
(2016) 08 CHH CK 0027

CHHATTISGARH HIGH COURT

Case No: Criminal Misc. Petition No. 599 of 2016

Shakil Ansari

APPELLANT

Vs

Afsana Bano

RESPONDENT

Date of Decision: Aug. 23, 2016

Acts Referred:

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

Citation: (2017) CriLJ 834

Hon'ble Judges: Shri P. Sam Koshy, J.

Bench: Single Bench

Advocate: Mr. Vivek Tripathi, Advocate, for the Petitioner

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Shri P. Sam Koshy, J. - The present Petition has been preferred challenging order dated 11.04.2016 passed in the Criminal Revision No. 5/2015 whereby the Revisional court has affirmed the order dated 24.08.2015 passed by the Judicial Magistrate First Class (for short "the JMFC"), Pratappur District-Surajpur in Misc. Criminal Case No. 132/2012.

2. The fact of the case in brief is that the Petitioner is the husband of 2 Respondent No. 1 and father of the Respondent No. 2. The Petitioner and Respondent No.1 got married on 23.05.2008. Subsequently the relation between the parties got strained and Respondent No. 1 along with Respondent No.2 left the matrimonial home and started living with her parents. While Respondent No. 1 had left the matrimonial home she was in the advance stage of pregnancy having conceived the second child i.e. Respondent No. 3 who later on was also born on 12.09.2012.

3. Respondent No. 1 filed a maintenance application under Section 125 of the Cr.P.C. before the JMFC, Pratappur at District Surajpur which was registered as Misc.

Criminal Case No. 132/2012. The Court below having considered the facts and submissions by the parties vide order dated 24.08.2015 allowed the application under Section 125 of the Cr.P.C. and granted maintenance to Respondents at the rate Rs. 1000/- each. This order dated 24.08.2015 was subjected to challenge by way of Criminal Revision filed before Additional Sessions Judge vide Criminal Revision 5/2015. The Revisional Court also vide its order dated 11.04.2016 i.e. impugned order rejected the Revision Petition upholding the order passed by the JMFC, Pratappur. Assailing the said two orders the Petitioner has raised a ground that the two orders passed by the Court below are bad in law for the reason that firstly there was a settlement between the parties to the extent making one time payment of 3.5 lakhs inclusive of the maintenance amount to the Respondents vide agreement dated 14.02.2012. Secondly the provisions under Section 125 of the Cr.P.C. would not be applicable on account of the fact that the case of the present parties is governed under the provisions of Muslim Woman (Protection of Rights on Divorce) Act, 1986 (herein after "the Act, 1986).

4. It was also the contention of the Counsel for the Petitioner that there was a settlement between the parties at the time of mutual separation and an agreement (Ikrarnama) was entered into between the parties on 14.02.2012. According to the Counsel for the Petitioner by the said Ikrarnama there was specific agreement between the parties that first part in the agreement was to pay a lump sum amount of Rs. 3.5 lakhs to Respondent No.1 and the said amount shall be utilized by the Respondents for their maintenance and also their sustenance for the whole life. According to the Petitioner since the Respondents have received one time amount of Rs. 3.5 lakhs they are not entitled to further seeking maintenance by invoking Section 125 of the Cr.P.C. It was also the contention of the Counsel for the Petitioner that so far as maintainability part of Section 125 of the Cr.P.C. is concerned, judgment of the Orissa High Court in case of **Begum Bibi & Ors v. Abdul Rajak Khan reported in (1995) 1 Crimes 532** which clarifies the fact that provision under Section 125 of the Cr.P.C. would not be applicable in the case where parties are governed by the provisions of the Act, 1986.

5. If we consider the submissions put forth by the Counsel for the parties and a perusal of the record what clearly appears is that fact that the Petitioner in the instant case has not been able to establish the fact that there was a customary Talak (except claiming Talak to have been made by sending a Registered letter) between the parties, coupled with the fact that there was an allegation made by the Respondent wife that she was subjected to physical and mental harassment and torture at the hands of the Petitioner and therefore she was forced to leave the matrimonial house and live separately. Further so far as agreement between the parties is concerned there is also an averment specifically made by Respondent No. 1 that the said agreement has been got executed by playing mischief by her father and uncle and she was not aware of the said proceeding, therefore the same would not be binding upon her. These pleadings have also come on record where it is the

finding of fact that there was no customary ritual Talak which is said to have been executed by the Petitioner by sending the same by registered post to the house of the Respondent-wife. Further it also reflects from the Ikrarnama that the payment of Rs. 3.5 lakhs was by way of payment made as Mehar as well as amount payable during Iddat, therefore the same can not be said to be an amount paid to the Respondents as one time settlement towards the maintenance of the Respondents for the life time. Further even if there was an agreement between the parties which the Respondent No.1 has denied clearly would be contrary to the legal provisions of law. Mere agreement entered at between the parties would not disentitle wife and their children from claiming maintenance for their sustenance. Thus, till his wife is remarried it would be the responsibility of the Petitioner husband alone to maintain the wife and children born from them. An agreement in another words can not be construed that the amount which have been paid as "Mehar" and during "Iddat" would be liable of being also considered for payment of maintenance of the Respondents No. 1 to 3.

6. So far as law in respect of maintainability of the provisions of Section 125 of the Cr.P.C. is concerned much water has since flown. Until and unless there is a proper legal divorce between the parties under the Provisions of the Act, 1986 the wife under normal circumstance can move claim for grant of maintenance under Section 125 of the Cr.P.C.

7. The Hon"ble Supreme Court in **2014 (12) SCC 646 in case of Khatoon Nisa v. State of Uttar Pradesh and Others** in para 10 has held as under:-

"10. Subsequent to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short "the Act") as it was considered that the jurisdiction of the Magistrate under Section 125 Cr. P.C. can be invoked only when the conditions precedent mentioned in Section 5 of the Act are complied with, in the case in hand, the Magistrate came to a finding that there has been no divorce in the eye of law and as such, the Magistrate has the jurisdiction to grant maintenance under Section 125 of the Cr.P.C. This finding of the magistrate has been upheld by the High Court. The validity of the provisions of the Act was for consideration before the Constitution Bench in the case of **Danial Latifi v. Union of India, (2001) 7 SCC 740**. In the said case by reading down the provisions of the Act, the validity of the Act has been upheld and it has been observed that under the Act itself when parties agree, the provisions of Section 125 Cr.P.C. could be invoked as contained in Section 5 of the Act and even otherwise, the Magistrate under the Act has the power to grant maintenance in favour of a divorced woman, and the parameters and considerations are the same as those in Section 125 Cr.P.C.. It is undoubtedly true that in the case in hand, Section 5 of the Act has not been invoked. Necessarily, therefore, the Magistrate has exercised his jurisdiction under Section 125 Cr. P.C. But, since the Magistrate retains the power of granting maintenance in view of the Constitution Bench decision in Danial Latifi's case (supra) under the Act and since

the parameters for exercise of that power are the same as those contained in Section 125 Cr. P.C., we see no ground to interfere with the orders of the magistrate granting maintenance in favour of a divorced Muslim woman. In fact, Mr. Qamaruddin, learned counsel appearing for the appellants, never objected to pay maintenance as ordered by the magistrate. But he seriously disputes the findings of the magistrate on the status of the parties and contends that the magistrate was wholly in error in coming to the conclusion that there has been no divorce between the parties in the eye of law."

8. The same view has further been reiterated in **(2014) 12 SCC 636 in the case of Shamim Bano v. Asraf Khan** and also in **(2015) 5 SCC 705 in the case of Shamima Farooqui v. Shahid Khan**.

9. Thus, in the opinion of this Court keeping in view the aforementioned decisions of the Supreme Court the Court below has not committed any error of law or on fact calling for any interference with the order.

10. For the aforesaid reason as no strong case is made out by the Petitioner calling for interference with the impugned order by this Court. The Revision Petition being devoid of substance stands rejected.