

(2013) 02 BOM CK 0221

Bombay High Court (Aurangabad Bench)

Case No: Criminal Writ Petition No. 562 of 2011

Parvin Firoz Shaikh, Vasim Firoz
Shaikh and Muskan Firoz Shaikh

APPELLANT

Vs

Firoz Sharfuddin Shaikh,
Sahrfuddin Amin Shaikh, Ashabi
Sharfuddin Shaikh and The State
of Maharashtra

RESPONDENT

Date of Decision: Feb. 27, 2013

Acts Referred:

- Constitution of India, 1950 - Article 14, 15, 21
- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Muslim Women (Protection of Rights on Divorce) Act, 1986 - Section 3, 3(1)(a), 4, 5
- Protection of Women From Domestic Violence Act, 2005 - Section 12, 18, 19, 20, 21

Citation: (2013) 4 ABR 67 : (2013) ALLMR(Cri) 3103 : (2013) 3 BomCR(Cri) 388

Hon'ble Judges: K.U. Chandiwal, J

Bench: Single Bench

Advocate: Mahendra B. Kolpe, for the Appellant; S.B. Gastgir, Advocate for Respondent
Nos. 1 to 3 and Mr. P.N. Mule, APP for State, for the Respondent

Judgement

K.U. Chandiwal, J.

Heard finally. Rule made returnable forthwith. Petitioner No. 1 Smt. Parvin was married to Respondent No. 1 Firoz. She had applied to the learned Chief Judicial Magistrate, Osmanabad for maintenance and consequential benefits under the provisions of Section 12 of The Protection of Women from Domestic Violence Act, 2005 (for short, the DV Act).

2. The learned Chief Judicial Magistrate allowed the application and directed the respondent and his parents not to cause domestic violence to the petitioners. The respondent was directed to pay an amount of Rs. 2,000/- per month to petitioner

No. 1 - Parvin and Rs. 1,000/- per month to Petitioner No. 2 Vasim and Petitioner No. 3 - Muskan, as maintenance. The respondent was directed to pay an amount of Rs. 1,000/- per month towards rental charges for accommodation.

3. In Criminal Appeal No. 66/2010, the learned Additional Sessions Judge, Osmanabad allowed the appeal and set aside the order of maintenance, referred to above on the ground that there had been a talaq on 9.11.2009 by Respondent No. 1 to the petitioner and the application u/s 12 of the DV Act was moved on 24.11.2009, and not maintainable.

4. Section 12 of the DV Act provides the avenues to aggrieved person for rights. Section 26 thereof reads as under:

26. Relief in other suits and legal proceedings,-

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceedings, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court.

(3) in case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

5. Section 36 of the said Act reads as under:

36. Act not in derogation of any other law, - The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

6. Section 20 contemplates monetary relief to the aggrieved person as a result of domestic violence. There is no in-built inhibition.

7. Thus cumulative effect of these provisions illustrate, even if remedies are available u/s 4 of Muslim Women (Protection of Rights on Divorce) Act, 1986, it will not obliterate and defuse the provisions of Section 12 of the DV Act for a wife to stake claim. This legal position was kept in wrapper by the learned Additional Sessions Judge.

8. Even if the respondent has allegedly divorced the petitioner, his liability to maintain the wife or the children till she re-marries, is not squeezed or deflated. In fact, in the instant case, the learned Chief Judicial Magistrate has elaborately discussed that the divorce is not proved. The evidence of the respondent unfolds that on 6.10.2008 and 10.7.2009, he extended single talaq to the petitioner Parvin by

stating - "Parvin Mai Tuze Talaq Deta hoon". He allegedly uttered last talaq on 9.11.2009 at Yedshi in presence of Lal Khan, Bashir and Shabbir. Shabbir and Bashir supported the version of Respondent - Firoz regarding talaq to the petitioner, but evidence illustrate that these witnesses had been to Parvin to insist her for cohabitation and when she refused, the respondent uttered a single talaq on 9.11.2009 and it was made final. It is pertinent, wife has disputed Talaq.

9. The Full Bench of this Court in the matter of Dagdu Pathan, Latur Vs. Rahimbi Dagdu Pathan, Ashabi and Nasimatbi, has explained the legal position. The Full Bench considered the provisions of Section 125 of Cr.P.C. And provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986 and observed about eligibility of entitlement of the wife to claim maintenance. The factum of talaq and the stages, it has preceded are also required to be proved before the court, if disputed by the wife. Mere intention of the husband while making such statement before the Court, cannot be accepted to be a valid talaq from the date of such statement was made before the Court in any form.

10. The Hon"ble Apex Court in the matter of Shabana Bano Vs. Imran Khan, explained the legal position in tune with Muslim Women (Protection of Rights on Divorce) Act, and in particular Sections 4 and 5 thereof. The Hon"ble Lordships in paragraphs 27, 29 and 30 has observed as under,-

27. The appellant's petition u/s 125 of the Cr.P.C. would be maintainable before the Family Court as long as appellant does not remarry. The amount of maintenance to be awarded u/s 125 of the Cr.P.C. cannot be restricted for the iddat period only.

29. Cumulative reading of the relevant portions of judgments of this Court in Danial Latifi (supra) and Iqbal Bano (supra) would make it crystal clear that even a divorced Muslim woman would be entitled to claim maintenance from her divorced husband, as long as she does not remarry. This being a beneficial piece of legislation, the benefit thereof must accrue to the divorced Muslim women.

30. In the light of the aforesaid discussion, the impugned orders are hereby set aside and quashed. It is held that even if a Muslim woman has been divorced, she would be entitled to claim maintenance from her husband u/s 125 of the Cr.P.C. after the expiry of period of iddat also, as long as she does not remarry.

11. The Constitution bench in the matter of Danial Latifi and Another Vs. Union of India, in paragraph 36 observed as under:

36. While upholding the validity of the Act, we may sum up our conclusions:

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

3) A divorced Muslim woman who has not remarried and who is not able to maintain herself after 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.

12. Thus, the talaq must be for a reasonable cause; it should not be at the whims and fancies of the husband. The object and scope of the DV Act is to ensure maintenance to those, who need such protective shelter from the person under an obligation. The petitioner obviously has to maintain two children out of the wedlock, infirm, embattled and hapless. Naturally, the whims of the husband/respondent would not be permitted to deflate the provisions of the DV Act, which provides a room to claim maintenance, notwithstanding the effect of Section 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

13. In V.D. Bhanot Vs. Savita Bhanot, the Supreme Court considered the provisions of Section 12, 18, 19 of the DV Act and observed, the provisions of the Act would come into operation in the light of Section 3 of the Act with retrospective effect. The conduct of parties in past of coming into force of the Act has a bearing on application u/s 12 of the Act.

14. In the set of above facts, I have no hesitation to hold that the provisions of the DV Act would operate the field for staking claim even to a divorced muslim woman/wife in terms of Section 12 thereof, until she re-marries. To repeat, in the instant case, the evidence of talaq itself is scanty and could not be accepted.

15. In the result, the order of learned Additional Sessions Judge, Osmanabad in Criminal Appeal No. 68/2010 dated 19.5.2011 is set aside and that of the learned Chief Judicial Magistrate Osmanabad dated 26.8.2010 is maintained with costs. Rule is made absolute in the aforesaid terms.