

Abdul Shakoor vs Smt. Kulsum Bibi And Ors. on 25 April, 1955

Equivalent citations: 1962CRILJ247

ORDER

A.N. Mulla, J.

1. This is a reference made by the learned Sessions Judge, Rae-Bareilly, in a case under Section 488 Cr.P.C.

2. Shrimati Kulsum Bibi had filed an application under Section 488 Cr.P.C. against Abdul Shakoor, her husband, claiming maintenance for herself as well as their three children. Abdul Shakoor resisted the application on the ground that he had divorced Shrimati Kulsum Bibi earlier and he was ready to maintain her children. The trial Court disbelieved the story of divorce set UP by Abdul Shakoor and ordered that he should pay maintenance at the rate of Rs. 25/- per mensem to Shrimati Kulsum Bibi and Rs. 15/- per mensem to each of the three children.

Abdul Shakoor went up in revision against this order and the learned Sessions Judge maintained the order of the trial Court as far as it related to the maintenance; of the three children. It, however, felt that the order awarding maintenance to Shrimati Kulsum Bibi was not justifiable in view of several decisions given by different authorities of different High Courts. He thereupon made this reference to this Court so that an authoritative pronouncement might be given on the point.

3. The Counsel for Abdul Shakoor contested before me that the amount of maintenance awarded was excessive as the trial Court has arbitrarily come to the conclusion that Abdul Shakoor is a man of means. I am not inclined to enter into this question at this stage and I accept the conclusions reached on this point by the trial Court as well as the first revisional Court. It seems to me that Abdul Shakoor must be a man of means because he himself alleged that when his wife left his house, she ran away with jewellery worth Rs. 3000/-. Obviously jewellery of such value cannot be found in the house of a person who has no substantial means. Again I find that Abdul Shakoor has at least taken two wives after divorcing Shrimati Kulsum Bibi and this again suggests that he cannot be devoid of means. I, therefore, see no reason to reduce the amount fixed by the trial Court.

4. The Counsel for Shrimati Kulsum Bibi on the other hand urged' that the written statement filed by Abdul Shakoor cannot be construed as a divorce. He could not place any authority before me in support of his contention. On the other hand the authorities cited by the learned Sessions Judge in his order of reference are to the effect that whenever the husband makes an unambiguous declaration of divorcing his wife, it amounts to a legal and valid divorce under the Hanafi Law. One of these decisions is on all fours with the facts of this case. It is Wahab Ali v. Qamro Bi AIR 1951 Hyd 117. It was observed in this decision:

Where in a proceeding under Section 488 by a Mohammadan wife against her husband for her maintenance, the husband states in the written statement that he had already divorced his wife and the Court comes to the conclusion that the ^divorce pleaded is not proved then such a statement in the written statement itself operates as an expression of divorce by the husband and operates as from that moment.

In this case also Abdul Shakoor pleaded mi earlier divorce and in his written statement filed on the 12th of October, 1953, he clearly mentioned in para 4 that he had divorced Kulsum Bibi earlier. This statement amounts to tin unequivocal expression of his desire and in my opinion it operates as a divorce. There is no indication that this statement was made under coercion or pressure, or when Abdul Shakoor was not sound in body and mind. I find myself in agreement with the observations of the learned Judge who decided the Hyderabad case quoted, above.

5. I, therefore, find that Abdul Shakoor divorced his wife on the 12th of October, 1953, and, therefore, Shrimati Kulsum Bibi is entitled to maintenance only for the Iddat period commencing from the 12th of October, 1953. I, therefore, modify the order passed by the trial Court in so far that Shrimati Kulsum Bibi will be entitled to maintenance only upto the term of Iddat and not afterwards. Abdul Shakoor will have to maintain 'his three children and will have to pay Rs. 45/- per month for their maintenance, who I am informed are living with Shrimati Kulsum Bibi. The reference is decided accordingly.