

IN THE HIGH COURT OF JUDICATURE AT PATNA

Md. Atiullah Khan
v
Shakila Khatoon

Criminal Revision No. 1006 of 2016
31 August, 2023

(Hon’ble Mr. Justice Anil Kumar Sinha)

Issue for Consideration

Whether a divorced Muslim wife is entitled to claim maintenance under Section 125 of the Code of Criminal Procedure, 1973.

Headnotes

The statutory right available to wife under Section 125 is unaffected by the provisions of the personal law applicable to her. There is no conflict between Section 125 and those of the Muslim Personal Law on the question of a Muslim husband's obligation to provide maintenance for his divorced wife who is unable to maintain herself. (Para 21)

It is not the case of the husband that the wife has re-married after divorce. Petitioner has failed to establish the adulterous relationship of the wife and further the sufficient reason has not been given for not living with her husband inasmuch as it is the case of the wife that on two or three occasions, she was assaulted, ousted by the petitioner and his family members, for which she filed complaint case as well as F.I.R., under Section 498-A of the Indian Penal Code. Wife has valid and sufficient reason for not living with her husband. (Para 22, 23, 24)

The husband has not come out with the plea that the wife is also earning, however, the wife has stated that her husband is in tailoring job and is earning a sum of Rs. 16,000/- per month. The maintenance of Rs. 3,000/- awarded by learned Family Court is not excessive. (Para 24)

Application is dismissed. (Para 27)

Case Law Cited

Rohtash Singh v. Ramendri (Smt.) and Others, (2000) 3 SCC 180; Vanamala (Smt.) v. H.M. Ranganatha Bhatta, (1995) 5 SCC 299; Dr. Swapan Kumar Banerjee v. State of West Bengal and Another, (2020) 19 SCC 342; Mohd. Ahmed Khan v. Shah Bano Begum and Others, (1985) 2 SCC 556; Anju Garg and Another v. Deepak Kumar Garg, 2022 SCC Online 1314

List of Acts

Code of Criminal Procedure, 1973 — Section 125; Indian Penal Code, 1860 — Section 498-A

List of Keywords

Maintenance, Divorce, Muslim Personal Law, Section 125 CrPC, Khullanama, Adultery, Cruelty, Family Court

Case Arising From

Judgment dated 20.08.2016 passed by the learned Principal Judge, Family Court, Sitamarhi, in Misc. Case No. 74 of 2011.

Appearances for Parties

For the Petitioner: Mr. Anil Kumar
For the Respondent: Mr. Ashok Kumar Jha

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 1006 of 2016

Arising Out of PS. Case No.- Year-1111 Thana- District-

Md. Atiullah Khan, SON OF Late Habib Khan, resident of village Parsauni,
P.O. Pachtaki Yadu, Police Station Bairganiya, District Sitamarhi

... .. Petitioner/s

Versus

Shakila Khatoon, daughter of Late Jalil Khan, at present residing at village
and P.O. Patahi, Police Station Bairganiya, District Sitamarhi

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Anil Kumar

For the Respondent/s : Mr.Ashok Kumar Jha

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

Date : 31-08-2023

The present revision application has been filed against the judgement, dated 20.08.2016, passed by learned Principal Judge, Family Court, Sitamarhi, in Misc. Case No. 74 of 2011, whereby the petitioner/husband has been directed to pay a sum of Rs. 3,000/- per month, as maintenance, from the date of filing of the maintenance petition, i.e. 19.07.2011, to the wife/Opposite Party by the 12th day of each month. By the impugned judgment, the petitioner has further been directed to pay arrears of maintenance amount to the wife/Opposite Party in three monthly instalments by adjusting the interim maintenance amount of Rs. 1,500/-, which was being paid by the petitioner to the wife/Opposite Party.



2. The brief facts, giving rise to the present case, is that the marriage between the petitioner and the Opposite Party was solemnised in the year 1999 under Muslim customs and rites. It is the case of the wife/Opposite Party that after three years of marriage, she came to know that her husband/petitioner is in illicit relationship with her *bhabhi* and when the wife/Opposite Party protested against the said wrong act of her husband, she was subjected to torture and cruelty. In the meantime, the wife/Opposite Party gave birth to a girl child in the year 2002-03 and after the birth of the girl child, the husband-petitioner, in conspiracy with other family members, snatched all the belongings of the wife/Opposite Party and ousted her from her matrimonial house. Thereafter, the wife/Opposite Party started living in her parents home.

3. Thereafter, the wife/Opposite Party filed Complaint Case No. 217 of 2006, on 22.02.2206, under Section 498-A of the Indian Penal Code, which was, subsequently, registered as Bairgania Police Station Case No. 54 of 2006, in which the petitioner-husband, at the time of taking bail, filed a compromise petition and an undertaking, in effect of which the wife/Opposite Party came back to her matrimonial house. But after the disposal



of said Bairgania Police Station Case No. 54 of 2006 on 15.08.2009, she was again ousted from her matrimonial home.

4. The wife/Opposite Party filed another complaint case, bearing Complaint Case No. C1-1511 of 2009, in which again at the time of bail, compromise was arrived at between the parties on 27.09.2010. When the wife/Opposite Party again became pregnant, she was ousted from her matrimonial home on 05.06.2011 by the petitioner-husband alleging illicit/adulterous relationship of the wife/Opposite Party with other person and since then, the wife/Opposite Party is residing at her parental house.

5. After the death of father of wife/Opposite Party, the wife/Opposite Party was unable to maintain herself, her pregnancy and her eight-years old daughter, she was compelled to file a maintenance case on 19.07.2011, bearing Misc. case No. 74 of 2011, before the learned Principal Judge, Family Court, Sitamarhi, praying therein for maintenance to the tune of Rs. 5000/- per month, as the husband-petitioner was earning Rs. 15,000/- per month from a tailoring job. It is also alleged that the petitioner-husband has solemnised second marriage with another girl.

6. The case of the petitioner-husband is that the said maintenance case has been filed only with an intention to harass, humiliate and torture him mentally and socially. The wife/Opposite



Party is habitual in filing false cases against him as she is a lady of questionable character, which is evident from her second time pregnancy. The wife/Opposite Party has already taken Khullanama Divorce on 26.04.2011 (Annexure 3) out of her own sweet will by threatening the petitioner that if divorce is not given, then several false cases would be lodged against him.

7. Learned Counsel for the petitioner submits that the petitioner is a sewing worker at a shop and earns Rs. 4,000/- per month and is subscriber/member of B.P.L. and is also getting coupon of B.P.L. scheme for purchasing food grains, which is annexed at Annexure 1).

8. Learned Counsel further submits that a panchanama was issued in a panchayati, held on 08.12.2015 (Annexure 2), which goes to show that the wife/Opposite Party herself was not ready to live with the petitioner-husband and she was demanding land and cash amount from the petitioner-husband to compromise the cases. She was not living with the petitioner-husband on her own sweet will.

9. The petitioner has brought on record a report of the police, dated 21.06.2011, by way of Annexure 4, in which the petitioner's side has claimed that the wife/Opposite Party had adulterous pregnancy. The said child died immediately after birth.



The wife had left her matrimonial home leaving behind all her belongings and her daughter also, who is living with the petitioner.

10. Learned Counsel further submits that the petitioner is earning only a sum of Rs. 5,000/- per month from sewing and does not have any other source of income and if he parts with a sum of Rs. 3,000/- from his total earning of Rs. 5,000/-, he will be starving along with his other family members. He further submits that the impugned order of maintenance was passed on mere presumption of income without any valid evidence and as such, the impugned order of maintenance is liable to be set aside.

11. From perusal of the impugned judgment, it appears that three witnesses have been examined from the side of the wife/Opposite Party, wherein A.W- 1 is the wife herself, A.W. 2 is her mother and A.W. 3 is her brother and no documentary evidence was produced on behalf of the wife/Opposite Party; whereas, six witnesses were examined from the side of the husband-petitioner herein.

12. It is an admitted fact that the parties are legally married couple and the wife/Opposite Party is residing at her parental home since 05.06.2011. In her cross-examination, the wife/Opposite Party has deposed that she is not ready to live with her husband and she had also not given divorce to her husband on



her own will. The elder daughter of the parties, aged about 12 years, is living with her father, who is earning Rs. 16,000/- per month.

13. The petitioner-husband, in his examination-in-chief, has deposed that he is earning only a sum of Rs. 5,000/- per month and has no other source of income. He further deposed that he was always ready to keep her wife, but her wife divorced him on her own will. In his cross-examination, the petitioner-husband has deposed that he got the signature of the wife/Opposite Party on a plain paper and got the Talaknama prepared. He has also admitted that he has solemnised second marriage.

14. I have heard learned Counsel for the petitioner and have gone through the materials available on record, including the impugned judgement.

15. The crux of the argument advanced by the petitioner is that once the wife-Opposite Party has obtained divorce and marital relationship between the petitioner-husband and the wife-Opposite Party came to an end, the petitioner-husband is not under obligation to maintain her, with whom all relations have ceased after divorce.



16. The further case of the petitioner-husband is that the wife is not living with the petitioner out of her own sweet will and she is a lady of questionable character.

17. In other words, the petitioner is taking a plea that under Section 125 (4) of the Code of Criminal Procedure, 1973, if the wife is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, she would not be entitled to receive maintenance.

18. Insofar as the first leg of argument, based upon the khullanama divorce given by the wife-Opposite Party is concerned, the Supreme Court, in the case of **Rohtash Singh v. Ramendri (SMT) and Others**, reported in ((2000) 3 SCC 180, has held that a woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125 (4) of the Code of Criminal Procedure, 1973. In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. If she cannot maintain herself or remains unmarried, the man who was, once, her husband continues to be under a statutory duty and obligation to provide maintenance to her.



19. In another decision, the Supreme Court, in the case of **Vanamala (SMT) v. H. M. Ranganatha Bhatta**, reported in **(1995) 5 SCC 299**, has held that the expression "wife", in sub-section (4) of Section 125 of the Code of Criminal Procedure, 1973, does not have the extended meaning of including a woman who has been divorced. This is for the obvious reason that unless there is a relationship of husband and wife, there can be no question of a divorced woman living in adultery or without sufficient reason, refusing to live with her husband. After divorce, where is the occasion of a woman to live with her husband? Similarly, there would be no question of the husband and wife living separately by mutual consent because after divorce, there is no need for consent to live separately. In the context, therefore, sub-section (4) of Section 125 of the Code of Criminal Procedure, 1973, does not apply to the case of a woman who has been divorced or who has obtained a decree for divorce. Therefore, a wife, who obtains divorce by mutual consent, cannot be denied maintenance by virtue of Section 125(4) of the Code of Criminal Procedure, 1973.

20. In yet another decision, the Supreme Court, in the case of **Dr. Swapan Kumar Banerjee v. State of West Bengal and Another**, reported in **(2020) 19 SCC 342**, has held that



explanation II to Section 125 of the Code of Criminal Procedure, 1973, by deeming fiction includes a divorced woman to be a wife and, therefore, a woman who has been divorced by her husband can still claim maintenance under Section 125 of the Code of Criminal Procedure, 1973. The deeming fiction of the divorced wife being treated as a wife can only be read for the limited purpose for grant of maintenance and the deeming fiction cannot be stretched to the illogical extent that a divorced wife is under a compulsion to live with her ex-husband.

21. In the case of **Mohd. Ahmed Khan v. Shah Bano Begum and Others**, reported in **(1985) 2 SCC 556**, the Supreme Court has held that Section 125 of the Code of Criminal Procedure, 1973, is truly secular in character. It was enacted in order to provide a quick and summary remedy to a class of persons who are unable to maintain themselves. Such provisions, which are essentially of a prophylactic nature, cut across the barriers of religion. They may not supplant the personal law of the parties but, equally, the religion professed by the parties or the state of the personal law by which they are governed, cannot have any repercussion on the applicability of such laws unless, within the framework of the Constitution, their application is restricted to a defined category of religious groups or classes. The liability



imposed by Section 125 to maintain close relatives who are indigent is founded upon the individual's obligation to the society to prevent vagrancy and destitution. The moral edict of the law and morality cannot be clubbed with religion. The "Wife", in clause (b) of Explanation to Section 125 (1) of the Code of Criminal Procedure, 1973, means a wife as defined, irrespective of the religion professed by her or by her husband. Therefore, a divorced Muslim woman, so long as she has not remarried, is a "wife" for the purpose of Section 125 of the Code of Criminal Procedure, 1973. The statutory right available to her under that Section is unaffected by the provisions of the personal law applicable to her. There is no conflict between the provisions of Section 125 of the Code of Criminal Procedure, 1973, and those of the Muslim Personal Law on the question of a Muslim husband's obligation to provide maintenance for his divorced wife who is unable to maintain herself. If a wife is unable to maintain herself, she can take recourse to Section 125 of the Code of Criminal Procedure, 1973.

22. In view of the aforesaid legal proposition and the law laid down by the Supreme Court, the plea of the petitioner-husband that after the divorce obtained by the wife-Opposite Party, she is not entitled to maintenance, cannot be accepted, particularly,



when this is not the case of the petitioner-husband that the wife-
Opposite Party has re-married after divorce.

23. The second limb of argument of the petitioner-husband regarding disabilities of the wife-Opposite Party for claiming maintenance under Section 125 (4) of the Code of Criminal Procedure, 1973 is also not acceptable in view of the fact that the petitioner has failed to establish the adulterous relationship of the wife-Opposite Party and further the sufficient reason has not been given for not living with her husband inasmuch as it is the case of the wife-Opposite Party that on two or three occasions, she was assaulted, ousted by the petitioner and his family members, for which she filed complaint case as well as F.I.R., under Section 498-A of the Indian Penal Code.

24. Thus, on the face of it, it appears that the wife-Opposite Party has valid and sufficient reason for not living with her husband-petitioner. The husband-petitioner has not come out with the plea that the wife-Opposite Party is also earning, however, the wife-Opposite Party, in her deposition, has stated that her husband is in tailoring job and is earning a sum of Rs. 16,000/- per month. The maintenance of Rs. 3,000/- awarded by learned Principal Judge, Family Court, Sitamarhi, is not excessive taking



into account the high rise of essential commodities and the rising cost of living.

25. The Supreme Court, in the case of **Anju Garg and Another v. Deepak Kumar Garg**, reported in **2022 SCC ONLINE 1314**, has held that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children and the husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds.

26. In view of the aforesaid discussion, I come to the conclusion that the impugned order of maintenance of a meager amount of Rs. 3,000/- per month does not require any interference by this Court.

27. This application is, accordingly, dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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