

(2016) 11 BOM CK 0014

Bombay High Court (Nagpur Bench)

Case No: Criminal Writ Petition No. 258 of 2016

Ashfaque s/o Mushtaq Ahmad

APPELLANT

Vs

Smt. Farzana w/o Ashfaque
Ahmad

RESPONDENT

Date of Decision: Nov. 21, 2016

Acts Referred:

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

Citation: (2016) ALLMRCri 5142 : (2017) 1 MhLJCrl 595

Hon'ble Judges: P.N. Deshmukh, J.

Bench: Single Bench

Advocate: Shri C.A. Lokhande, Additional Public Prosecutor, for the Respondent No. 2;
Shri A.A. Naik, Advocate, for the Petitioners; Ms. Ayesha Rizwy, Advocate, for the
Respondent No. 1

Final Decision: Dismissed

Judgement

P.N. Deshmukh, J.(Oral) - Rule. Rule is made returnable forthwith. Heard finally by consent of learned Counsel for the parties.

2. By this petition, petitioner no.1, who is husband of respondent no.1, and petitioner no.2, who is father of petitioner no.1, seek to quash and set aside the judgment and order dated 28/1/2016 passed by learned Additional Sessions Judge, Nagpur in Criminal Appeal No.241/2014 and the judgment and order dated 4/9/2014 passed by learned Judicial Magistrate, First Class, Kamptee in Criminal Application No. 141/2009 vide which amount of Rs. 10,000/- per month is directed to be paid by petitioner no.1 to respondent no.1 as maintenance.

3. Shri Naik, learned Counsel for petitioners, submits that marriage between petitioner no.1 and respondent no.1 took place in the year 1987 and in the year 2009, petitioner no.1 had divorced respondent no.1. However, learned trial Court without framing any issue on this aspect, in spite of sufficiently pleaded, directed

grant of maintenance. The appeal preferred against said judgment and order of learned trial Court was dismissed by learned Additional Sessions Judge. He, therefore, prays that petition may be allowed and judgments and orders passed by both the Courts below may be quashed and set aside.

4. Ms. Rizwy, learned Counsel for respondent no.1, submits that there is nothing on record to establish divorce to have taken place between petitioner no.1 and respondent no.1 as learned appellate Court in para 14 of its judgment has rightly noted that petitioner no.1 failed to establish said fact by bringing proper evidence on record.

5. In the light of submissions advanced, as aforesaid, and on perusal of the documents filed in support of the petition, it is found that petitioner no.1 was directed to pay Rs. 10,000/- per month to respondent no.1 towards maintenance from the date of application by learned Judicial Magistrate, First Class, Kamptee. The appeal appears to have been dismissed by learned Additional Sessions Judge.

6. Petitioner no.1 in his reply to application under Section 12 read with Sections 17, 18 and 19 of the Protection of Woman from Domestic Violence Act, 2005 filed by respondent no.1 has specifically put up his case of pronouncing talaq to respondent no.1 on 8/6/2009 as per Muslim law in the presence of competent witnesses for a valid reason, which was reduced into writing by way of talaqnama and was served upon respondent no.1. It is also the case of petitioner no.1 that dower amount (Meher) of Rs. 20,000/- including Rs. 8000/- towards maintenance for the iddat period was duly paid to respondent no.1.

7. Having so specifically pleaded, it is, therefore, found that learned trial Court should have framed issue while considering the case for grant of maintenance to satisfy itself, if there existed valid marriage between the parties. However, no such issue appears to have been framed by learned trial Court while considering the application. Copies of evidence on record further establish the case of petitioner no.1 as per his pleadings as aforesaid, which case is found duly corroborated by the evidence of his son where he has stated that petitioner no.1 had given talaq to his mother on 8/6/2009 as per Muslim law in the presence of competent witnesses and the copy of talaqnama has been received by respondent no.1.

8. The learned Courts below without considering above said evidence appear to have given much weight to the fact of petitioners not producing on record original talaqnama. On the contrary, it is noted that even in the cross-examination of petitioner no.1, nothing material has been elicited doubting fact of his giving talaq to respondent no.1 wife. In that view of the matter, I find it necessary to remit back the proceedings to learned trial Court with direction to frame additional point with regard to talaq, if any given by petitioner no.1 to respondent no.1 wife as pleaded and to answer the same accordingly on considering evidence, which is already on record and if necessary, opportunity be given to both sides to bring material on

record.

9. In the circumstances, following order is passed :

The impugned judgment and order dated 4/9/2014 passed by learned Judicial Magistrate, First Class, Kamptee in Criminal Application No.141/2009 and the impugned judgment and order dated 28/1/2016 passed by learned Additional Sessions Judge, Nagpur in Criminal Appeal No.241/2014 are set aside. The matter is remitted back to learned trial Court for re-considering the issue as aforesaid, preferably by 31/3/2017. The parties to appear before learned trial Court on 19/12/2016.

10. Rule is made absolute in the aforesaid terms. No order as to costs.