint of the same. Act 25 of 1986 cannot be said to have been brought in so as

to abrogate the scope and ambit of Sections 125 - 128 of the Cr.P.C. On the other hand, S. 3 of the Act contemplates fair and reasonable provision to be made and maintenance paid to the divorced wife, that too within the Iddat period

while S. 125, Cr.P.C., limits the maximum amount of maintenance to Rs. 500/- per month, the payment being made monthly. This is not a case where the wife is making a complaint that she would have got more than Rs. 500/- per month

had the proceedings been conducted in accordance with the provisions of the Act. Therefore, it cannot be said that the order granting maintenance under S. 125, Cr.P.C., has in any way caused prejudice to the petitioner-husband vis a

vis his liability under S. 3 of the Act. Further, whether it is under S. 125, Cr.P.C., or under provisions of the Act, the proceedings have to be conducted by the Magistrate only. So much so, in either case the recourse to be had for default

in payment of maintenance is again before a Magistrate and under the provisions of the Cr.P.C. since sub-section (4) of S. 3 of the Act enables the Magistrate to issue a warrant in the manner provided for levying fines under the Cr.P.C.

Therefore, non-observance of the transitional provision, namely S. 7, can at best be said to be a curable irregularity and consequently the order passed granting maintenance under S. 125, Cr.P.C., after the commencement of the Act

cannot be said to be a nullity. It can at best be said to be a curable irregularity. Since there is already sufficient evidence, available to fix the amount of provision and maintenance, as requested by the learned counsel, I proceed to decide

the same under S. 3 of the Act. It is found by the learned Magistrate that the husband was drawing a gross salary of Rs. 1300/- to Rs. 1400/- and after deductions receiving a net amount of Rs. 950/-. The evidence of the wife that she

has no means of livelihood and was also not habituated to do manual labour is not contradicted by the husband. In the circumstances, I think it proper and just to award Rs. 10,000/- towards fair and reasonable provision and

maintenance to the divorced wife as per S. 3 of the Act. No doubt, while fixing this amount apart from the status of the parties, the dower or Mahr agreed to be payable at the time of divorce and also other properties, if any, given to her

as per Cls. (c) and (d) of S. 3(1) of the Act have to be kept in mind. In this case there is no evidence to show that any amount representing Mahr or dower was paid except stating that it was already paid, nor there is anything on record

to show any properties as per clause (d) of S. 3(1) have been given to the wife. The only evidence is that the husband paid Rs. 10/- per month maintenance of the 2nd respondent son for some time. There is no dispute before me in so far

as the 2nd respondent is concerned since he attained the age of majority. The amount of Rs. 10,000/- referred to supra if kept in fixed deposit in a nationalised bank would fetch some interest and that would be sufficient for the survival of

the wife 1st respondent. Therefore, the husband-petitioner shall pay the sum of Rs. 10,000/- to the 1st respondent-wife towards her fair and reasonable provision and maintenance. Until he makes the said payment, he shall continue to

pay Rs. 100/- (instead of Rs. 120/-) ordered by the Magistrate per month and as soon as he pays the lump sum of Rs. 10,000/- he need not pay any amount further. The revision is accordingly disposed of.

13. Before parting with this, I should record appreciation for the interest evinced and services rendered by Mr. V. Krishna Mohan, Advocate, sponsored by the Legal Aid Committee.

14. Order accordingly.