

**Mohd. Sadiq Vs. the State and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/702851](http://sooperkanoon.com/702851)

**Court :** Delhi

**Decided On :** Aug-30-2001

**Reported in :** 94(2001)DLT472; II(2001)DMC751; 2001(60)DRJ402

**Judge :** Mr. S.K. Agarwal, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 125(2), 313, 397, 401 and 482

**Appeal No. :** Criminal Revision No. 240/1998

**Appellant :** Mohd. Sadiq

**Respondent :** The State and Others

**Advocate for Def. :** Mr. O.P. Saxena, Adv.; Mr. P.S. Gahlot, Adv.

**Advocate for Pet/Ap. :** Mr. S.Q. Kazim and; Mr. F. Mohammad, Adv

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**S.K. Agarwal, J.**

1. This petition u/s. 397/401 Cr.P.C. r/w. S. 482 Cr.P.C. is directed against the judgment and order dated 12-3-1998 passed by Sh. R.K. Yadav, ASJ, Shahdara

holding that the order of maintenance under Section 125 Cr. P.C. in favor of respondent No.2 would operate from the date of the application.

2. Facts in brief are: that Smt. Farhana (respondent No.2) filed a petition u/s. 125 Cr.P.C. against the petitioner for grant of maintenance alleging that she was married to the petitioner on 28th March, 1989 as per muslim rites and ceremonies, that she was subjected mal-treated for bringing less dowry and was ultimately deserted and was forced and was forced to live with her parents. It was stated that petitioner was working in the MCD and she was not able to maintain herself Petitioner filed reply denying the allegations and stating that she had left the matrimonial house of her own choice and was not entitled to give maintenance. The petitioner also filed a petition for restitution of conjugal rights. By order dated 17th December, 1996 trial court directed the petitioner to pay Rs. 400/- per month to respondent No.2 towards maintenance from the date of the order. Wife (Respondent No.2) filed a revision petition praying that the maintenance ought to have been granted from the date of the application and not from the date of the order. Learned Addl. Sessions Judge taking into consideration the fact that respondent No. 2 was not responsible for the delay of disposal of the maintenance application, allowed the revision petition and ordered that the order of maintenance would operate from the date of the application (24th April, 1991), subject tot he adjustment of any interim maintenance paid by the petitioner to the respondent petitioner was further permitted to pay the arrears in monthly Installments. The order of the Ld. Addl. Sessions Judge is under challenge.

3. Learned counsel for the petitioner has argued that respondent No.2 was already divorced on the date she filed an application for grant of maintenance and being muslim she was not entitled for any maintenance. Learned counsel for respondents 2 argued to the contrary, Admittedly, the petitioner, in this reply, did not take this stand that the application was not maintainable or that respondent No.2 was already divorced. In any case, Explanationn (b) of Section 125 provides that wife u/s. 125 Cr.P.C. includes a woman who has been divorced by or has obtained divorce from her husband. In view of this Explanationn, there is no merit in this contention of the petitioner.

4. Learned counsel for the petitioner then argued that the statement of the petitioner u/s. 313 Cr.P.C. was not recorded and therefore the proceedings are liable to be quashed. This argument is being noticed only to be rejected. The object to the proceedings for maintenance is to prevent vagrancy by compelling a person to support his wife child or father unable to maintain himself or herself. This section is intended to ensure food, clothing and shelter to such deserted persons. A person proceeded under this section is not an accused. He can be examined on oath as a witness as in civil cases. The proceedings under this section cannot be described as trial for an offence. therefore, provision of Section 313 Cr.P.C. do not apply to these proceedings.

5. Sub-section (2) of Section 125 Cr.P.C. gives discretion to the court to grant maintenance either from the date of the order or from the date of the application as it thus fit. The discretion is required to be exercised judiciously. In this case, petition for grant of maintenance was filed in the year 1991. There was nothing on record to indicate that respondent No.2 responsible for the delay in disposal of the petition. Even, here the petitioner did not argue that respondent No.2 was in any way responsible for delay. Taking into consideration the fact that respondent No.2 was not, instrumental in delay, the Id. Addl. Sessions Judge directed the petitioner to pay maintenance to his wife and his child from the date of the application. subject to the adjustment of the interim maintenance received by respondent No.2. Further the arrears of maintenance were ordered to be paid in Installments.

6. I view of the above, I find nothing in the impugned order to warrant any interference.

7. Dismissed.