

Yunus Vs. Shabbiran

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Court : Delhi

Decided On : Aug-26-1997

Reported in : I(1998)DMC678

Judge : Anil Dev Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 125

Appeal No. : Criminal Misc. (Main) 1032 of 1994 and Cr. 1. Misc. No. 936 of 1994

Appellant : Yunus

Respondent : Shabbiran

Advocate for Pet/Ap. : Mr. W.A. Ansari, Adv; Mr. Akshay Bipin, Adv

Judgement :
ORDER

Anil Dev Singh, J.

1. This a petition under section 482 of the Code of Criminal Procedure of quashing proceedings under section 125 thereof including the orders dated February 20, 1993 and March 15, 1994 passed by Shri A.K. Chaturvedi, Metropolitan Magistrate, Shahdara, and Shri S.C. Mittal, Additional Sessions Judge, Shahdara, respectively. The petitioner Mohd. Yunus was married to respondent Smt. Shabbiran on January 15, 1995 according to the Muslim rites and ceremonies. Out

of the wedlock two sons and two daughters were born. The respondent filed an application under section 125 Cr. P.C. against the petitioner for maintenance on the ground that she was turned out of the matrimonial home by the petitioner at the instigation of her mother-in-law and other relatives. Along with the application for maintenance, an application for grant of interim maintenance was also filed. The Metropolitan Magistrate by his order dated February 20, 1993 directed the petitioner to pay a sum of Rs. 400/- per month to the respondent from February 20, 1993 itself, i.e., from the date of the order. The petitioner, not satisfied with the order of the Metropolitan Magistrate, filed a revision, inter alia, on the grounds that the respondent was not entitled to the grant of maintenance as he had already divorced her and that the Metropolitan Magistrate did not have the jurisdiction to try the petition as neither the marriage was performed at Delhi nor any of the parties ever resided at Delhi. The learned Additional Sessions Judge, Shahdara, by order dated March 15, 1994 rejected the revision petition and maintained the order passed by the learned Metropolitan Magistrate. The petitioner not being satisfied with the order of the learned Additional Sessions Judge has moved the instant petition under section 482 challenging the order granting interim maintenance to the respondent.

2. Learned counsel appearing for the petitioner submitted that the petitioner had divorced the respondent and the respondent being a Muslim divorced wife, was not entitled to maintenance under section 125 Cr. P.C. He also submitted that the Metropolitan Magistrate did not have the jurisdiction to entertain the application under section 125 of the Cr. P.C. as neither the marriage was solemnised in Delhi nor the parties reside at Delhi.

3. I have considered the submissions of the learned counsel for the petitioner and have gone through the record. The question whether the petitioner had divorced the respondent is concerned, the same cannot be gone into at this stage as there is no evidence to support the plea of the petitioner. The parties have yet to lead evidence in support of their respective stands. Learned counsel for the petitioner, however, submitted that no evidence was required to prove divorce. He submitted that in the written statement filed by the petitioner in reply to the application under section 125 Cr. P.C. it is specifically mentioned that the petitioner had divorced the

respondent by uttering the word 'talaq ' thrice in her presence. He further submitted that in law stating the factum of 'talaq' in the written statement is enough as it is an acknowledgement of talaq which cannot be ignored and has to be given effect to. In support of his submission he relied upon the decision of the Allahabad High Court in Asmat Ullah and others Vs . Mt. Khatun Unnisa and others : AIR1939 All592 . In order to appreciate, the submission of the learned counsel it will be necessary to refer to para 2 of the written statement where the petitioner has raised the plea of divorce. Para 2 of the written statement reads as follows :-

'That the present petition of the above noted case is not maintainable as the respondent has already divorced the petitioner, Smt. Shabbiran according to the Muslim Law by asking TALAQ, TALAQ, TALAQ, in the presence of the public witnesses and issues who was born out by the wedlock, i.e., Mohd. Yusuf aged about 14 years, Kumari Sitara aged about 8 years, Mohd. Asif aged 6 years, are living with the respondent. The petitioner is not the wife of the respondent. (no) so the present petition u/s 125 Cr. P.C. against the respondent is not maintainable at all according to the Muslim Law.'

4. As is apparant from the above para, what is stated in the written statement is that the petitioner divorced the respondent by asking 'TALAQ', 'TALAQ', 'TALAQ' ' from her in the presence of the public witnesses. It appears the petitioner is under a misconception that a Muslim under the Shariat can secure talaq by asking his wife for talaq three times. In fact Talaq-bidaat could only by effected by the petitioner by making the following pronouncements to the respondent-wife:-

(1) I divorce thee thrice,

(2) I divorce thee, I divorce thee, I divorce thee.

In the instant case, according to the written statement the petitioner merely asked for 'talaq' from his wife. This statement cannot constitute Talaq-ul-bidaat. It is also note worthy that at one stage of the proceedings when the application under section 125 Cr. P.C. was decided ex parte the petitioner moved an application for setting aside that order. In that application the petitioner did not mention that he had given 'talaq' to the respondent. Rather, the case of the petitioner was that

while he was willing to keep and maintain the respondent at the matrimonial house, she was not agreeable to live with him. A question that arises is that in case the petitioner had divorced the respondent where was the occasion to keep her in his house and maintain her. At the present stage, when the evidence has yet to be led by the petitioner, learned counsel for the petitioner cannot be heard to say that the petitioner had divorced the respondent. The judgment cited by the petitioner is also of no avail to him as in that case the written statement filed by the husband showed that a proper pronouncement of 'talaq' was made by him to his wife. In the instant case, there is no statement in the written statement to the effect that the petitioner had divorced the respondent by making the following pronouncement :-

I give you talaq, I give you talaq, I give you talaq.

5. Having regard to the above discussion, I am of the opinion that the courts below were right in taking a view that the petitioner cannot take up the above plea of talaq-ul-bidaat at this juncture as the evidence in support thereof is lacking.

6. In so far as the question of jurisdiction is concerned, the respondent had categorically stated in the application that for the last three years she had been residing in Delhi. Learned counsel for the petitioner, however, pointed out that in the year 1995 the petitioner had written registered letters to the respondent at the Delhi address, as given by her in the petition under section 125 Cr. P.C., but same came back undelivered as the latter was not residing in that premises. He, therefore, submitted that the petitioner is not residing in Delhi. He also submitted that the respondent's name is included in the voters list of Kishan Ganj, Uttar Pradesh pertaining to the year 1995. I have considered the submissions of the learned counsel on this aspect of the matter. The fact that the registered letters addressed to the respondent came back undelivered does not show that the petitioner was not living in Delhi at the time of filing the petition and three years preceding thereto. Similarly, voters list of the year 1995 cannot even remotely suggest that the petitioner could not have been living in Delhi in the year 1991.

7. For the foregoing reasons, the application is dismissed as the same is without merit.

