

Kasam Vs. Jainabai

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Court : Madhya Pradesh

Decided On : Jan-22-1993

Reported in : I(1993)DMC254

Judge : A.R. Tiwari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; Muslim Womens (Protection of Rights on Divorce) Act, 1986 - Sections 7

Appeal No. : M. Cr. C. Nos. 1540 and 1541 of 1990

Appellant : Kasam

Respondent : Jainabai

Advocate for Def. : M.A. Bohra, Adv.

Advocate for Pet/Ap. : C.R. Joshi, Adv.

Disposition : Petition dismissed

Judgement :

A.R. Tiwari, J.

1. This order shall also govern the disposal of Misc. Cr. Case No. 1541/90.

2. The applicant, husband of the nun-applicant in both the afore-said petitions (Misc. Cr. Case No. 1540/90 and Misc. Cr. Case No. 1541/90) has filed the petition having the facts as stated hereafter.

The non-applicant filed a proceeding under Section 125 Cr.P.C. claiming maintenance allowance. The same was allowed. It was directed that the applicant shall pay maintenance allowance at the rate of Rs. 125/- per month from 1-3-83. On failure to pay, proceedings for recovery i.e. for enforcement of the order were initiated. The objection was taken that in view of the advent of the Muslim Woman (Protection of Rights on Divorce) Act 1986, the order has become un-enforceable. The applicant also filed an application under Section 127 Cr.P.C., claiming cancellation of order on the ground of change in circumstances. They were registered as 162/84 and 227/87. The orders went against the applicant. He thus, filed Cr. Revision No. 67/90 and 68/90 which were rejected. Hence, he filed the aforesaid two Misc. Criminal cases.

3. The main thrust of the arguments on behalf of the applicant in that the case attracted Section 7 of the aforesaid Act. Section 7 reads as under :

'7. Traditional Provisions-Every application by a divorced woman under Section 125 or under Section 127 of the Code of Criminal Procedure, 1973 (2) of 1974) pending before a Magistrate on the commencement of this Act, shall, notwithstanding anything contained in that Code and subject to the provisions of Section 5 of this Act be disposed of by such Magistrate in accordance with the provisions of this Act.' x x x x

4. It emerges from the aforesaid provision that the application as contemplated should be one by a divorced woman. The Courts below have considered this aspect and have recorded a categorical finding that even earlier the applicant had raised this point and it was rightly held that the plea of divorce was not proved. In view of this the material foundation so as to attract Section 7 of the aforesaid Act was absolutely lacking in this case. In view of this factual position, it seems unnecessary to go into the legal question whether after the order of maintenance the aforesaid section would be applicable or not and if so at what stage and under what circumstances. This point, is, therefore, left open.

5. In the ultimate analysis centering round the finding it was not proved that the non-applicant was a divorced woman, these petitions deserve to be dismissed and are accordingly dismissed.
6. A copy of this order is directed to be placed on the record of Misc.Cr.Case No. 1541/90.

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