

Bashir Ahmad Vs Mst. Roshni and Others

Court: Jammu & Kashmir High Court

Date of Decision: April 4, 1995

Acts Referred: Jammu and Kashmir Criminal Procedure Code, 1989 " Section 125, 3(2), 488
Muslim Women (Protection of Rights on Divorce) Act, 1986 " Section 5

Citation: (1995) CriLJ 3944

Hon'ble Judges: A.Q. Parray, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

A.B. Qadir Parray, J.

This matter was called several times, but nobody appeared. From the perusal of the file, it appears that this

reference was made way back in the year 1988. Parties were served and despite service, they are not appearing. The matter has been listed today

after having been duly notified in the cause list, even then nobody is present for the parties.

2. This being criminal reference, cannot be dismissed in default for appearance of the parties and is to be disposed of on merits.

3. By pursuing the order of interim maintenance passed by learned Judicial Magistrate, 1st Class, Billawar in proceedings u/s 488, Cr. P. C. in

case titled Mst. Roshni v. Bashir Ahmad, the order of interim maintenance came to be challenged by way of revision petition before learned

Sessions Judge, Kathua, who had decided the same by making reference to this Court way back on 9-5-1988.

4. The learned Sessions Judge, Kathua after having heard the parties has recommended for quashment of initiation of proceedings u/s 488, Cr. P.

C. and vacation of interim maintenance order.

5. The reasons given by learned Sessions Judge in its order dated 9-5-1988 are cogent and legally tenable. The order of interim maintenance

passed under the provisions of Section 488, Cr. P. C. against the petitioner, though not provided under the relevant section, but nevertheless is

being passed as per precedence laid down in this behalf. However, before passing such an order, the Magistrate has no doubt to see whether the

relationship between the husband and wife is existing and wife has claimed for such maintenance for herself or for the children born out of the

wedlock. In case the relationship between the parties, being Muslim by religion, is not existing, then the interim maintenance for such petitioner is

not possible. So the finding arrived at by learned Sessions Judge and the recommendations made by him for quashing of the proceedings u/s 488;

Cr. P.C. and vacation of the order of interim relief is well founded.

6. The provisions of Section 125, Cr. P.C. (Central Act), which are applicable throughout the country and are not applicable to the State of

Jammu and Kashmir, in our State, maintenance proceedings are initiated u/s 488, Cr. P.C. and no-doubt interim relief is also being ordered to

destitute/neglected wife/children by judicial precedence, but to a Muslim divorced woman, for whom provisions of law in the central have also

been amended by incorporating Muslim Women (Protection of Rights on Divorce) Act, 1986 and in that context, the Magistrate cannot exercise

his jurisdiction u/s 125, Cr. P. C. of the Central Act in case of Divorced Muslim wife, unless an application is filed u/s 3(2) of the said Act and

parties exercise their option u/s 5 of the Muslim Women (Protection of Rights on Divorce) Act of 1986, but the provisions of this Act are also not

applicable to the State of Jammu and Kashmir. Hence passing of interim maintenance to a divorced Muslim woman is not envisaged under the

provisions of law applicable to the State. As such, even the maintenance proceedings which have been initiated by learned Magistrate, as rightly

pointed out by learned Sessions Judge, also lacks jurisdiction.

7. Proceedings u/s 488, Cr. P. C. can be maintained by a deserted wife in case the relations are existing between the wife and the husband and is

not a divorce and for a divorce woman, in case she wants maintenance of the period of Iddat. she can do so by moving a civil court.

8. For the foregoing reasons, this criminal reference made by learned Sessions Judge Kathua is allowed and the proceedings initiated by learned

trial Magistrate as also the interim maintenance order passed in the proceedings u/s 488, Cr. P. C. are husband. The records be transmitted back

to the Courts below.