

Kerala High Court

Abdul Hameed vs Fousiya on 18 November, 2004

Equivalent citations: 2004 (3) KLT 1049

Author: M Ramachandran

Bench: M Ramachandran, M S Nambiar

ORDER M. Ramachandran, J.

1. The order passed by the Judicial First Class Magistrate, Kasaragod dated 21.3.2003 in M.C.No.39 of 2001 is challenged by the respondent, former husband. The petitioner was the divorced wife. She had filed an application under Section(1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (Act 25 of 1986) (hereinafter referred as the Act). The Court held that the wife was to get maintenance at the rate of Rs. 1,500/- for the three months duration of iddat observed by her and Rs.90,000/-being a reasonable and fair provision for her. Claim for mahr, as coming under Section(1)(c) was upheld and the respondent was also to give back properties, which had been received at the time of marriage, in view of the claims that had been put under Section(1)(d) of the Act.

2. The application for maintenance had been filed on 13.6.2001. By the above time, she had got remarried, and though the exact date is not made available it was on a date before 17.6.2000. According to the former husband, this circumstance was highly relevant in the adjudication process, and reliance had been placed on the decision of this Court in Rasiya v. State of Kerala, 2002 (2) KLT 825. However, the learned Judge found that a dictum in an earlier decision, viz., Nizar v. Hyrunneesa 1999 (1) KLT 709, was to the effect that such remarriage was- of little consequence while determining the claims under S-3 of the Act. Since the later decision had drawn sustenance from a decision rendered by the Supreme Court during the year 2001, Danial Latifi v. Union of India, 2001 (3) KLT 651, and two earlier Division Bench decisions of this Court would have gone against the view taken in Nizar's case, although he was inclined to accept the law as proposed, Mr. Justice Basant was of opinion that the area of conflict could be considered by a Bench for an authoritative pronouncement. This was how the matter came up before us.

3. The decisions of this Court, Nizar v. Hyrunneesa, 1999 (1) KLT 709 and Rasiya v. State of Kerala, 2002 (2) KLT 825, pertain to the claims adjudicated under Section 3 of the Act. In a nut shell, the issue was as to whether the subsequent marriage of the divorced woman was reckonable in the matter of prescribing the amount of maintenance and the fair provision, referred to in the section. In Nizar's case, the learned Judge had expressed the view that this had no relevance. Although the above view had been brought to the attention of the learned Single Judge, while Rasiya's case was being decided, preferring to follow the observations which had been made by the Supreme Court in Danial Latifi's case (cited supra), the learned Judge held that the incidence of marriage in fact was to be taken notice of while adjudicating such claims.

4. The reference order is comprehensive. The learned Judge posed the question as to "whether a divorced woman is entitled to receive anything more than the arithmetical equivalent of the maintenance which she would be entitled from the date of divorce to the date of remarriage under Section(a) of the Act". Advertence had been made to the background of the legislation (Mohd.

Ahmed Khan v. Shah Bano Begum, 1985 CrL.J. 875, with particular reference to Danial Latifi. The learned Judge had been of the view that the observations in Nizar's case would have been more in consonance with the principles of social justice, and the restrictive meaning given in Rasiya's case perhaps were to be subjected to a reconsideration.

5. The marriage between the parties in the present case had been solemnized on 31.8.1995, in accordance with Muslim rites. The wife claimed that in March, 1996 she was forced to leave the husband's residence because of threat and she had thereafter never gone or lived with him. She came to know that thereafter he had married another woman. Her former husband was having sufficient means and was employed in the Gulf countries. As he was refusing to provide her, during 1997, she had filed M.C. No. 47 of 1997 invoking Section 125 of the Code of Criminal Procedure (for short 'Code') and even though there was an order for payment of maintenance at the rate of Rs.500/- per mensem, such payments had not forthcome. She had also filed O.S. No.439 of 1998 before the Munsiffs Court, Kasaragod and had obtained a decree of divorce on 29.2.2000. It was an ex parte decree. According to her, she had observed iddat. The husband had failed to maintain her. She had no means for her livelihood. She quantified the claim for Rs. 3,00,000/- towards reasonable and fair provisions; Rs. 4,500/- as maintenance for three months iddat period, at the rate of Rs. 1,500/-per month; Rs.105/-as Mahr; Rs. 2,25,000/-being the value of 75 sovereigns and also for return of Rs. 1,00,000/- as gift given on her behalf by her father to the bride groom.

6. The respondent/husband had contested the claim. He refers to C.C. No.136 of 1998, filed at the instance of the petitioner, under the Dowry Prohibition Act, but he had been acquitted on 13.3.2001 by the Judicial First Class Magistrate, Kasaragod.

According to him, the claim raised in the maintenance case was misconceived, as the wife had remarried long ago before the claim was preferred. She had failed to perform iddat and therefore became disentitled to get the benefits as claimed. The claims in respect of gold and the gift amount could not have been urged on principles of res judicata, as they were the subject matter of O.S. No.439/98, the suit filed for divorce. He denied his subsequent marriage. He had further pleaded that even though at the time of marriage he was having employment, he had come back from the Gulf countries and was at present engaged in odd jobs alone, and was only getting a meagre income.

7. The learned Magistrate held that maintenance during the iddat period, at the rate of Rs. 1500/-, for three months was payable. For computing entitlement for a reasonable and fair provisions and maintenance, it was held that a payment calculated at Rs. 1500/- per month for sixty months, coming to Rs. 90,000/- would take care of fair provision for life's necessities. Reliance was made on the judgment of this Court in Ahammed v. Aysha, 1990 (2) BMC 110. He had also entered a finding that the husband was bound to return the gift amount of Rs. 1,00,000/- received from his father-in-law plus the value of gold ornaments, kept back valued at Rs. 2,25,000/- (75 sovereigns).

8. The petitioner herein challenges the findings as above, both regarding the maintenance as awarded as also the fair provisions allowed, as envisaged by Section of the Act. Dispute was there about the mahr amount as also the value of the gift and properties which had been alleged as appropriated after the marriage.

9. As referred to earlier, there is no dispute about the fact that there was divorce. It had been brought by a decree of the Civil Court on 29.2.2000 and the claim of an earlier settlement including divorce, pleaded by the husband cannot be now taken cognizance of. It could also be taken notice of that at least as on 17.6.2000, the wife had remarried as a notice sent to her in her present husband's house address, had been accepted by her. In her evidence also she had admitted of the marriage. Although the petitioner herein has a case that the remarriage had taken place some time in 1997 itself, so long as a binding decree has been passed, granting a divorce as on 29.2.2000, we cannot go behind such a factual finding. There is no case projected by the petitioner herein that his former wife had remarried after the date of decree, within a period of three months, when she was to observe iddat, since he had only relied on a circumstance that the marriage was as early as in 1997. Therefore, we have to go by the plea of the wife that she had observed iddat after the decree as required by the custom, and as referred to in the Act. The question however is whether the remarriage which had taken place at least as on 17.6.2000 would have altered the position to the advantage of the former husband and was to be an input while the fair provisions were adjudged.

10. Mr. Justice Mohamed Shafi, in Nizar's case had considered an objection almost similar in nature. A claim had been put in by the wife under Section of the Act. The balance mahr, maintenance during the period of iddat, the value of ornaments as well as gifts had been directed to be paid and Rs. 90,000/- was to be paid as future maintenance. Challenging the order of the learned Magistrate, a Criminal Revision Petition had been filed before the Sessions Court, but it was rejected. The Criminal Miscellaneous Case came to be filed before the Court, when practically the decision had been confirmed by the Revisional Court complaining that exercise of jurisdiction under S. 482 of the case became necessary. The contention that had been raised by the petitioner was based on a decision of a Division Bench of this Court in Aliyar v. Pathu, 1988 (2) KLT 446, where the Court had observed that "besides paying maintenance to the divorced wife for the iddat period, former husband has to provide reasonably and fairly for the future needs of the divorced wife after the period of iddat till her remarriage or death". Therefore, the argument was that payments were to be there till the remarriage alone. When the remarriage had been admitted, quantification of the reasonable and fair provision made overlooking this circumstance was irregular.

11. The learned Judge, after examining the basic principles, held in paragraphs 9 and 10 of the judgment that Section 3 of the Act does not mention the period up to which the needs of a woman should be reckoned. According to him, the remarriage of the divorced woman is not a criterion while determining the reasonable and fair provision to be paid by the former husband to his divorced wife. According to him, therefore the fact that the divorced woman had remarried during the pendency of the petition filed by her, claiming reasonable and fair provision, is not a factor which determines the date to which she is entitled to reasonable and fair provision. According to the learned Judge, the purport of the section is that the former husband should make reasonable and fair provision to his former wife at the time of the divorce or at least within the period of iddat. Once the former husband fails to make such provisions, he is liable to pay reasonable and fair provision to his divorced wife and this liability becomes absolute. On this premises, he held as following:-

"10. The only fact to be considered by the Magistrate when the liability of the former husband to make reasonable and fair provision to the divorced wife is established, is the fixation of quantum as

contemplated under Section (3) of the Act. Of course, if the wife gets remarried during the pendency of the petition, that fact also is a factor to be considered by the Magistrate keeping in view the object and reasons in enacting the provisions of the Muslim Women (Protection of Rights on Divorce) Act".

12. We may also notice that Justice Shafi had examined the position, although in a slightly different circumstance, in another case, namely *Majitha Beevi v. Yakoob*, 1999 (1) KLT 796. It had been held that even though reasonable and fair provision is to be made by the former husband to the divorced woman within the period of iddat, if the husband has already made such reasonable and fair provision even during the subsistence of the marriage, it will be a factor to be taken into account while considering the issue of reasonableness in the fair provision to be made to the divorced wife.

13. In *Rasiya's* case (cited *supra*), petitioner - *Rasiya* was a divorced wife. She had been directed to be paid maintenance during the period of iddat, mahr, as also the reasonable and fair provision for future livelihood. In Revision at the instance of former husband, the Sessions Judge, taking notice of the fact that subsequent to the disposal of the maintenance case, the wife had remarried, chose to reduce the amount granted under the head "reasonable and fair provision". She had approached the High Court in the above background. As referred to earlier, the wife had placed heavy reliance on *Nizar's* case, in support of her contentions that the remarriage was of no consequence while considering the claims under Section of the Act. However, advertent to the circumstance that after the pronouncement of the *Nizar's* case, the Supreme Court had explained the provision in *Danial Latifi's* case, 2001 (3) KLT 651 (SC), Mr. Justice Hassan Pillai had went on to observe that a remarriage might have had impact on such claims.

14. The Supreme Court had in the above referred decision observed that reasonable and fair provision and maintenance was never limited to the iddat period. In fact, it would extend to the full life of the divorced wife unless she gets married for a second time. It was therefore a binding declaration of law. The learned Judge had also adverted to the Division Bench ruling in *Aliyar's* case as also *Kunhamad Haji v. Amina*, 1995 (1) KLT 765. The ultimate finding was that no reliance could be placed on *Nizar's* case to accede to the contention that divorced wife is entitled to get reasonable and fair provision for future livelihood from her former husband till her death. Earlier in paragraph 3 he had also observed that it is clear from the law laid down by the Supreme Court that divorced wife is entitled to get reasonable and fair provision and maintenance only up to the date she got married for second time.

15. In fact, we do not find that in the essential findings, there has been any serious difference as between the judgments presently under consideration. We have quoted paragraph 10 from the judgment of Mr. Justice Shaffi. We agree that while making the provision, the Magistrate has to bear in mind the said circumstance also as a factor to be noticed. This duty is cast on him, by Section(3) as the parameters are (1) that it should be fit and proper; (2) he should have regard to the needs of the divorced woman and her standard of life; and (3) is to take note of the means of the former husband. A remarriage definitely would contribute to additional support to a divorced woman. We see that this principle has been highlighted in *Rasiya's* case. The claim of a former husband that there is a case for realistic approach for determining the quantum of provision to be paid because of the impact of subsequent events had been accepted by the Court. The event was the, remarriage, and

it had been upheld that this will be a relevant factor, or an input for refixing the liability. Both the learned Judges have proceeded on the same basic principle of reasonableness. These findings were after taking substance from the earlier Division Bench Rulings in Aliyar's case. In Nizar's case, there was no direction to pay the benefit till the date of the divorced wife and if paragraph 5 of Raziya proceeded on such an erroneous assumption, it was only by an oversight. The Judges were agreed on the proposition that a remarriage also might be a reckonable factor.

16. Although there is no basic conflict as between the two decisions, taking notice of the contingencies referred to in the reference order, we may examine the matter as parameters will have to be laid down with clarity, as might be possible. Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945, was a land mark case, literally and figuratively. Though two earlier decisions of the Supreme Court (Bai Tahira v. Ali Hussain Fidaali Chothia, AIR 1979 SC 362, and Fazlunabi v. K.Khader, 1980 SC 1730, had spoken that S.125 of the Code of Criminal Procedure enables a divorced Muslim woman to seek for maintenance under the provision, the science and authenticity of the decisions were doubted, and the matter had thereupon been referred to a larger Bench. The Court ultimately held that the said cases had been correctly decided (excepting the observation in respect of the meaning of Mahr). Resultantly, resort to the Criminal Procedure Code-could have been possible to be made by such sector as well. According to the Supreme Court, the position explained by them had no conflict with the Personal Laws of Muslims.

17. Evidently, there might have been hectic lobbying work for legislation and a Bill leading to the enactment had been introduced in the Lok Sabha on 25.2.1986. The objective of the effort was perhaps, as submitted by counsel before the Supreme Court, to water down the effect of the judgment.

18. Quite a number of Writ Petitions came to be filed, challenging the constitutional validity of the Act, when it was found that the new Muslim Woman (Protection of Rights on Divorce) Act inter alia made inapplicable S.125 of the Criminal Procedure Code to divorced Muslim women and a claim for maintenance, which had been declared as available to them had been made out of bounds. For, only on consent, recourse thereto would have been sustainable. Certain transferred cases, Criminal Appeals and Special Leave Petitions also had come up. Understandably, one of the persons who filed the Writ petition was Mr. Danial Latifi, who had successfully led the crusade, on behalf of Shah Bano Begum, as counsel representing her in the earlier, heated proceedings. The validity of the Act, however, had been upheld, though the modality and effectiveness of the principle and procedure prescribed by S.4 of the Act had been subjected to criticism. The Supreme Court had occasion to observe that "All that needs to be considered is whether in the Act specific deviation has been made from the personal laws as declared by this Court in Shah Bano case without mutilating its underlying ratio. We have carefully analysed the same and come to the conclusion that the Act actually and in reality codified what was stated in Shah Bano case". (Danial Latifi v. Union of India, 2001 (3) KLT 651 (SC) = (2001) 7 SCC 740.

19. As we are venturing to the issue presently agitated before us, for reference, Section(3) of the Act could be extracted herein below:-

"3. Mahr or other properties of Muslim woman to be given to her at the time of divorce.

(1) Notwithstanding anything contained in anyother law for the time being in force, a divorced woman shall be entitled to-

(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

(b) Where she herself maintains the children 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;

(c) an amount equal to the sum of mahr or dower agreed to be paid to her at her time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the ti me of marriage or after the marriage by her relatives or friends or the husband or any relatives of the husband or his friends;

(2) Where a reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made or paid or the properties referred to in clause (d) of sub-section(1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate : for an order for payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section(2) by a divorced woman, the Magistrate may, if he is satisfied that-

(a) her husband having sufficient means, has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of mahr ox dower has not been paid or that the properties referred to in clause (d) of sub-section(1) have not been delivered to her, make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman.

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) xxx xxx xxx."

20. Mr. Justice Basant was of the opinion that he could not reconcile with the views exp

"3. Supreme Court has recently held in *Danial Latifi v. Union of India* (2001 (3) KLT 651 (SC): JT 2001 (8) SC 218, that nowhere the Parliament has provided that reasonable and fair provision and maintenance is limited only for the iddat period and not beyond that. It would extend to the whole life of the divorced wife unless she gets married for a second time. Thus it is clear from the law laid down by the Supreme Court in the above cited decision that the divorced wife herein is entitled to get reasonable and fair provision and maintenance only upto the date she got married for second time. In Nizar's case also this Court held that the factum of remarriage of the wife is also a factor to be considered by the Magistrate keeping in view the object and reasons in enacting the provisions of the Act".

The passage seen by the learned Judge for entering to such a finding appears in paragraph 28 of the Supreme Court judgment which also could be extracted hereunder:-

"28. A careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. It was stated that Parliament seems to intend that the divorced woman gets sufficient means of livelihood after the divorce and, therefore, the word "provision" indicates that something is provided in advance for meeting some needs. In other words, at the time of divorce the Muslim husband is required to contemplate the future needs and made preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provision for her residence, her food, her clothes, and other articles. The expression "within" should be read as "during" or "for" and this cannot be done because words cannot be construed contrary to their meaning as the word "within" would mean "on or before", "not beyond" and, therefore, it was held that the Act would mean that on or before the expiration of the iddat period, the husband is bound to make and pay maintenance to the wife and if he fails to do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in S. 3 (3) but nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the iddat period and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time".

21. Evidently, in the course of the discussions, the Apex Court was examining the contentions urged by the petitioners, with reference to the constitutional validity of the enactment. Perhaps though the genesis of the enactment could be traced to Shah Bano and the claim centered round S.125 of the Code of Criminal Procedure, and even if as suggested by the counsel for the petitioner, the effort was to water down the impact of the claim, we have to understand the statute as could be found from the plain meaning of the provisions. Clear guidance is not forthcoming from the governing section. The issue is therefore whether the possibility of a remarriage of a divorced woman was sufficient to make an impact about her otherwise recognisable claims. The passage may even show that the Court referred to maintenance as payable, even beyond the iddat period.

22. Section starts with a non-obstante clause. The first limb of sub-cl.1(a) speaks about her entitlement for a reasonable and fair provision to be made in respect of her by her husband, within the iddat period. The second limb declares her right for maintenance to be paid to her within the iddat period itself. Section(1)(b) speaks about the maintenance to children. This payment, and the payment referred to in Section(1)(c) and (d) are also mandatorily to be paid during the iddat period

as could be seen from the construction of the section, and as also gatherable from the guidance given by Section(3)(a). In the event of non-payment of any of these, a right settles on her to claim the benefits by an application to the Magistrate for an order for payment.

23. Iddat period in the case of a divorced woman is defined by Section 2(b) of the Act. It has absolutely no religious intones, and it has become part of a statute, and merely denotes the reckonable period. It is three menstrual courses, or three lunar months or delivery/termination of pregnancy, as the case may be, whichever is earlier. Perhaps there is scope for an argument that the right to get maintenance was confined to the period of iddat alone. It is however an entitlement in absolute terms as has been explained by the Supreme Court. When provision is made, separately and on suggested parameters, we may have to hold that there is no further legal justification for demanding maintenance and beyond the iddat period. The said claim is distinct in its characteristics. One usually makes a provision, so that there is income derivable therefrom, for future appropriation. The provision is directed to be 'made', and maintenance to be 'paid' by the charging section. But, it may be possible that provision is made in the form of real estate properties, or provision in the nature of annuity for ensuring sustenance. But this option for the former husband for making provision, perhaps even with a limited, life interest, is there only when the former husband comes up voluntarily to discharge his obligation. In the absence thereof, on an application, it is obligatory for the Magistrate for directing payment of reasonable and fair provision. Property has to transfer hands.

24. The right for reasonable and fair provision also is indefeasible, subject only to the means and ability for shouldering the burden by the former husband. The further stipulation that this has to be determined within one month from the date of the application also is meaningful. There may be a remarriage or not. But the liability has already arisen. The point of time for making it is the iddat period. Explanation to Section 125 of the Code, stipulates that maintenance could be claimable by a person, who has not remarried after her divorce. But, the definition of divorced woman in Muslim Women Act under S.2(a) takes in a woman who was married, according to Muslim Law, and has been divorced by, or has obtained divorce from her husband in accordance with Muslim Law. Statute does not refer to the contingency or existence of a remarriage, as the mischief sought to be remedied was within specific compass, viz. for protecting rights of divorced Muslim woman, right at the moment of the catastrophe. This is because the right had accrued to her even during the iddat period, and the payment could not have been withheld, by her subsequent marriage. As observed in Latif's case, what was sought to be extended was a reassurance and if possible, at the earliest point of time. Even if delayed, it was not liable to be defeated by a remarriage.

25. If that be the case, the impact of a remarriage can have little effect. The Magistrate is to make an order, to pay reasonable and fair provision and maintenance as he may determine as fit and proper. Guidelines also have been prescribed, to be followed by him for such determination; they being the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of the former husband. Marriage is not encouraged during iddat period. An application to Magistrate is envisaged immediately thereafter. Therefore, possibility of a remarriage is not a situation which adds or subtracts to the scope of the enquiry, normally as she is a divorced woman, always in the eye of law. The finding has to be arrived after the Magistrate enters a satisfaction that



the husband, who was having sufficient means had failed to make within the iddat period a reasonable and fair provision or pay maintenance for her and the children. Nevertheless, the question is as to whether the remarriage is wholly a circumstance to be ignored,, as in very many cases, the adjudication process might be time consuming although the proceedings are intended to be of summary nature.

26. A provision in a statute is not to be construed in isolation, and we have necessarily to look deeper. Under Section 4 of the Act, in the case of a divorced woman who is not remarried, and who finds herself difficult to maintain herself, on an application made by her, the Marriage is empowered to pass orders, requiring even third person to the matrimony to come to her help. This, of course, is an indication to presume that the husband will have no obligation to maintain her, after the period of iddat. For obvious reason, such benefit is not claimable or made available to a divorced woman, who is married, which thereby is sufficient to show that, after a remarriage, fresh resources would have opened up to her. A remarriage is therefore considered as a relief to a divorced woman. Therefore, although limits have not been prescribed, legislative interest appears to be clear that when the matter comes to the adjudicating authority, he has to act in obedience to the provisions of the statute, in conformity with the prescriptions under Section 3(3). As pointed out by the learned Judges, in both Nizar and Rasiya, a remarriage becomes a relevant criterion for adjudging the compensation package. Our finding is that such an interpretation viz. that a remarriage would also be a criterion while the enquiry is made under Section 3(3) is decipherable from the provisions of the statute to which we have presently adverted. Remarriage has only a limited impact on the claim, and that too only in the matter of fixation of a fair provision. Like wise, we hold that a remarriage of divorced woman' will not confer a cause of action for the former husband for a direction for regurgulating the benefits ordered/paid, as the statute has not envisaged such a contingency. When the liabilities had Keen enquired and adjudged under a special enactment, by indirect methods, the benefits payable cannot be withheld or recovered.

27. Now, we may advert to the contentions raised in the revision as about the findings entered into by the lower authority. As regards the grant of monthly maintenance of Rs. 1500/- for the iddat period and quantification for five years, towards reasonable and fair provision, we are not inclined to interfere. Adequate reasons have been given for entering into the finding. That is the case with Mahr also.

28. However, in respect of the claim in respect of the gift, and the gold ornaments, the demands have the characteristics of civil claims, and it would be unsafe to accept the averments as gospel even if we take it that what is contemplated is only a summary proceedings. Situated as she was, the respondent might be correct when she stated that she was given adequate gold ornaments, in the form of gifts. But, it is improbable that when she had walked away from the husband's residence, she would have gone empty handed. The evidence is scanty, and efforts has not been there to substantiate the averments. Against her earlier claim for 75 sovereigns, in paragraph 8 of the petition, she had stated that what was given was only fifty sovereigns. In the interest of fair play, we direct that the former husband will have the liability to pay a sum of Rs. 1,50,000/- towards the daim,-calculating the price of gold at Rs. 3000/- per sovereigns and for fifty sovereigns remaining as not returned.

29. In the matter of the gift of rupees one lakh, there should have been better evidence and we cannot overrule exaggeration. Even according to the divorced wife, it was given by her father, directly. He has not come and substantiated the claim. Further, we cannot but observe that there was inordinate delay in filing the case; it was filed only on 13.6.2001. At that time, she was married, but the averments were made as if she was a destitute. It was not factually correct. It could even amount to a harassment. No amounts towards the above claim are therefore payable.

The Criminal Revision Petition is disposed of as above. The judgment of the lower authority would stand modified to this extent. There will be no order as to costs.