

Mohammad Khalid Vs. Nasima Khatoon

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Court : Patna

Decided On : Feb-01-1995

Judge : A.N. Chaturvedi, J.

Appeal No. : Criminal Revision No. 538 of 1987

Appellant : Mohammad Khalid

Respondent : Nasima Khatoon

Disposition : Petition Allowed

Judgement :

A.N. Chaturvedi, J.

1. This petition in revision is directed against the judgment dated 17th June, 1987 passed by die Judicial Magistrate, 1st Class, Barh in Case No. M. 41 of 1984, Trial No, 899/87 whereby the learned Magistrate has directed the petitioner to pay monthly maintenance allowance of Rs. 300 to die respondent and her minor daughter.

2. It appears that the respondent was married to the petitioner according to the Muslim Personal Law and both the parties began to live as husband and wife. After some time, a daughter, namely, Sajida Khatoon was born. On 24-6-1984, the petitioner is alleged to have divorced the respondent at his residential house and

thereafter the respondent left the house of the petitioner with her baby (daughter) and began to live with her mother. Thereafter on 12-11-1984, the respondent filed a petition under Section 125 of the Code of Criminal Procedure claiming the maintenance of Rs. 500 per month for herself and Rs. 200 as maintenance for her minor daughter, inter alia, on the ground that she had not re-married and she was unable to maintain herself as well as her daughter.

3. The petitioner, who was the opposite party before the Magistrate took the plea that there was cordial relationship between the parties and the trouble arose when the respondent Nasima Khatoon refused to live with the petitioner and demanded a sum of Rs. 500 per month for her maintenance as well as for tie maintenance of the daughter. The petitioner is said to have assured the wife (respondent) that he would maintain her provided she lived with him. The petitioner is also said to have taken the plea that he had no independent source of income and the property was joint with his sister and mother. He also denied that he had two shops at Calcutta from which he had income of Rs. 2, 000 per month besides income from landed property.

4. Evidence was led before the learned Magistrate and after considering the same, the learned Magistrate came to the conclusion that the petitioner-respondent had in fact divorced the respondent wife and was not maintaining her and minor daughter. Accordingly, the learned Magistrate passed the impugned judgment to the aforesaid effect directing the petitioner to pay Rs. 300 per month as maintenance allowance to the respondent (wife) and her daughter w.e.f. the date of application for allowances. The learned Magistrate has directed the petitioner husband to make payment of arrears of maintenance within period of two months from the date of the impugned judgment, failing which the respondent wife was held to be entitled to get the sains realised through process of the Court.

5. Petitioner has filed a supplementary affidavit on 27-9-1993 stating therein that the respondent wife got married to one Alam, son of Sahud Alain of Abijan on 3rd January, 1989. The respondent has filed counter-affidavit in which she has described herself as the divorced wife of the petitioner Md. Khalid and at present wife of Sri Alam of Mohalla Sah Ki limli, Patna City. So this much stands admitted

that the respondent has been remarried. In Para 5 of the counter-affidavit, it has been stated that the petitioner husband has taken a second wife, namely, Sah Jahan and is not caring for the daughter who is with her maternal grandmother.

6. A petition has been filed on behalf of Sajda Khatoon (daughter of the petitioner and respondent) for enhancing the monthly maintenance allowance for her to Rs. 500 per month w.e.f. 12-11-1984 the date of application under Section 125 of the Code of Criminal Procedure.

7. It is the case of the respondent that the petitioner had divorced her and the case of the respondent to this effect has been accepted by the learned Magistrate. It was contended by the learned Counsel for the petitioner that the Muslim Women's (Protection of Rights

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maintenance allowance to the respondent wife and her daughter under Section 125 of the Code of Criminal Procedure even though it had been pointed out to him that Section 125 of the Code of Criminal Procedure will not be applicable to the case of a divorced wife.

10. As mentioned earlier, respondent wife, in her application before the Magistrate, had prayed for maintenance to her at the rate of Rs. 500 per month and for her minor daughter at the rate of Rs. 200 per month. I have already pointed out above that the aforesaid Act of 1986 is not applicable to the application moved on behalf of the children who are minors and are unable to maintain themselves. Instead of granting maintenance allowance separately for the wife and the minor daughter, the learned Magistrate has granted Rs. 300 per month as maintenance allowance both for the wife and the minor daughter. It has already been pointed out above that in accordance with the provisions of the aforesaid Act of 1986, the liability of the husband for payment of maintenance to the divorced wife is limited for and during the period of Iddat, it has also been pointed out above that the respondent wife has already re-married herself and under the circumstances, the question of maintenance to the respondent after the period of Iddat and after re-marriage would hardly arise.

11. The liability of the husband petitioner for payment of maintenance to the divorced wife (respondent) being limited for and during the period of Iddat the consolidated amount of Rs. 300 per month will be payable upto the period of Iddat only. After the period of Iddat , the petitioner will not be liable to pay maintenance allowance to the respondent. Since the amount of Rs. 300 per month has been allowed by the Magistrate for the respondent wife and her daughter jointly, the amount payable to the daughter after the period of Iddat of the respondent has to be fixed. Evidence will be required regarding the requirement of the minor after the period of Iddat and re-marriage of her mother. Under the circumstances, there is no option but to remit the matter back to the learned Magistrate for fixing the amount of maintenance for minor daughter.

12. In result, this revision petition is allowed. The impugned judgment of the learned Magistrate is hereby modified to the extent indicated above and the matter is remitted back to the learned Magistrate for fixing the amount of maintenance for the minor daughter in accordance with the relevant provisions of the Code of Criminal Procedure.

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