

islam Alias IslamuddIn Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Mar-17-2001

Reported in : 2001CriLJ2846

Judge : S.K. Agarwal, J.

Acts : Muslim Women (Protection of Rights) Act, 1986; Criminal Proceduer Code , 1974 - Sections 125

Appeal No. : Criminal Misc. Writ Petn. No. 569 of 2001

Appellant : islam Alias Islamuddin

Respondent : State of U.P. and ors.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : N.K. Jafri and ;Shahbuddin, Advs.

Judgement :

ORDER

S.K. Agarwal, J.

1. Heard learned counsel for the petitioner and learned A.G.A.

2. I have gone through both the judgments one of the Judicial Magistrate Ist, Jaunpur dated 11-3-1998 as well as of the revisional Court dated 19-1-2001. On

merits learned counsel for the petitioner is not able to assail the judgments of the two courts. The trial Court has only granted maintenance to the minor daughter. So far as the wife was concerned he was of the opinion that she is not entitled to maintenance and has refused to allow maintenance on the ground that she was divorced by the husband before filing of the present application for maintenance and therefore her application is not entertainable under Section 125, Cr.P.C. It has also been held that she was living without any valid reason away from the company of her husband and the applicant has never declined to maintain her. Moreover, she is permitted under the Muslim Women (Protection of Rights) Act, 1986 to claim maintenance from the Waqf Board If she is unable to maintain herself. So far as this girl is concerned the only challenge thrown by the learned counsel for the petitioner to the grant of maintenance to her is that this maintenance should have been granted from the date of order and not from the date of the application. The reason behind this submission is that the law does not permit to do so unless special reasons are recorded by the Court below. I have gone through the entire judgment but I am unable to find any special reason having been recorded by the trial Court. Even the judgment in revision does not contain any such person. Learned counsel for the respondent Nos. 2 and 3 Sri Ali Hasan has argued that this application for maintenance was contested by opposite party for full 11 years, i.e. from the year 1989 till early 2001 when the revision was decided by the revisional Court. According to him this itself is a good ground for maintaining the order passed by the trial Court in favour of the minor daughter respondent. After hearing the submission of both the parties I am of the opinion that by doing so this Court will saddle the applicant with a burden which will be humanly not possible for him to discharge at the rate of Rs. 3000/- per month. The applicant will be liable to make payment of Rs. 3,600/- per year for 11 years when multiplied this amount will come to over Rs. 45,000/-. By doing so this Court will be committing the error of refusing by implication the benefit of the order to this minor. For this applicant it will be impossible to pay such huge arrears. He is a labour earning Rs. 50/- to 60/- per day now, In the circumstances if the petitioner is asked to pay the respondent No. 3, minor daughter from the date of the order it will suffice. In case of failure to pay due to his incapacity this order will not serve any useful purpose. The purpsoe behind introducing this relief in Code of Criminal

Procedure is not to allow any vagrancy to afflict the life of the married woman or the minor children. It has not given any woman a right to use it as a tool to wreak vengeance against the husband. If the person fails he is liable to simple jail term but it will fail to serve the spirit behind the enactment of this section. The courts must not always be guided by compassionate feelings or disposition. It is a must to have a fair look into the capacity to pay of the husband as well. In the present case the applicant, the husband, was not on the wrong side but it was the wife herself. The daughter suffered due to her because she abandoned her husband's roof without any valid reason or a proper cause. Therefore, in my opinion it shall be most irrational to burden this applicant from the date of the application.

3. The trial Court will calculate the amount due from the petitioner from the date of his own order and the applicant shall be intimated about the same. The trial Court is further directed to divide the entire amount so calculated into three instalments. The first instalment shall be paid by the petitioner within one month from the date he will be directed by the trial Court. The second instalment shall be paid after another 45 days and the last instalment will be paid by the petitioner after another 45 days from second instalment. He will further go on paying each month's instalment regularly on every 10th date of successive month. Any failure in complying with this direction will result into complete negation of the present order and he will be liable to pay the amount from the date of the application as directed by the trial Court by its order dated 11-3-1998.

4. With this direction this petition stands finally disposed of.