

Ameensab Vs. Shanshad

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SooperKanoon Citation : sooperkanoon.com/389243

Court : Karnataka

Decided On : Oct-09-2006

Reported in : I(2007)DMC654

Judge : H.V.G. Ramesh, J.

Acts : Muslim Women (Protection of Rights on Divorce) Act, 1986 - Sections 3, 3(1) and 3(2); Mohammedan Law; [Constitution of India](#) - Articles 14, 15 and 21

Appeal No. : Criminal Revision Petition No. 1473 of 2004

Appellant : Ameensab

Respondent : Shanshad

Advocate for Pet/Ap. : P.H. Gotkhindi, Adv.

Judgement :

ORDER

H.V.G. Ramesh, J.

1. This revision is against the order passed by the Fast Tract Judge, Bagalkot in Cri. R.P. No. 1 of 2004 filed by the respondent. The respondent had filed an application before the Judicial Magistrate First Class, Bilgi in Cri. Misc. No. 54 of 2001 seeking to award compensation of Rs. 2 lakhs towards her maintenance, marriage and other expenses and for return of the house hold articles as per

Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 ('Act' for short).

2. According to the respondent, she married the petitioner as per Mohammedan customs and during marriage, the parents of the respondent had given Rs. 15,000/- as dowry, one watch and clothes worth Rs. 1,500/-, two tholas of gold and household articles worth Rs. 50,000/-. After marriage, she led marital life for about six months and thereafter, as there was some misunderstanding, she was driven out of the house as such, she filed a maintenance petition before the Family Court, Bijapur and the same was dismissed on the ground that she was divorced by the petitioner. Later she filed application under Section 3(1) and (2) of the Act before the Magistrate, Bilgi in Cri. Misc. No. 54 of 2001 seeking for award of compensation as noted above. Learned Magistrate dismissed the application on the ground that there is no cogent evidence produced. Against the said order, revision was preferred before the Fast Track Judge who allowed the petition in part and ordered to pay Rs. 41,500/- towards maintenance, marriage expenses and also towards cost of utensils provided during marriage. Aggrieved by the same, the husband of the respondent i.e., the petitioner is before this Court.

3. Heard the Counsel for the petitioner. Although respondent has been served with notice, she remained absent.

4. It is the submission of the petitioner's Counsel that there is no cogent evidence on record and the respondent has already been paid maintenance for the iddat period and there is no evidence to show that any amount has been spent as claimed by her and there is no proof for having given the watch, gold and other household articles. Accordingly, it is submitted that without there being any evidence on record, only on surmises, the revision Judge has passed the impugned order which calls for interference.

5. It is seen, the learned Magistrate while dismissing the petition has held that there is no document produced in support of the case of the respondent and that the claim of the respondent has been denied by the petitioner. However, the Revision Court was of the view that the Trial Court, without appreciating the oral and documentary evidence placed by the parties, has dismissed the petition. As

such, having held that the order of the Trial Court is erroneous, has passed an order awarding maintenance for iddat period at the rate of Rs. 500/- per month and Mehr amount at Rs. 10,000/- and Rs. 20,000 towards expenses and future needs of the respondent and Rs. 10,000/- towards cost of marriage and value of the gifted articles to the petitioner.

6. It is the submission of the petitioner's Counsel that the respondent is a coolie and neither she nor her parents were able to afford to pay such amount and without any cogent evidence, the Revision Court has committed an error in passing the impugned order.

7. As per Mohammedan Law, when there is a Talaq, there is an obligation on the part of the petitioner to pay the maintenance amount for the iddat period of three months as well as the Mehr amount. Section 3 of the Act provides for a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband and also the Mehr or dower amount agreed to be paid to her at the time of marriage along with all the properties given to her before or at the time of marriage and an order has to be made by the Magistrate on such application being made within one month from the date of filing of the application directing her former husband to pay all reasonable and fair provision and maintenance to the divorced women as he deems fit and proper having regard to the needs of the divorced women.

8. Although it is the contention of the petitioner that the Mehr amount is only Rs. 500/-, no material is placed by him seeking for reviewing that order and further, the amount of Rs. 500/- fixed towards maintenance for three months also cannot be interfered with. Accordingly, the Mehr amount is taken as Rs. 5,000/-; marriage expenses would be in a sum of Rs. 5,000/-; Rs. 9,000/- would be the amount spent by the parents of the respondent towards clothes and utensils that were given at the time of marriage along with gold articles. Thus, while modifying the order of the Revision Court, the respondent would be entitled to Rs. 20,500/-. The petitioner shall pay the same within three months. The amount in deposit before the Trial Court be released in favour of the respondent.

Petition is allowed in part.

