

QamruddIn Vs. Rashida

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Court : Rajasthan

Decided On : Dec-16-1991

Reported in : II(1992)DMC328; 1992(1)WLC305; 1991WLN(UC)339

Judge : M.B. Sharma and; N.C. Kochhar, JJ.

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

Appeal No. : D.B. CrI. Misc. A. No. 179 of 1982

Appellant : Qamruddin

Respondent : Rashida

Advocate for Def. : None

Advocate for Pet/Ap. : Sayed Manzoor Ali, Adv.

Judgement :

M.B. Sharma, J.

1.We have heard the learned Counsel for the husband-appellant in this misc. appeal arising out of the judgment dt. 12.4.89 of the learned Judge Family Court Jaipur passed on an application Under Section 125 of the Criminal Procedure Code preferred before him by the respondent Smt. Rashida.

2. In the impugned judgment the learned Judge Family Court has ordered that the appellant shall pay Rs. 150/-per month to the respondent from 3.6.1985 to 12.11.86. It has also been ordered by the learned Judge Family Court that for the minor daughter the appellant shall pay a sum of Rs. 75/- p.m. from 3.6.1985 to 12.11.1986 and thereafter a sum of Rs. 100/- p.m. till the minor daughter is married or attain majority.

3. It will appear from the aforesaid judgment of the learned Family Court that he came to the conclusion that there was divorce between the parties in accordance with the Muslim Law w.e.f. 12.11.1986 and for that reason he has not awarded any amount of maintenance of the respondent-wife after that date.

4. In challenge to the aforesaid judgment, the learned Counsel for the appellant has contended that Under Section 125 generally the amount should have been ordered to be paid from the date of order and not from the date of application. He contends that no reason has been assigned by the learned Judge Family Court as to why the payment of the maintenance so far as respondent was concerned should be from the date of the application till the date of the divorce. He also contends that similarly also so far as the minor daughter is concerned, the payment should have been ordered from the date of order and not from the date of the application.

5. A bare reading of Section 125 Cr.P.C. and more so Sub-section 2 will show that the allowance shall be payable from the date of the order or if so ordered, from the date of the application for maintenance. Therefore, if the Court feels that the amount of maintenance should be ordered from the date of application there should be some reasons for ordering so. On the earlier occasion i.e. 6.9.86 when the learned Judge Family Court had disposed of the application Under Section 125 Cr.P.C. and had ordered that the amount of maintenance shall be payable w.e.f. 26.9.86. The case was remanded back to the Family Court and the learned Judge Family Court ordered that the amount of maintenance shall be payable from 3.6.85 i.e. the date of application We are of the opinion that there was no reason why in this case the amount should have been paid from the date of the application and the proper date could have been 26.9.86 on earlier occasion when the learned

Judge Family Court disposed of the case.

6. Consequently, we hereby partly allow this misc. appeal and modify the order of the learned Judge Family Court with the extent that amount at Rs. 150/- p.m. as maintenance to the respondent-wife shall be payable from 26.9.86 upto 12.11.86. So far as minor-daughter is concerned, Rs. 75/- shall be payable from 26.9.86 to 12.11.86 the date of divorce and thereafter Rs. 100/- p.m. either she is married or she attains majority.

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