

Bombay High Court

Syed Mushtaque Ahmad vs Tasneem Kausar And Anr. on 6 September, 1990

Equivalent citations: I (1991) DMC 524

Author: D Moharir

Bench: D Moharir

JUDGMENT D.J. Moharir, J.

1. This is an application under Section 482, Code of Criminal Procedure, challenging the rejection of applicant's contention that in view of the provisions of The Muslim Women's Act, 1986, he was no more liable to make provision for the maintenance of his daughter, after the latter attained the age of the two years. Facts may be stated thus, in brief.

2. The present petitioner Syed Mushtaque was married to Smt. Syeda Kaniz Sibtain on 13-5-1984 at Nagpur. The child Tasneem Kausar was born to the couple on 6-6-1985. She therefore attained the age of two years on 6-6-1987. In the meanwhile on 30th October, 1985, the couple was divorced. Smt. Syeda Kaniz Sibtain quite obviously a well educated person, is a teacher in the Municipal High School at Nagpur under the Corporation of City of Nagpur. Being herself a person who had her own means of livelihood and was earning, she did not therefore herself seek any amount by way of maintenance from her husband. However on behalf of the child Tasneem Kausar she filed Misc. Criminal Application No 114 of 1985 under Section 125, Code of Criminal Procedure, claiming a monthly maintenance allowance of Rs. 350/-. This application was granted. On a Criminal Revision Application to the Sessions Judge the amount however came to be reduced to Rs. 200/- per month. Not satisfied with this, the petitioner here again approached High Court in a petition under Section 482, Code of Criminal Procedure, being Criminal Application No. 273/89. The same was decided rejected on 6-9-1989.

3. On the order for payment of Rs. 200/- per month to Tasneem Kausar in Criminal Revisional Application No. 1703/86 decided on 18-2-1987, the mother filed, on her behalf, proceedings for recovery of the outstanding arrears of maintenance. The arrears of maintenance due upto 15th May 1987 accordingly came to be recovered at the rate of Rs. 200/-per month.

4. The dispute however started as regards the period from 16-5-87 to 15-9-87. The dispute specifically was about the entitlement of the child to claim maintenance allowance from the father, in view of the provisions of Section 3(1)(b) of the Muslim Women's Act, 1986, after her attainment of the age of two years. The father therefore made an application to the Court of the learned J.M.F.C. that in view of the provisions of Section 3(1)(b) of The Muslim Women's Act and the child Tasneem Kausar having completed two years of age, he was no more liable to provide maintenance to her, as per the order passed against him in the proceedings under Section 125, Code of Criminal Procedure. This contention did not prevail either with the learned J.M.F.C. or to the learned Addl. Sessions Judge who rejected the same by his order dated 19-2-1988 in Criminal Revision No. 403/88. Aggrieved, the petitioner father has once again knocked the doors of this Court under Section 482, Code of Criminal Procedure.

5. The question which falls for determination is indeed very short. The submission of learned counsel Shri Mardikar is that the order passed under Section 125 Code of Criminal Procedure in favour of the respondent minor child. Tasneem Kausar no doubt valid when passed becomes inoperative and unenforceable any more, after the child attained the age of two years for according to him under the provisions of Section 3(1)(b) of The Muslim Women's Act, he would be no more bound to make any provision for the maintenance of the child. Quite obviously the submission has to be rejected as entirely erroneous.

6. Under the provisions of Section 125(1)(b)(c) Code of Criminal Procedure, the right to maintenance so far as children are concerned is provided as under--

If any person having sufficient means neglects or refuses to maintain --

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (nor being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d)

The Magistrate may order the father of a minor female child referred to in Clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. It has not to be appreciated whether this right stands to be further restricted by applying the provisions of Section 3(1)(b) of the Muslim Women Act. The provision reads as under--

"3(1)--Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to (a)...

(b) where she herself maintains the child born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children."

The said Act itself stands not for the benefit of the children of the couple, residing with the divorced mother or otherwise but for the benefit of the mother herself, though for the purpose of maintenance of child. The distinction is well demarcated. The right of the child to claim maintenance, may be by applying through a next friend or guardian of such child if a minor, is entirely different from the right which is conferred under Section 3(1)(b) of the Muslim Women Act on a muslim wife herself. The right thereunder is one which is conferred not on the child but on the wife on the mother of the child. It provides for the benefit of the divorced wife, that where she herself maintains the children born to her from the husband, before or after her divorce, a reasonable and fair provision by way of a maintenance allowance to her has to be made and paid accordingly by her former husband for a period of two years from the respective dates of birth of

such children. It is under Section 3 of the Act. It therefore becomes plain that if an application by the child, the opponent Tasneem Kausar here, were to have been made on her behalf either by her mother by somebody else as the next friend or guardian, the application would be immediately thrown out as not maintainable. The child itself would have no locus-standi to apply. The amount for the purposes of maintenance of the child would only be entitled to be claimed by the divorced wife as such and in the mother's own right. Therefore while under the provisions of Section 125, Code of Criminal Procedure, it will be the right of the minor child herself to claim maintenance against her father under Section 3 of the Muslim Women Act as such the right to claim an amount of maintenance allowance as a fair provision, from the husband is what is given to the divorced wife, for the purpose of the maintenance of the child. That is, the right to claim maintenance stands vested, under the Act of 1986 in the divorced wife and not in the child itself, for whose sake the amount of maintenance is claimed. That distinction is in my opinion much too transparent to be confused for advancing a contention that with the attainment of the age of two years by the opponent Tasneem Kausar, her right granted under the provisions of Section 125(1)(b) of the Code of Criminal Procedure to claim maintenance from her father, cannot be said to have come to be extinguished. It remains as much intact as it was, at the date of passing of the order under Section 125(1)(b) as it would be at the date of her attainment of full two years of age. The right would of course be enforceable subject only to the duration which is provided under Section 125 of the Code of Criminal Procedure itself and cannot be sought to be curbed on the strength of the provisions of the Muslim Women Act 1986. Therefore it is no more open to the petitioner-husband to contend that he stands free of all liability and obligation under the order passed against him and in favour of the child, under Section 125 of the Code of Criminal Procedure the moment the minor child, the daughter Tasneem Kausar attains the age of two years.

7. In the circumstances the application would have to be dismissed. The question of reduction or any further reduction in the amount of maintenance can also obviously arise no more. As I am however informed at this stage, the recover of the arrears of maintenance, for the period in dispute has also been since effected. Nothing therefore survives now. The application stands dismissed.