

Bombay High Court

Rehana Sultana Begum Hashmi Syed ... vs Hashmi Syed Mujib Hashmi Syed ... on 11 August, 2016

Bench: N.W. Sambre

544.03crwp

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 544 OF 2003

1. Rehana Sultana Begum
w/o Hashmi Syed Mujib,

Age: 26 years, Occ: Household,
R/o. Killa Galli, Udgir, Tq. Udgir,
District Latur.

2. Sayeeda Sultana d/o Hashmi

Syed Mujib,
Age: 6 years, minor, under

guardianship of her mother-
Petitioner No. 1.

...PETITIONERS

VERSUS

Hashmi Syed Mujib s/o Hashmi Syed
Yakub, Age: 36 years, Occ: Business,

Proprietor Kohinoor Steel and Iron
Work Shop, R/o. Udgir, Now at

Chandani Apartment,
2nd Floor, Room No. 203, Amrut Nagar,
Mumbra, District Thane.

...RESPONDENT

...
Mr. A.V. Sakolkar, Advocate h/f Mr. V.G. Sakolkar, Advocate for
petitioners
Ms. A.N. Ansari, Advocate for respondent.

...

CORAM : N.W. SAMBRE, J.

RESERVED ON : 05/05/2016

PRONOUNCED ON: 11/08/2016

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JUDGMENT :

Present petition is by wife and daughter seeking maintenance under Section 125 of the Code of Criminal Procedure, as their attempt to get maintenance through the proceedings initiated before learned Magistrate has resulted into denial of the same, however, the request for grant of maintenance came to be allowed to the extent of Rs.3000/- per month for petitioner No. 2 daughter Sayeeda.

2. The petitioner-mother and daughter, both preferred a revision before the learned Additional Sessions Judge, Udgir, Camp at Ahmedpur, which came to be dismissed.

3. The facts as are necessary for deciding the present writ petition are as under :-

The petitioner No. 1 Rehana got married to respondent Hashmi on 15/05/1996 at Udgir and out of

the said wedlock, daughter Sayeeda came to be born.

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4. As the respondent-husband doubted the chastity of petitioner No. 1-wife and it is claimed by the petitioner-wife that there was demand of dowry. It is further claimed that as there was threat to kill petitioner No.1-wife by the respondent-husband and tried to burn her by putting her on fire and as she was assaulted on 04/06/1990. It is further claimed that as she is unable to maintain herself, she moved the application before learned Magistrate claiming maintenance.

5. In the application filed under Section 125 of the Code of Criminal Procedure, it is claimed that respondent-husband is skilled welder and is earning Rs. 1000/- per day. It is then claimed that appropriate maintenance be paid to the petitioners.

6. The claim was resisted by the respondent-husband by admiring the marriage and birth of daughter. The respondent has come out with the case that divorce by notice is claimed to have been served on the petitioner-wife on 20/02/1999.

7. In support of the claim for maintenance, petitioner No.1 544.03crwp Rehana examined herself at Exhibit-8, her uncle Chisti Md. Khaja Karoddin Ahmed Ali at Exhibit-29, whereas respondent-husband has examined himself at Exhibit-32 and his father Sayyad Yakub Sayyed Shamshoddin at Exhibit-34.

8. After considering rival claim of the parties and evidence as is brought brought on record, learned Magistrate noted that the parties to the proceedings are Muslims by religion and as such, in view of provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986 (hereinafter shall be referred to 'Divorce Act'), rejected the claim of petitioner No.1-wife, whereas allowed to the extent of claim of the daughter @ Rs.300/- per month. Learned Magistrate directed the respondent-husband to pay maintenance @ Rs.500/- per month to petitioner No.1-wife for the Iddat period i.e. three months and rejected the claim for future maintenance.

9. The revision against the above referred order dated 11/02/2002 being Criminal Revision No. 23 of 2002 came to be dismissed by learned Additional Sessions Judge, Udgir, by an order 23/09/2003.

10. Heard Mr. Sakolkar, learned Counsel for the petitioners 544.03crwp and Ms. A.N. Ansari, learned Counsel for the respondent.

11. Mr. Sakolkar, learned Counsel for the petitioners would submit that even if presuming that Divorce Act is available to the parties, still the Apex Court has already decided the said issue by observing that the muslim woman is entitled for maintenance. He would rely upon the observations made by the Apex Court in the matter of Danial Latifi and another vs. Union of India reported in (2001) 7 SCC 740. He would invite my attention to the observations made in paragraphs-34 and 35 of the said judgment, which reads thus :

"34. The learned counsel appearing for the Muslim organisations contended after referring to various passages from the text books which we have adverted to earlier to state that the law is very clear that a divorced Muslim woman is entitled to maintenance only upto the stage of iddat and not thereafter. What is to be provided by way of Mata is only a benevolent provision to be made in case of divorced Muslim woman who is unable to maintain herself and that too by way of charity or kindness on the part of her former husband and not as a result of her right flowing to the divorced wife. The effect of various interpretations placed on Suras 241 and 242 of Chapter 2 544.03crwp of Holy Quran has been referred to in Shah Bano case.

Shah Bano case clearly enunciated what the present law would be. It made a distinction between the provisions to be made and the maintenance to be paid. It was noticed that the maintenance is payable only upto the stage of iddat and this provision is applicable in case of normal circumstances, while in case of a divorced Muslim woman who is unable to maintain herself, she is entitled to get Mata. That is the basis on which the Bench of Five Judges of this Court interpreted the various texts and held so. If that is the legal position, we do not think, we can state that any other position is possible nor are we to start on a clean slate after having forgotten the historical background of the enactment. The enactment though purports to overcome the view expressed in Shah Bano case in relation to a divorced Muslim woman getting something by way of maintenance in the nature of Mata is indeed statutorily recognised by making provision under the Act for the purpose of the "maintenance" but also for "provision".

When these two expressions have been used by the enactment, which obviously means that the Legislature did not intend to obliterate the meaning attributed to these two expressions by this Court in Shah Bano case. Therefore, we are of the view that the contentions advanced on behalf of the parties to the contrary cannot be sustained.

35 In Arab Ahemadhia Abdulla vs. Arab Bail Mohmuna 544.03crwp Saiyadbhai AIR 1988 (Guj.) 141, Ali v. Sufaira, (1988) 3 Crimes 147 (Ker), K. Kunhammed Hazi v. Amina, 1995 CrL.J. 3371 (Ker), K. Zunaideen v. Ameena Begum, (1998] II DMC 468 (Mad), Karim Abdul Rehman Shaik v. Shenaz Karim Shaik, 2000 Cr.L.J. 3560 (Bom) (FB) and Jaitunbi Mubarak Shaikh v. Mubarak Fakruddin Shaikh, 1999 (3) Mh.L.J. 694, while interpreting the provision of Sections 3(1)(a) and 4 of the Act, it is held that a divorced Muslim woman is entitled to a fair and reasonable provision for her future being made by her former husband which must include maintenance for the future extending beyond the iddat period. It was held that the liability of the former husband to make a reasonable and fair provision under Section 3(1)(a) of the Act is not restricted only for the period of iddat but that a divorced Muslim woman is entitled to a reasonable and fair provision for her future being made by her former husband and also to maintenance being paid to her for the iddat period. A lot of emphasis was laid on the words "made" and "paid" and were construed to mean not

only to make provision for the iddat period but also to make a reasonable and fair provision for her future. A Full Bench of the Punjab and Haryana High Court in *Kaka v. Hassan Bano.*, (1998) 2 DMC 85 (P&H) (FB), has taken the view that under Section 3(1)(a) of the Act a divorced Muslim woman can claim maintenance which is not restricted to iddat period. To the contrary it has been held that it is not open to the wife to 544.03crwp claim fair and reasonable provision for the future in addition to what she had already received at the time of her divorce; that the liability of the husband is limited for the period of iddat and thereafter if she is unable to maintain herself, she has to approach her relatives or the Wakf Board, by majority decision in *Usman Khan Bahamani v. Fathimunnisa Begum*, 1990 Cr.L.J. 1364; *Abdul Rashid v. Sultana Begum*, 1992 Cr.L.J. 76 (Cal); *Abdul Haq v. Yasmin Talat*; 1998 Cr.L.J. 3433 (MP) and *Md. Marahim v. Raiza Begum*, 1993 (1) DMC 60. Thus preponderance of judicial opinion is in favour of what we have concluded in the interpretation of Section 3 of the Act.

The decisions of the High Courts referred to herein that are contrary to our decision stand overruled."

12. In addition, Mr. Sakolkar, learned Counsel for the petitioners would urge that unless divorce is proved, which burden on the present respondent-husband, the Courts below have committed error in refusing the maintenance. He would then invite my attention to the Full Bench judgment of this Court in the matter of *Dadgu Chotu Pathan vs. Rahimbi Dagdu Pathan* and others reported in 2002(3) Mh.L.J. 602 so as to canvass that not merely the factum of Talaq but the conditions which were required to be followed preceding to the stage of giving Talaq are also required to 544.03crwp be proved. He then takes me through the evidence of the respective parties so as to draw an inference that there was no Talaq and the petitioner-wife was very entitled for the maintenance.

13. Per contra, Ms. Ansari, learned Counsel for the respondent-husband would invite my attention to the provisions of Sections 3 and 4 of the Divorce Act. According to her, once notice of Talq was served on the petitioner-wife through Registered Post A.D. and same was established, learned Court below has rightly considered the factum of valid Talaq and has rightly ordered maintenance pursuant to the provisions of Section 4 of the Divorce Act. She would then submit that the proceedings were initiated on 22/09/1999 and Talaq was given on 20/02/1999, as such, before the verdict, there was valid Talaq and as such, present petition deserves rejection.

14. While dwelling upon the submissions made, I have perused the order passed by learned Magistrate, wherein he has framed the point as regards whether there exists on the date of passing of the order the relationship of husband and wife in between the parties and has answered the same in the negative. He has 544.03crwp framed another issue as regards neglect and refusal on the part of respondent-husband to maintain the petitioners and answered the same in favour of the petitioners.

15. While dealing with the point No.1, it is required to be noted that learned Magistrate has accepted straight-way the contention of the respondent-husband that he has given Talaq to the

petitioner-wife before 20/02/1999 as a gospel truth without being any sufficient evidence on record to that effect. It is then without looking into pleadings and the evidence, learned Magistrate has recorded findings that there not exists relationship between petitioner No.1-

wife and respondent-husband.

16. The revisional Court, while dealing with the said issue, particularly as regards Talaq between the parties, has answered the same against petitioner-wife, as Talaq was proved. Learned revisional Court, rather while framing the issue, has cast burden on the petitioner to prove that there was Talaq, which was never a case of present petitioner. The present petitioner, rather has come out with a case that there was refusal and neglect to maintain and as such, she was entitled for maintenance. Learned Sessions Judge in 544.03crwp paragraph-15 of the judgment has made observations that as husband has categorically stated that he has given divorce to his wife i.e. petitioner No.1, she is not entitled to claim maintenance. In support thereof, the document that was placed on record is in the form of postal envelope alongwith endorsement of postman.

17. It is to be noted that Full Bench judgment of this Court had an occasion to deal with the issue of plea of divorce and effectiveness of Talaq in the judgment of Dadgu Chotu Pathan (supra). While dealing with the issue as regards Talaq by a husband, this Court has noted that same must be for a reasonable cause and should be preceded by attempt of reconciliation between the husband and wife by Arbitrators. Full Bench Judgment then has held that while proving valid Talaq, not merely the factum of Talaq but the conditions preceding to the stage of giving Talaq are also required to be proved. Paragraph-22 and 26 of the said judgment, in my opinion, are worth referring to, which reads thus :

"22. A divorce by the husband is Talaq and it has its oral as well as written forms. The oral form of Talaq can be effected in three modes viz. Talaq-e-Ahsan, Talaq-e-Hasan, 544.03crwp Talaq-ul-Biddat or Talaq-e-Badai. The first two forms are conditioned and they are accepted to be more civilized but while resorting to any of these two forms there are conditions precedent and it is not that the husband is at his free will to resort to any of these modes at any time and without assigning any reasons. If the husband feels that his wife does not care for him, she is incompatible, she does not listen to him, she does not love him, she refuses to cohabit with him, she engages in cruel behaviour, she is unfaithful or for any other reason, he has the right to give Talaq to his wife but by following certain procedure. Firstly, he has to make it known to his wife about any of these reasons and she must be given time to change her behaviour. If by his direct conversation/ persuasions she does not change her behaviour, the husband has to resort to the process of conciliation by informing to her father or any other parental relations. Two arbitrators, one from wife and one from the husband, are required to be appointed and it shall be the duty of the Arbiters to bring in a settlement between the parties so that they live together happily and inspite of these efforts having been made if the discord still persists to an irreparable level there is no alternative but to separate and it is at this stage that the husband has the right to give Talaq to his wife. The stage of conciliation with the

intervention of the arbiters is a condition precedent for effecting Talaq either in Ahsan form or Hasan form.

544.03crwp It will be seen that in all disputes between the husband and the wife the judges are to be appointed from the respective people of the two parties. These judges are required first to try to reconcile the parties to each other failing which divorce is to be effected. Therefore, though it is the husband, who pronounces the divorce, he is as much bound by the decision of the judges as is the wife. This shows that the husband cannot repudiate the marriage at his will. The case must be first referred to two judges and their decision is binding. Talaq must be for reasonable cause and be preceded by attempts at reconciliation between the husband and the wife by the arbitrators, one from the wives family and the other from the husbands. If the attempts failed, Talaq may be effected. In other words, an attempt at reconciliation by two relations, one each of the parties, is an essential condition precedent to Talaq.

26. The above discussion does indicate that mere pronouncement of Talaq by the husband or merely declaring his intentions or his acts of having pronounced the Talaq is not sufficient and does not meet the requirements of law. In every such exercise of right to Talaq the husband is required to satisfy the preconditions of arbitration for reconciliation and reasons for Talaq. Conveying his intentions to divorce the wife are not adequate to meet the requirements of Talaq in the eyes of 544.03crwp law. All the stages of conveying the reasons for divorce, appointment of arbiters, the arbiters resorting to conciliation proceedings so as to bring reconciliation between the parties and the failure of such proceedings or a situation where it was impossible for the marriage to continue, are required to be proved as condition precedent for the husbands right to give Talaq to his wife. It is, thus, not merely the factum of Talaq but the conditions preceding to this stage of giving Talaq are also required to be proved when the wife disputes the factum of Talaq or the effectiveness of Talaq or the legality of Talaq before a Court of law. Mere statement made in writing before the Court, in any form, or in oral depositions regarding the Talaq having been pronounced sometimes in the past is not sufficient to hold that the husband has divorced his wife and such a divorce is in keeping with the dictates of Islam.

It is a fallacious argument that in case of a minor or a woman past menopause, the oral Talaq in the form of Ahsan or Hasan could be pronounced by the husband at any time or at his sweet will as in such cases there is no Iddat. However, the period of Iddat has been specifically defined and even in such cases there is a waiting period of three lunar months even though there is no occurrence of menstruation. The view taken by this Court in the case of Chandbi Ex W/o Bandeshah Mujawar (supra) cannot be accepted as a good law."

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18. Once it is noted by this Court from available evidence on record that it is the respondent-husband, who has come out with a plea of Talaq in his defence while responding to the prayer for grant of maintenance and wife in her claim for maintenance has come out with a plea that their relationship as husband and wife still exists (there was no Talaq), the burden shifts on the respondent-

husband to prove that there was valid Talaq.

ig The respondent-

husband, in the present case, has hardly placed any material on record but for a some envelope stating that there was valid Talaq.

The perusal of evidence of the respondent, who is examined at Exhibit-33, depicts that he claimed that he has uttered word 'Talaq' for three times in presence of four witnesses at the parental house of the petitioner and as such, there is valid Talaq. If the entire evidence of the respondent and his witnesses if analyzed, the same does not stand to the scrutiny as is provided in the Full Bench judgment of this Court in the matter of Dadgu Chotu Pathan (supra) in the light of the observations made herein above.

19. In view of above, in my opinion, both the Courts below have committed an error by shifting the burden of proving Talaq on 544.03crwp petitioner No.1. Learned Magistrate has committed an error by recording the findings that there was Talaq, whereas learned Sessions Judge, in revision, has recorded incorrect findings that the petitioner-wife has failed to prove Talaq though it was never such a plea of the petitioner-wife, but was defence set up by the respondent-husband.

20. Once it is held that there was valid Talaq, it is required to be noted that the provisions of Divorce Act has hardly any applicability to the present case. In the judgment of Danial Latifi and another (supra) delivered by the Apex Court, the Apex Court has already held that divorced woman is entitled for maintenance, which should not be confined only for iddat period. Paragraphs-33, 34, 35 and 36 of the said judgment are worth referring to, which reads thus :

"33. In Shah Banos case this Court has clearly explained as to the rationale behind Section 125 CrPC to make provision for maintenance to be paid to a divorced Muslim wife and this is clearly to avoid vagrancy or destitution on the part of a Muslim woman. The contention put forth on behalf of the Muslims organisations who are interveners 544.03crwp before us is that under the Act vagrancy or destitution is sought to be avoided but not by punishing the erring husband, if at all, but by providing for maintenance through others. If for any reason the interpretation placed by us on the language of Sections 3(1)(a) and 4 of the Act is not acceptable, we will have to examine the effect of the provisions as they stand, that is, a Muslim woman will not be entitled to maintenance from her husband after the period of iddat once the Talaq is pronounced and, if at all, thereafter maintenance could only be recovered from the various persons mentioned in Section 4 or from the Wakf Board. This Court

in *Olga Tellis v. Bombay Municipal Corporation*, 1985(3) SCC 545, and *Maneka Gandhi v. Union of India*, 1978 (1) SCC 248, held that the concept of right to life and personal liberty guaranteed under Article 21 of the Constitution would include the right to live with dignity. Before the Act, a Muslim woman who was divorced by her husband was granted a right to maintenance from her husband under the provisions of Section 125 CrPC until she may re-marry and such a right, if deprived, would not be reasonable, just and fair. Thus the provisions of the Act depriving the divorced Muslim women of such a right to maintenance from her husband and providing for her maintenance to be paid by the former husband only for the period of iddat and thereafter to make her run from pillar to post in search of her relatives one after the other and ultimately to knock at the doors of the Wakf Board does 544.03crwp not appear to be reasonable and fair substitute of the provisions of Section 125 CrPC. Such deprivation of the divorced Muslim women of their right to maintenance from their former husbands under the beneficial provisions of the Code of Criminal Procedure which are otherwise available to all other women in India cannot be stated to have been effected by a reasonable, right, just and fair law and, if these provisions are less beneficial than the provisions of Chapter IX of the Code of Criminal Procedure, a divorced Muslim woman has obviously been unreasonably discriminated and got out of the protection of the provisions of the general law as indicated under the Code which are available to Hindu, Buddhist, Jain, Parsi or Christian women or women belonging to any other community. The provisions prima facie, therefore, appear to be violative of Article 14 of the Constitution mandating equality and equal protection of law to all persons otherwise similarly circumstanced and also violative of Article 15 of the Constitution which prohibits any discrimination on the ground of religion as the Act would obviously apply to Muslim divorced women only and solely on the ground of their belonging to the Muslim religion. It is well settled that on a rule of construction a given statute will become ultra vires or unconstitutional and, therefore, void, whereas another construction which is permissible, the statute remains effective and operative the court will prefer the latter on the ground that Legislature does not 544.03crwp intend to enact unconstitutional laws. We think, the latter interpretation should be accepted and, therefore, the interpretation placed by us results in upholding the validity of the Act. It is well settled that when by appropriate reading of an enactment the validity of the Act can be upheld, such interpretation is accepted by courts and not the other way.

The learned counsel appearing for the Muslim organisations ig contended after referring to various passages from the text books to which we have adverted to earlier to state that the law is very clear that a divorced Muslim woman is entitled to maintenance only upto the stage of iddat and not thereafter. What is to be provided by way of Mata is only a benevolent provision to be made in case of divorced Muslim woman who is unable to maintain herself and that too by way of charity or kindness on the part of her former husband and not as a result of her right flowing to the divorced wife. The effect of various interpretations placed on Suras 241 and 242 of Chapter 2 of Holy Quran has been referred to in *Shah Banos* case. *Shah Banos* case

clearly enunciated what the present law would be. It made a distinction between the provisions to be made and the maintenance to be paid. It was noticed that the maintenance is payable only upto the stage of iddat and this provision is applicable in case of a normal circumstances, while in case of a divorced Muslim woman 544.03crwp who is unable to maintain herself, she is entitled to get Mata. That is the basis on which the Bench of Five Judges of this Court interpreted the various texts and held so. If that is the legal position, we do not think, we can state that any other position is possible nor are we to start on a clean slate after having forgotten the historical background of the enactment. The enactment though purports to overcome the view expressed in Shah Banos case in relation to a divorced Muslim woman getting something by way of maintenance in the nature of Mata is indeed the statutorily recognised by making provision under the Act for the purpose of the maintenance but also for provision.

When these two expressions have been used by the enactment, which obviously means that the Legislature did not intend to obliterate the meaning attributed to these two expressions by this Court in Shah Banos case. Therefore, we are of the view that the contentions advanced on behalf of the parties to the contrary cannot be sustained.

In Arab Ahemadhia Abdulla and etc vs. Arab Bail Mohmuna Saiyadbhai & Ors. etc., AIR 1988 (Guj.) 141; Ali vs. Sufaira, (1988) 3 Crimes 147; K. Kunhashed Hazi v. Amena, 1995 Cr.L.J. 3371; K. Zunaideen v. Ameena Begum, (1998] II DMC 468; Karim Abdul Shaik v. Shenaz Karim Shaik, 2000 Cr.L.J. 3560 and Jaitunbi Mubarak Shaikh v. Mubarak Fakruddin Shaikh & Anr., 1999 (3) Mh.L.J. 694, while interpreting the provision of Sections 544.03crwp 3(1)(a) and 4 of the Act, it is held that a divorced Muslim woman is entitled to a fair and reasonable provision for her future being made by her former husband which must include maintenance for future extending beyond the iddat period. It was held that the liability of the former husband to make a reasonable and fair provision under Section 3(1)(a) of the Act is not restricted only for the period of iddat but that divorced Muslim woman is entitled to a reasonable and fair provision for her future being made by her former husband and also to maintenance being paid to her for the iddat period. A lot of emphasis was laid on the words made and paid and were construed to mean not only to make provision for the iddat period but also to make a reasonable and fair provision for her future. A Full Bench of the Punjab and Haryana High Court in Kaka v.

Hassan Bano & Anr., II (1998) DMC 85 (FB), has taken the view that under Section 3(1)(a) of the Act a divorced Muslim woman can claim maintenance which is not restricted to iddat period. To the contrary it has been held that it is not open to the wife to claim fair and reasonable provision for the future in addition to what she had already received at the time of her divorce; that the liability of the husband is limited for the period of iddat and thereafter if she is unable to maintain herself, she has to approach her relative or Wakf Board, by majority decision in Umar Khan Bahamami

v. Fathimnurisa, 1990 Cr.L.J. 1364; Abdul Rashid v. Sultana Begum, 1992 Cr.L.J. 76; Abdul Haq v.

544.03crwp Yasima Talat; 1998 Cr.L.J. 3433; Md. Marahim v. Raiza Begum, 1993 (1) DMC 60. Thus preponderance of judicial opinion is in favour of what we have concluded in the interpretation of Section 3 of the Act. The decisions of the High Courts referred to herein that are contrary to our decision stand overruled.

While upholding the validity of the Act, we may sum up our conclusions:

1) a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1)(a) of the Act.

2) Liability of Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to iddat period.

3) A divorced Muslim woman who has not remarried and who is not able to maintain herself after iddat period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her 544.03crwp children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance.

4) The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India. "

21. In this background, what is required to be noted is that even if the parties are governed by Mohammedan Law and provisions of Divorce Act are applicable, still the maintenance is not required to be confined only to iddat period but till the said lady gets remarried.

22. So far as the case in hand is concerned, once having held that in the light of Full Bench judgment of this Court in the case of Dagdu Chotu Pathan (supra), if the divorce in between the petitioner-wife and respondent-husband was not proved, the question of applicability of the provisions of Divorce Act is required to be negated. As such, in view of above, in my opinion, the present petitioner-wife is entitled for maintenance from the respondent-

husband from the date of filing of the application before learned 544.03crwp Magistrate i.e. 22/09/1989.

23. In this background, I propose to pass following order :-

: ORDER:

(I) Petitioner No.1-Rehana Sultana Begum w/o Hashmi Syed Mujib is entitled for maintenance of Rs.1000/- (Rs. One thousand) per month from the date of filing of the application i.e. 22/09/1989.

(ii) Petitioner No.1 is at liberty to move the appropriate Court for modification i.e. enhancement under Section 127 of the Code of Criminal Procedure, as the order of deciding the application of maintenance and proceedings were initiated and pending since 1989.

24. With above observations, present criminal writ petition stands allowed in above terms.

[N.W. SAMBRE, J.] Tupe/