

Mst. Zohara Khatoon vs Mohd. Ibrahim on 26 November, 1985

Equivalent citations: AIR1986SC587, 1986(34)BLJR401, 1986CRILJ556, 1986(2)CRIMES143(SC), 1985(2)SCALE1465, (1986)1SCC398, 1986(1)UJ226(SC), AIR 1986 SUPREME COURT 587, 1986 ALL. L. J. 281, 1986 BLJR 401, 1986 UP CRIR 185, 1986 (1) SCC 398, 1986 CRI APP R (SC) 35, 1986 CRI LC 230, 1986 SCC(CRI) 72, 1986 UJ (SC) 226, 1986 ALLAPPCAS (CRI) 45, 1986 MARR LJ 181, 1986 CHANDLR(CIV&CRI) 213, (1986) SC CR R 60, (1986) 1 SCWR 133, (1986) ALLCRIC 143, (1986) 2 DMC 1, (1986) EASTCRIC 300, (1986) MATLR 121, (1986) 2 RECCRIR 40, (1986) 2 SUPREME 413, (1986) ALLCRIR 152, (1986) CHANDCRIC 54, (1986) 2 CRIMES 143

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Bench: D.P. Madon, G.L. Oza

JUDGMENT

D.P. Madon, J.

1. Both the parties are Muslims. On January 15, 1973, the Appellant obtained under the Dissolution of Muslim Marriages Act, 1939 a decree of dissolution of her marriage with her husband, the Respondent. There was one issue born of the marriage of the Appellant with the Respondent, namely, a son. On coming into force on April 1 1974 of the CrPC, 1973, the Appellant filed on September 17, 1974, a petition Under Section 125 of the said Code for maintenance for herself and the child of the marriage. The Respondent contended that the Appellant's marriage with the Respondent having been dissolved by a decree of dissolution by a civil court, she was not entitled to any maintenance under the said Section 125. This defence was rejected and the Special Judicial Magistrate, Barabanki, U.P., allowed the said application by his order dated December 29, 1976, and directed the Respondent to pay a sum of Rs. 100/- per month in all as maintenance both for the Appellant and the child, holding that the Appellant had been neglected by the Respondent without reasonable or probable cause. The order of the learned Magistrate was upheld by the Sessions Judge in revision. Thereafter, the Respondent approached the Luck-now Bench of the Allahabad High Court Under Section 482 of the CrPC. The High Court held that being a divorced wife, she was not entitled to maintenance for herself and directed the Respondent to pay a sum of Rs. 40/- per month to the Appellant for the maintenance of the child.

2. The Appellant thereupon obtained Special Leave to Appeal against the judgment and order of the High Court. The Appeal reached hearing before a Division Bench of this Court consisting of S. Murtaza Fazal Ali, A.D. Koshal and A. Varadarajan, JJ. and was heard ex pane as the Respondent

did not appear. On February 18, 1981 S. Murtaza Fazal Ali, J., delivered judgment on behalf of himself and Varadarajan, J., while A.D. Koshal, J., delivered a separate but concurring judgment allowing the appeal. All the learned Judges held that the Appellant was entitled to maintenance for herself and the child. This Court accordingly set aside the order passed by the High Court and restored the order of the learned Magistrate. Thereafter, the Respondent made an application to set aside the Judgment and Order of this Court on the ground that the notice of lodgment of the Appeal had not been served on him. This plea was accepted and the Court by its Order dated September 24, 1981, restored the Appeal to the file and further pending the Appeal directed the Respondent to pay to the Appellant maintenance in the sum of Rs. 140/- per month, made up of Rs. 100/- for the Appellant and Rs. 40/- for the child, with effect from September 17, 1974. This Court further directed the Respondent to deposit within three months with the Joint Registrar (Lucknow Bench) of the Allahabad High Court the entire amount of maintenance. The Joint Registrar (Lucknow Bench) of the High Court by his report dated January 12, 1982, intimated to this Court that the Respondent had failed to deposit the amount as directed.

3. This Appeal has now reached hearing before us. In the judgments delivered on February 18, 1981, the learned Judges considered the entire law on the subject and held that a Muslim wife whose marriage was dissolved by a decree of dissolution passed at her instance was entitled to maintenance Under Section 125 of the CrPC. The position in law so far as a divorced Muslim wife is concerned has now been settled by the judgment of a Constitution Bench of this Court in Mohd. Ahmed Khan v. Shah Bano Begum and Ors. A.I R 1985 S.C. 945.

4. In view of these judgments there is no substance in the contention raised by the Respondent and this Appeal must succeed. We accordingly allow this Appeal, reverse the judgment and set aside the order of the High Court and direct the Respondent to pay to the Appellant a sum of Rs. 140/- per month, namely, Rs. 100/- as maintenance for the Appellant and Rs. 40/- as maintenance for the child, with effect from September 17, 1974. We further direct the Respondent to pay to the Appellant the arrears of maintenance at the above rate within three months from today.

5. On behalf of the Appellant it was urged that in view of the passage of time and the increased cost of living, the amount of maintenance should be increased. No materials, however, have been placed before us to show what the income of the Respondent is at present. If the Appellant desires the amount of maintenance to be increased, it will be open to her to apply to the concerned Magistrate Under Section 127(1) of the CrPC, 1973, to increase the amount of maintenance.