

(2018) 10 J&K CK 0053

Jammu & Kashmir High Court

Case No: Criminal Miscellaneous Case No. 534 Of 2018, IA No. 01 Of 2018

Khalid Hussain Salaria
@APPELLANT@Hash
Mehmoona Anjum

APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 17, 2018

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 488, 561A

Hon'ble Judges: Sanjay Kumar Gupta, J

Bench: Single Bench

Advocate: Bodh Raj Sharma

Final Decision: Dismissed

Judgement

1. Through the instant petition filed under Section 561-A of the Code of Criminal Procedure (hereinafter for short, Cr.P.C), the petitioner seeks

quashing of the order dated 27.04.2018 passed by learned 2nd Additional Sessions Judge, Jammu, by virtue of which revision petition filed by

respondent-Mehmoona Anjum against the order passed by JMIC, Jammu, has been allowed. In the petition, petitioner has stated that he has divorced

his wife-respondent on 9/8/2017 through whatsapp, so order of Court below is wrong. That divorce has been intimated to respondent, and he has filed

suit for injunction against respondent from interfering into his life, where she has appeared, so she has sufficient knowledge of Divorce.

2. I have considered the rival contentions.

3. Concluding paras of the order dated 27.04.2018 passed by 2nd Additional Sessions Judge, Jammu reads as under:-

As far as arguments for the learned counsel for the respondent and even observation and finding of learned Magistrate as to suppression of factum of divorce is concerned, the petitioner has categorically stated that she gained knowledge of the talaknama after filing petition under Section 488 Cr.P.C. From the perusal of record it is revealed that the petition came to be filed on 05.09.2017 and though as per interim order dated 23.08.2017 recorded in the civil suit filed by the respondents in the court of learned Sub Judge, Jammu as advocate, namely, NadeemBhat appeared on behalf of the petitioner herein but without any Vakalatnama and therefore, again it is triable question as to whether the petitioner had knowledge of the talaknama or not as mere annexure of some illegible whatsapp text without proof of the same is not sufficient to draw any conclusion against the petitioner. Otherwise also mere non-disclosure of a particular fact does not by itself defeats the statutory right of a party unless it is established that the party acted malafidely and the disclosure of the fact itself without any further probe would lead to the passing of order against such party. At the cost of repetition the legality of the talak is still to be proved by the respondent and therefore, even if the petitioner was having knowledge of the said pronouncement and would reveal before the Magistrate, it would not make any difference and therefore, on this count also the right of the petitioner cannot be defeated.

Hence, in view of discussion made herein above, I am of the considered opinion that the impugned order suffers from serious illegality and therefore, the revision petition is allowed and impugned order is set aside with the direction to the Court below that quantum of interim maintenance be determined and appropriate order in accordance with law be passed in this regard after hearing both the parties. Parties are directed to appear before learned Court below on the date fixed in the main petition under Section 488 Cr.P.C. Copy of this order be sent to the learned court below for compliance and information. Revision petition file be consigned to records after due compilation.

4. From bare perusal of above said order, it reveals that respondent-Mehmoona Anjum filed a petition under Section 488 Cr.P.C before the Munsiff

1st Class JMJC, Jammu, on the ground of neglect by her husband-petitioner herein. Along with the said petition, an application for interim maintenance

was also filed. The Petitioner resisted the said petition on the ground that he has already divorced the respondent-Mehmuna Anjum and the same has

been communicated to her on Whatsapp. Petitioner-husband further averred that marriage already stand dissolved before filing of the said petition and

despite the knowledge of the divorce, his wife/ respondent filed the aforesaid petition under Section 488 Cr.P.C for grant of interim maintenance. The

said application for interim maintenance came to be dismissed by the Munsiff 1st Class JMJC, Jammu on the ground that petitioner-respondent

herein has been duly divorced by the respondent-petitioner herein and the divorce deed has also been duly communicated to her through whatsapp.

5. The respondent-Mehmuna Anjum against the aforesaid order passed by Munsiff, Jammu filed a criminal revision before the 2nd Additional

Sessions Judge, Jammu. The revisional Court after hearing the learned counsel for the parties allowed the revision petition and set aside the order of

Munsiff, on the ground that in view of the Judgment of Constitution Bench of Honâ€™ble Supreme Court in case Shayara Bano and ors. Vs. Union

of India and ors., (2017) SCCR 845, â€™triple-talakâ€™ is un-constitutional, so order of Magistrate is bad. Revisional Court further relied upon another

judgment of the Honâ€™ble Apex Court reported in case Shamim Ara vs. State of UP (2002) 7 SCC 518; and judgment of this Court in case Zubaida

Akhter and another vs. Tariq Mehmood Bhat 2017 (4) JKL 110, wherein it is held that such like divorce is valid when it is given by husband only for a

reasonable cause and secondly, it must be preceded by an attempt to reconciliation between husband and wife by two arbiters, one chosen by husband

from his family and one by wife from her family. There is, thus, no infirmity of law in the order of Court below. Factual matrix of defense cannot be

appreciated in this petition.

6. Further the plea of divorce is a fact, which husband is required to prove during trial of proceeding. At initial stage, the Divorce Deed cannot be

considered as valid proof for denying the interim maintenance.

7. In view of above, this petition is dismissed.