

Reserved On: 25.01.2023
Delivered On: 21.02.2023

Court No. - 88

Case :- CRIMINAL REVISION No. - 3573 of 2021

Revisionist :- Smt. Shakila Khatun

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Chandra Bhushan Tiwari

Counsel for Opposite Party :- G.A., Vinayak Varma

Hon'ble Raj Beer Singh,J.

1. The present criminal revision has been preferred against the judgement and order dated 20.09.2021, passed by the learned Principal Judge, Family Court, Ghazipur, in Case No. 665 of 2020 (Smt. Shakila Khatun and others vs. Ali Husen), under Section 125 Cr.P.C., whereby the case of revisionist under Section 125 Cr.P.C. was dismissed.

2. Heard learned counsel for the revisionist, learned counsel for the respondent No.2, learned A.G.A. for the State and perused the record.

3. It has been argued by learned counsel for the revisionist that impugned judgment and order is against the facts and law and thus liable to be set aside. Referring to facts of the matter, it was submitted that marriage/Nikah of revisionist with opposite party No.2 has taken place in the year 2006 but she was harassed by the opposite party No.2 on account of dowry and later on she was divorced by the opposite party No.2 on 20.08.2009. The revisionist has not re-married so far. The revisionist along with her minor children has filed a case under Section 125 Cr.P.C. for maintenance against the opposite party No.2 but the claim of revisionist was rejected by the Court below vide impugned order by holding that divorced Muslim woman is not entitled for maintenance under Section 125 Cr.P.C. Referring to impugned judgment and order, it is submitted that the claim of

revisionist under Section 125 Cr.P.C. has been rejected merely on the said ground that she, being divorced wife, is not entitled for maintenance under Section 125 Cr.P.C., which is against settled position of law. Learned counsel has referred the case of Danial Latifi vs. Union of India 2001 Law Suit(SC) 1293 and case of this Court in Jubair Ahmad vs. Ishrat Bano 2019(3)DMC 789 and submitted that in view of law laid down by Hon'ble Apex Court, which has been followed by this Court, it is clear that a divorced Muslim wife is entitled for maintenance under Section 125 Cr.P.C. even after the iddat period, till she re-marries. It is also submitted that there is absolutely no such evidence that divorce between the parties took place by mutual consent or that she was residing separately by mutual consent. Referring to facts of the matter, it was submitted that the impugned order is against well settled position of law and thus liable to be set aside.

4. Learned counsel for the opposite party No.2 has opposed the revision and argued that the revisionist has filed the case under Section 125 Cr.P.C. making false and baseless allegations. Referring to impugned judgment, it was submitted that the revisionist was divorced with mutual consent of both the parties and she is residing separately with mutual consent and thus, the revisionist is not entitled for any maintenance. The allegations made by the revisionist, are thoroughly false. Even before the divorce, she had been residing separately from her husband without any just cause. It was submitted that there is no illegality or perversity in the impugned order and thus, the revision is liable to be dismissed.

5. I have considered rival submissions and perused the record.

6. The perusal of record shows that that the marriage/Nikah of revisionist with opposite party No.2 has taken place in the year

2006 but she was divorced by the opposite party No.2 on 20.08.2009. The revisionist has not re-married so far. The revisionist along with her minor children has filed a case under Section 125 Cr.P.C. against the opposite party No.2 claiming maintenance for herself and her minor children. The Family Court granted maintenance to the minor daughter of the parties but the claim of revisionist was rejected by the Court below vide impugned order by holding that a divorced Muslim woman is not entitled for maintenance under Section 125 Cr.P.C.

7. Thus, question to ponder over in this matter is that whether a divorced muslim woman is entitled for maintenance under section 125 CrPC?

8. In case of **Mohd. Ahmed Khan v. Shah Bano Begum , AIR 1985 SC 945**, a Five-judge Bench of the Supreme Court held that the Code of Criminal Procedure controls the proceedings in such matters and overrides the personal law of the parties and in case of conflict between the terms of the Code and the rights and obligations of the individuals under personal law, the Code would prevail. The Supreme Court, reiterating the view expressed earlier in *Bai Tahira v. Ali Hussain Fidaalli Chothia*, (1979) 2 SCC 316 and *Fuzlunbi v. K. Khader Vali* (1980) 4 SCC 125, held:

"The true position is that, if the divorced wife is able to maintain herself, the husband's liability to provide maintenance for her ceases with the expiration of the period of iddat but if she is unable to maintain herself after the period of iddat, she is entitled to take recourse to Section 125 of the Code. The outcome of this discussion is that there is no conflict between the provisions of Section 125 and those of the Muslim Personal Law on the question of the Muslim husband's obligation to provide maintenance for a divorced wife, who is unable to maintain herself."

9. After the decision of Shah Bano case, the Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act,1986

(hereinafter referred as Act) to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or identical thereto. Section 3 of the Act overrides all other laws and provides that a divorced woman shall be entitled to - (a) a reasonable and fair provision and maintenance to be made and paid to her within the period of iddat by her former husband; (b) where she maintains the children born to her before or after her divorce, a reasonable provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children; (c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim Law; and (d) all the properties given to her before or at the time of marriage or after the marriage by her relatives, friends, husband and any relatives of the husband or his friends.

10. In case of *Danial Latifi vs Union of India (supra)*, the Apex Court observed:

"Our society is male dominated both economically and socially and women are assigned, invariably, a dependent role, irrespective of the class of society to which she belongs. A woman on her marriage very often, though highly educated, gives up her all other avocations and entirely devotes herself to the welfare of the family, in particular she shares with her husband, her emotions, sentiments, mind and body, and her investment in the marriage is her entire life - a sacramental sacrifice of her individual self and is far too enormous to be measured in terms of money. When a relationship of this nature breaks up, in what manner we could compensate her so far as emotional fracture or loss of investment is concerned, there can be no answer. It is a small solace to say that such a woman should be compensated in terms of money towards her livelihood and such a relief which partakes basic human rights to secure gender and social justice is universally recognised by persons belonging to all religions and it is difficult to perceive that Muslim law intends to provide a different kind of responsibility by passing on the same to those unconnected with the matrimonial life

such as the heirs who were likely to inherit the property from her or the wakf boards. Such an approach appears to us to be a kind of distortion of the social facts. Solutions to such societal problems of universal magnitude pertaining to horizons of basic human rights, culture, dignity and decency of life and dictates of necessity in the pursuit of social justice should be invariably left to be decided on considerations other than religion or religious faith or beliefs or national, sectarian, racial or communal constraints. Bearing this aspect in mind, we have to interpret the provisions of the Act in question."

It was further held as under:

"While upholding the validity of the Act, we may sum up our conclusions: Court holds that - 1) A Muslim husband is liable to make a 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 under Section 3(1)(a) of the Act to pay maintenance is not confined to iddat period."

11. In *Shabana Bano v. Imran Khan* (2010) 1 SCC 666, the question that arose for consideration before the Supreme Court was whether a Muslim divorced wife would be entitled for maintenance from her divorced husband under Section 125 of the Cr.P.C. and, if yes, then through which forum? Referring to several earlier judgments, the Court held that proceedings under Section 125 Cr.P.C. are civil in nature and laid down that a petition under Section 125 of the Cr.P.C. filed by a divorced woman would be maintainable before the Family Court as long as appellant does not remarry and the amount of maintenance to be awarded under Section 125 of the Cr.P.C. cannot be restricted for the iddat period only. It was held:

"Cumulative reading of the relevant portions of judgments of this Court in *Danial Latifi*, (2001 AIR SCW 3932) (supra) and *Iqbal Bano*, (2007 AIR SCW 3880) (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.

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 under Section 125 of the Cr.P.C. after the expiry of period of iddat also, as long as she does not remarry."

12. In *Shamim Bano v. Asraf Khan (2014) 12 SCC 636*, again the issue was whether the appellant's application for grant of maintenance under Section 125 of the Code is to be restricted to the date of divorce and because of filing of an application under Section 3 of the Act after the divorce for grant of mahr and return of gifts would disentitle the wife to sustain the application under Section 125 of the Code. Referring to *Shabana Bano (supra)* it has been held that the appellant's petition under Section 125, CrPC would be maintainable before the Family Court as long as the appellant does not remarry. The amount of maintenance to be awarded under Section 125, CrPC cannot be restricted for the iddat period only,' the Supreme Court held:

"The aforesaid principle clearly lays down that even an application has been filed under the provisions of the Act, the Magistrate under the Act has the power to grant maintenance in favour of a divorced Muslim woman and the parameters and the considerations are the same as stipulated in Section 125 of the Code."

13. In ***Shamima Farooqui v. Shahid Khan AIR 2015 SC 2025***, the application of wife for grant of maintenance was resisted by the husband alleging that he had already given divorce to her and has also paid the Mehar to her. The Supreme Court held that there can be no shadow of doubt that the divorced Muslim woman is entitled to claim maintenance under Section 125 CrPC.

14. In case of ***Jubair Ahmad vs. Ishrat Bano (supra)***, relied by learned counsel for the revisionist, this court held as under:

"Thus from the above discussion, it is clear that after the passing of the Act, from the judgment in *Danial Latifi (supra)* to *Shamima Farooqui*

(supra), it is clear that the Supreme Court has interpreted the provisions of the Act and section 125 of the Code in such a way so as to give recognition to the right of divorced Muslim wife to claim maintenance under section 125 even for the period beyond iddat period and for the whole life unless she is disqualified for the reasons such as entering into marriage with someone else. Therefore, I find no force in the argument that the divorced Muslim wife is not entitled to maintenance beyond iddat period.”

15. Thus, in view of aforesaid position of law it is clear that a divorced Muslim woman is entitled to claim maintenance under Section 125 CrPC even for the period after iddat and for whole life unless she is disqualified for the reasons such as marriage with some one else. Thus, in the instant case, the rejection of the application of revisionist under section 125 CrPC on the ground that, being a divorced muslim woman, she is not entitled to seek maintenance under section 125 CrPC, is against the well settled position of law and thus, the impugned order is liable to be set aside.

16. In view of aforesaid, the impugned order passed by the Family Court is set aside and matter is remitted back to the Court concerned to decide the claim of revisionist under section 125 CrPC and pass an order afresh in accordance with law.

17. Revision is allowed in above terms.

Order Date :- 21.02.2023

A. Tripathi