

Samuel Haque Molla Vs State of West Bengal and Another

Court: Calcutta High Court

Date of Decision: July 27, 2007

Acts Referred: Constitution of India, 1950 " Article 14, 15, 21

Criminal Procedure Code, 1973 (CrPC) " Section 125, 482

Muslim Women (Protection of Rights on Divorce) Act, 1986 " Section 3, 3(1), 3(2), 3(3), 4

Citation: (2008) 1 CHN 875

Hon'ble Judges: Tapan Mukherjee, J

Bench: Single Bench

Advocate: Arun Kumar Roy and Tanusri Chanda, for the Appellant; Abdul Hamid and D. Kr. Gupta for O.P. No. 2, for the Respondent

Judgement

Tapan Mukherjee, J.

This application u/s 482 of Cr.PC registered as C.R.R. No. 1356 of 2007 is directed against the order dated

14.2.2007 passed by the learned Additional District & Sessions Judge, Fast Track Court, Diamond Harbour in Criminal Motion No. 849 of 2005

modifying the judgment and order dated 22.9.2005 passed by learned Judicial Magistrate, Diamond Harbour in case No. M 56 of 2000.

2. The petitioner, a divorced Muslim wife filed a petition u/s 3 of Muslim Women (Protection of Rights on Divorce) Act, 1986 before the learned

Magistrate for realising dower, value of her properties given at the time of marriage and maintenance during iddat period. Before that she filed a

petition u/s 125, Cr.PC for monthly maintenance allowance of Rs. 1,500/-. She prayed for treating the instant petition as a part of that petition.

3. The O.P. disputed the amount of dower and denied giving of marriage gift or cash amount and contended that the petitioner is able to maintain

herself. Learned Magistrate on consideration allowed the petition under Sections 3 and 4 of the Act and directed the O.P. husband to pay the

petitioner a sum of Rs. 501/- as dower, Rs. 4,500/- towards maintenance during iddat period and Rs. 10,000/- as amount made for marriage gift

and Rs. 600/- per month towards fair and reasonable provision from the date of the order.

4. Being aggrieved the husband preferred revision before the learned Additional Sessions Judge, Diamond Harbour and learned Additional

Sessions Judge reduced the value of gifts made at the time of marriage from Rs. 10,000/- to Rs. 5,000/- and maintenance during iddat period from

Rs. 4,500/- to Rs. 3,000/- and Rs. 500/- per month towards fair and reasonable maintenance and confirming the order of dower fixed by the

learned Magistrate at Rs. 501/-. The husband has filed this instant application challenging the order of the learned Additional Sessions Judge

modifying the order of learned Magistrate.

5. It has been contended by the learned Lawyer for the petitioner that the learned Additional Sessions Judge misdirected himself in affirming the

order of the learned Trial Court with some modifications. He misappreciated the factual as well as legal position. The evidence shows that the

petitioner is able to maintain herself and the question of granting maintenance allowance in her favour does not arise. Moreover, when the learned

Appellate Court granted Rs. 600/- per month towards future maintenance allowance and it is not understandable on what logic he fixed the

maintenance allowance during the iddat period at Rs. 1,000/- per month.

6. Ld. Lawyer has further contended that the learned Judge also based his finding as regards the price of gifts given to the petitioner at the time of

marriage not on evidence but on mere surmise and conjecture. Learned Lawyer has further pointed out that the decision of the learned Magistrate

on the point No. 3 as to whether the couple was given any article or cash or not. Learned Magistrate has observed that P.W. 1 has submitted a

long list and all the P. Ws. corroborated it more or less but none of them could say how they (those) were purchased. Furthermore from the

evidence of P.Ws. it appears that the financial condition of the petitioner's father is weak and the said father's family consist of as many as 8

children and the O.P. has said no articles or ornament were given in the marriage of the petitioner and the other O.Ps. corroborated it. From the

evidence he was of the view that both the parties are telling a lie, as because some articles and ornaments are given irrespective of the caste, creed,

religion and financial condition of the wife's father from the parental house of the wife so, consideration of all learned Magistrate held that the

valuation of the Stridhan properties not yet returned to the petitioner is estimated at a lump sum amount of Rs. 10,000/-. Learned Judge in revision

based upon his personal experience and observed that it is common experience in their society that in each and every family the father of the

bridegroom offered some articles and articles to her daughter in the marriage. The evidence of P.Ws. 1 to 3 that gold ornaments, cot and beddings

were given to the petitioner-husband appeared to him convincing and he believed it.

7. Regard being had to the status and standard of the parties so far he can derive and that price of the gold ornaments and other bridegroom

presentation will be less than Rs. 42,750/- and the price thereof at the relevant year of marriage stand tentatively at Rs. 5,000/-. So looking at the

reality based on valuation of evidences, he came to the conclusion that claim of the wife regarding value of the gold ornaments and bridal

presentation was somewhat inflated. It might be the sequence of her painful feeling emerging from ill-treatment causing her grief. Therefore, the

petitioner-husband would pay Rs. 5,000/- to the O.P. No. 1, wife being the value of ornaments and marriage articles.

8. Ld. Judge further held that the view adopted by the Court below regarding fixation of value of ornaments and other articles of marriage is quite

unjustified and improper. As the order of the learned Sessions Judge in revision is abuse of process of law so the same must be interfered in the

interest of justice and the same cannot stand.

9. Ld. Counsel for the petitioner further contended that learned Single Judge relied on the decision of the Apex Court reported in the case of

Danial Latifi and Anr. v. Union of India reported in 2002 C Cr. LR (SC) 1 and found that Muslim husband was liable to make reasonable and fair

provision for the future of divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond

the iddat period must be made by the husband within the iddat period in terms of Section 3(1)(a) of the Act. The liability of a Muslim husband to

his divorced wife to pay maintenance is not confined to the iddat period and petitioner-wife was entitled to get a fair and reasonable amount as

maintenance from her former husband.

10. Ld. Magistrate allowed monthly maintenance at a rate of Rs. 600/- and learned Judge reduced the amount to Rs. 500/- per month and made

the same effective from the date of his order in revision.

11. Ld. Lawyer has contended that u/s 3(1)(b) the question of payment of regular monthly maintenance allowance to the divorced wife by husband

does not arise. The husband is to pay a lump sum amount in advance and the Act does not contemplate payment of regular monthly allowance.

12. Ld. Lawyer for the petitioner has further contended that the respondent-divorced wife if she is unable to maintain herself after iddat period, she

can get maintenance from the State Wakf Board u/s 4 of the Act and the petitioner cannot be saddled with liability to pay maintenance u/s 3 of the

Act.

13. Thus learned Lawyer for the petitioner has contended that the order of payment of Rs. 500/- per month towards maintenance allowance to the

divorced wife is not sustainable in law.

14. He has further contended that as the order of payment value of ornaments and bridal presentation to the tune of Rs. 5,000/- is not based on

evidence but on mere surmise and conjectures, so the said order cannot be sustained. Only the order for payment of Rs. 501/- Den Mohar or

dower is sustainable. Learned Counsel placed his reliance upon the ruling reported in the case of Usman Khan Bahamani Vs. Fathimunnisa Begum

and others, : Minu Kumari and Another Vs. The State of Bihar and Others, , Secretary, Tamil Nadu Wakf Board and another Vs. Syed Fatima

Nachi, .

15. Ld. Lawyer for the respondent has contended that in law second revision is not maintainable and the instant petition filed by the husband-

petitioner which is in the garb of second revision and the same is not maintainable. The petition does not contain any ground u/s 482, Cr.PC in the

mere fact that the same is filed u/s 482, Cr.PC does not convert the same into the petition under said provision.

16. Learned Lawyer for the respondent has supported the order of the learned Judge. It is undisputed that the respondent is the divorced Muslim

wife of the petitioner. So, claim for maintenance during the period of iddat and reasonable and fair provision including the maintenance till she is

remarried and payment of dower and delivery of properties given to her before or at the time of marriage or after marriage is available u/s 3(b) of

the Muslim Women (Protection of Rights on Divorce) Act, 1986.

17. It has been contended by the husband-petitioner that the petitioner is able to maintain herself because she earns by doing chikkan work. Mere

evidence that the petitioner-wife earns by doing chikkan work does not prove that said earning is sufficient to support the petitioner. Moreover,

there is no evidence as to quantum of income of the petitioner out of such earning. So the fact that the petitioner wife does earn by doing chikkan

work does not stand on the way of claiming maintenance and the other reliefs u/s 3(b) of the Act.

18. The order for payment of dower amount to the tune of Rs. 501/- has not been challenged by the petitioner during hearing. So, the said order of

learned Magistrate affirmed by learned Additional Sessions Judge stands.

19. As regards bridal gifts of the petitioner there is no dependable evidence. Both the learned Magistrate and learned Sessions Judge have not

believed the P.Ws. and both the learned Lower Courts have assessed the said amount on surmise or conjectures. Learned Magistrate took the

view that P. W. 1 submitted a long list but none of them could say how the same were purchased and considering the financial condition of the

petitioner's father and his liability the learned Magistrate did not rely the contention of the petitioner. Learned Magistrate also disbelieved the O.P

who said that no articles or ornaments given in the marriage and the evidence of O.P. Ws" corroborating the O.P and learned Magistrate found

that both the parties are telling lie as some articles and ornaments are given irrespective of the caste, creed and religion. Learned Magistrate

considering all things assessed the amount at Rs. 10,000/-. There is no basis of arriving at such a quantum towards marriage gifts.

20. Learned Sessions Judge believed the P.Ws" to arrive at the price of those gifts at Rs. 5,000/- and branded the view of the learned Magistrate

regarding the fixation of value of the gifts at Rs. 10,000/- as quite unjustified and improper. Learned Sessions Judge without having any price list of

articles of the relevant year of marriage observed that the price of the golden ornaments and other bridal presentation at the relevant year of

marriage stood tentatively at Rs. 5,000/-. Of the P.Ws the petitioner as P.W. 1 says that in the marriage golden ornaments and cot, bedding were

given. She does not specify the articles given. Her father P.W. 2 also does not specify the articles given. He also makes a general statement that

articles and ornaments were given. On the other hand P.W. 3 comes to specify articles given. He admits that he was not witness in the marriage of

the parties. He cannot say from how many shops marriage gifts were purchased. He is neither relative nor close neighbour of petitioner. So he

cannot be believed. Thus there is no dependable evidence as to giving of marriage gifts to the petitioner in the marriage. None of the P.Ws"

including the father of the petitioner says about the price of gifts. It was incumbent upon the petitioner to prove the price of the gift properties by

cogent and reliable evidence but the petitioner hopelessly failed to do so. Obviously the petitioner is not entitled to any sum towards price of gold

ornaments and other bridal presentations and granting of Rs. 5,000/- by the learned Judge towards price of the same is patently without evidence

and is not sustainable in law.

21. As regards the maintenance allowance during iddat period and also the payment of reasonable amount including maintenance after iddat it is

relevant to refer to the decision reported in the case of Danial Latifi and Another Vs. Union of India, In para 36 of the judgment the Apex Court

while upholding the validity of the Act summed up the conclusion as reproduced below:

(1) A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance

as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of

Section 3(1)(a) of the Act.

(2) Liability of a Muslim husband to his divorced wife arising u/s 3(1)(a) of the Act to pay maintenance is not confined to the iddat period.

(3) A divorced Muslim woman who has not remarried and who is not able to maintain herself after the iddat period can proceed as provided u/s 4

of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim

Law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may

direct the State Wakf Board established under the Act to pay such maintenance.

(4) The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India.

22. Under the Act the former husband is required to make reasonable and fair provision for the future of the divorced wife which obviously

includes her maintenance as well and such a reasonable and fair provision extending beyond the iddat period must be made by the husband during

the iddat period in terms of Section 3(1)(a) of the Act.

23. In the ruling reported in the case of Danial Latifi and Anr. v. Union of India (supra) it has been held that the careful reading of the provisions of

the Act would indicate that a divorced woman is entitled to a reasonable and fair provisions for maintenance. 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 contention that expression "within" in Section 3(1)(a) should be read as "during" or "for" cannot be accepted

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 the 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.

24. As u/s 3(1) of the Act the former husband - the petitioner is liable to make reasonable and fair provision including maintenance for the

petitioner-divorced wife who is unable to maintain herself, so the petition for future maintenance u/s 3(2) of the Act is very well maintainable and

petitioner is not required to approach State Wakf Board for maintenance u/s 4 of the Act. Thus contention of Id. Lawyer for the petitioner that

petitioner can get maintenance from the State Wakf Board u/s 4 of the Act and petitioner cannot be saddled with liability to pay maintenance u/s 3

of the Act has no force.

25. The Apex Court in the said case of Danial Latifi and Anr. (supra) considered the contention put forward by the other side that divorced

Muslim woman who is entitled to ""mata"" is only a single or one time transaction which does not mean payment of maintenance continuously at all.

The Apex Court observed that this contention, apart from supporting the view that the word ""provision"" in Section 3(1)(a) of the Act incorporates

""mata"" as a right of the divorced Muslim woman distant from and in addition to Mahr and maintenance for the iddat period, also enables ""a

reasonable and fair provision"" and ""a reasonable and fair provision"" as provided u/s 3(3) of the Act would be with reference to the needs of the

divorced woman, the means of the husband and the standard of life the woman enjoyed during the marriage and there is no reason why such

provision could not take the form of the regular payment of alimony to the divorced woman, though it may look ironical that the enactment intended

to reverse the decision in Shah Bano's case actually codifies the very rationale contained therein.

26. Thus it cannot be said that there cannot be order of regular payment of future maintenance allowance to the divorced wife after iddat period

under the Act. To the contrary u/s 3(3) of the Act the Magistrate can pass an order directing the husband to pay maintenance regularly to the

divorced wife till she is remarried. Ld. Additional Sessions Judge has assessed that amount at Rs. 500/- per month having regard to the need of the

divorced woman-respondent, standard of life enjoyed by her during her marriage and the means of the former husband. The fixation of Rs. 500/-

per month by the learned Additional Sessions Judge has not been challenged by the respondent-wife. The petitioner-husband has contended that

the payment of future maintenance allowance should not be regular but in law lump sum amount can be assessed in advance for future maintenance.

The said order does not appear to be grossly illegal and there is nothing to quash that order. That order cannot be challenged as the learned Judge

instead of directing the former husband-petitioner to pay lump sum amount towards future maintenance ordered for payment of future maintenance

allowance regularly. There is no illegality in the order of the learned Additional Sessions Judge in directing the O.P. to pay regular maintenance

allowance in future. The said order has not occasioned in failure of justice.

27. About fixation of amount as to maintenance allowance to be paid during the period of iddat both the learned Magistrate and learned Sessions

Judge have not arrived at a concurrent finding. According to the learned Magistrate she should be given highest amount of maintenance per month

during the period oiiddat and fixed the same at Rs. 4,500/- at the rate of Rs. 1,500/- per month.

28. Ld. Additional Sessions Judge interfered with the said order and observed that the petitioner-husband is a day labourer by profession and man

like petitioner-husband is expected to earn Rs. 2,001/- per month therefore, he should part with Rs. 1,000/- per month for his divorced wife

whilest maintenance during iddat period and considered the amount of Rs. 4,500/- allowed by the learned Magistrate towards maintenance during

iddat period as excessive and harsh and reduced the said amount to Rs. 3,000/-.

As the learned Judge assessed Rs. 500/- for future maintenance allowance so lie should have allowed Rs. 1,500/- towards maintenance allowance

to the petitioner during the period ofiddat and fixing of Rs. 3,000/- for the said period is not justified and the same must be interfered in the interest

of justice as the said order is gross abuse of process of Court.

29. Under the circumstances the order of learned Judge is modified to the extent that petitioner-former husband shall pay Rs. 1,500/- towards

maintenance for the period of iddat to his divorced wife-respondent. The order of payment of future maintenance allowance and dower passed by

the learned Judge stands affirmed. The order of payment of Rs. 5,000/- towards ornaments and bridal presentations is set aside. The instant

petition being C.R.R. No. 1356 of 2007 u/s 482, Cr.PC stands disposed of accordingly. I make no order as to costs.