

(1980) 01 BOM CK 0026

Bombay High Court

Case No: Criminal Revision Application No. 518 of 1976

Rajiya

APPELLANT

Vs

Sayyed Munir Ahmad Hassen
and Another

RESPONDENT

Date of Decision: Jan. 9, 1980

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 125(1), 127(3)

Hon'ble Judges: M.P. Kanade, J

Bench: Single Bench

Advocate: H.D. Gole, for the Appellant; S.M. Hussain and N.M. Kachave, for respondent
No. 2--State, for the Respondent

Judgement

M.P. Kanade, J.

The short point to be decided in this Criminal Revision Application is as to whether a wife who is divorced is entitled to a maintenance notwithstanding a valid divorce.

2. The applicant, the revision-petitioner herein, is a Muslim wife. She filed a Criminal Misc. Petition No. 84 of 1975 in the Court of the Chief Judicial Magistrate, Satara, for her maintenance u/s 125 of the Code of Criminal Procedure for herself and her minor daughter on the ground that the husband had neglected and refused to maintain her and her daughter. After due inquiry the Chief Judicial Magistrate held that the wife and daughter are entitled to an order of maintenance. Accordingly, the learned Magistrate directed the respondent husband to pay Rs. 50/- to the wife and Rs. 30/- to the daughter. It appears that a revision application is filed by the respondent against the said order granting maintenance which was dismissed on May 27, 1976 by the Court of Sessions. A criminal application, being Application No. 2530 of 1976 was filed under Article 227 of the Constitution of India in this Court which also came to be dismissed on January 12, 1977.

3. Pending the above referred proceedings, the respondent filed the present application u/s 127(3)(b) of the Code of Criminal Procedure for cancellation of maintenance order. The said application filed by the respondent was resisted by the petitioner-wife on various grounds. It was contended by the petitioner in these proceedings (1) that there was no lawful divorce; (2) that there was no payment of the Mehr amount; (3) the husband did not pay the price of ring and watch which was gifted to him by the parents of the petitioner at the time of the marriage; (4) the wife claimed an amount of Rs. 5,000/- which was spent by her parents at the time of the marriage; (5) it is further contended by the petitioner that Iddat period maintenance was insufficient; (6) the petitioner also, inter alia, contended that there is a custom in the community that the divorce be given in the presence of the husband and wife and a panchas of the community wherein all the monetary claims of the parties are settled. The said custom has not been followed by the respondent; and (7) it was lastly contended that in spite of the divorce, the petitioner wife continues to have a right of maintenance.

4. The learned Magistrate after recording the evidence and hearing the parties by his judgment and order dated September 30, 1976 held that the petitioner is not entitled to an order of maintenance after the date of divorce. It was further held that the petitioner-wife is not entitled to recover maintenance amount as per the previous orders passed by the said Court, and accordingly, the order of maintenance granted in the previous proceedings on October 21, 1975 was cancelled from the date of the present proceedings. The said judgment and order is challenged by the petitioner-wife in this Court by way of this Criminal Revision Application.

5. Mr. H.D. Gole, the learned Counsel appearing on behalf of the petitioner-wife, contended that the Supreme Court in its judgment reported in [Bai Tahira Vs. Ali Hussain Fidaalli Chothia and Another](#), held that "On a simple reading of the Explanation (b) to section 125(1) of the Code, it is clear that every divorced wife, otherwise eligible, is entitled to the benefit of maintenance allowance and the dissolution of the marriage makes no difference to this right under the current Code". In view of this authoritative pronouncement by the Supreme Court this revision application will have to be allowed.

6. Mr. S.M. Hussain, the learned Counsel appearing on behalf of the respondent No. 1 husband, submitted that the matter may be remanded to the trial Court to decide as to whether the amount paid by the husband as Mehr and Iddat maintenance is sufficient. Further it is contended that the amount deposited by him in the Court should be adjusted and in view of the judgment of the Supreme Court, adjustment should be made with regard to that amount towards the maintenance of the wife.

7. There is no substance in his submission advanced by Mr. Husain. The Supreme Court has held that every divorce, otherwise eligible, is entitled to the benefit of maintenance allowance. The learned Magistrate has passed the order of

maintenance on October 21, 1975, awarding Rs. 50/- per month. Having regard to the index of living, no human-being will be able to maintain himself within the short amount of Rs. 50/-.

8. I do not find any reason to remand the matter to the trial Court to determine as to whether the amount paid by the husband and the amount of maintenance can be so adjusted as to comply with the observations made by the Supreme Court.

9. In the result, the rule is made absolute, the judgment and order of learned Chief Judicial Magistrate (First Class), Satara, dated September 30, 1976 is set aside and it is held that the wife is entitled to Order of maintenance as passed on October 21, 1975.

10. In this circumstances of the case, the respondent No. 1 husband to pay the costs of this application to the wife.