Bombay High Court
Mrs. Faridabano Shahabuddin ... vs Shahabuddin Muzzaroddin Kadri ... on 21 January, 1993
Equivalent citations: 1993 (2) BomCR 242
Author: M Saldanha
Bench: S Kurdukar, M Saldanha
JUDGMENT M.F. Saldanha, J.

1. This Criminal Writ Petition No. 1160 of 1992 came up for hearing before Dhabe, J., and the learned Single Judge vide his judgment dated 30th October 1990 referred the matter to the Division Bench as it involves a rather important issue touching the enforceability of a maintenance order that has been passed prior to the promulgation of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which came into force on 19th May 1986. The learned Single Judge had before him two proceedings, Criminal Revision Application No. 289 of 1989 from Bombay, and the other Criminal Writ Petition No. 1160 of 1988 from Nasik. Both cases concerned divorced Muslim women. In both instances, order for payment of maintenance had been passed in favour of the divorced wife under section 125 of the Code of Criminal Procedure and the applications relating to enforcement of those orders were pending before the Court in May 1986 when the new Act came into force. Section 7 of the Act requires that such pending proceedings be disposed of in accordance with the provisions of the new Act and not in keeping with the provisions of the Code of Criminal Procedure except in cases where parties have agreed that the provisions of that Code are to apply.

2. In substance, therefore, the issue which the courts had to resolve was as to whether the existing orders for payment of maintenance could be enforced in the face of the legislative changes. The husbands had contended that the new Act had superseded the provisions of the Code of Criminal Procedure and that under this Act the absolute right of a divorced Muslim women to claim maintenance was curtailed and restricted to the payment of Maher and to the Iddat period and that, consequently, no liability by way of maintenance is enforceable after the termination of that period. Consequently, it is argued that it would not be permissible to invoke the provisions of the Code of Criminal Procedure in relation to divorced Muslim women after 19th May 1986 in relation to the enforcement of maintenance orders even if such orders had been passed earlier. Conversely, on behalf of the applicants-wives, it was argued that the Act can only take effect prospectively, that rights have vested in favour of the divorced women by virtue of Court orders and that in the absence of any provisions in the Act, express or implied, those vested rights cannot be extinguished. It is this controversy that is required to be resolved in the present reference because three of the learned Single Judges of this High Court who had occasion to deal with the issue have expressed slightly divergent views, but as pointed out by Dhabe, J., since the Act has been considered by many of the other High Courts, the position in law requires to be resolved. We shall briefly deal with the relevant facts.

3. The petitioners in Criminal Writ Petition No. 1160 of 1988, Mrs. Faridabano Shahabuddin Kadri and her son Hunoddin Shahabuddin Kadri, who are the divorced wife and son of one Shahabuddin Muzzaroddin Kadri, obtained an order dated 14th August 1979 for maintenance of Rs. 175/- per month for the wife and Rs. 125/- per month for the son which was in modification of an earlier order for lower amounts. As the maintenance was not paid, Miscellaneous Application No. 113 of 1986 was

filed in the Court of the Judicial Magistrate, First Class, Nasik in which proceedings on 7th August 1986 the husband applied for stay of the recovery on the ground that the Act of 1986 precluded any demand for such maintenance. The learned Judicial Magistrate, First Class, Nasik by order dated 30th June 1987 dismissed the application for stay against which Criminal Revision Application No. 279 of 1987 was preferred. The learned Third Additional Sessions Judge, Nasik by order dated 30th July 1988 took the view that the independent right of a child remains unaffected after the passing of the Act and that, therefore, the recovery warrant for the claim of past maintenance for the son was justified. As far as the wife was concerned, the plea of the husband was upheld by virtue of the change of law. The learned Judge came to the conclusion that she had no right to enforce the earlier order of maintenance. Aggrieved by this order, the petitioners approached the High Court through the present Criminal Writ Petition.

4. In the meanwhile, Criminal Revision Application No. 289 of 1989 was placed along with the aforesaid writ petition for hearing before the learned Single Judge, Dhabe, J., in the following circumstances. The applicant-wife Mumtaz Begum who had been married to one Kazi Mohammed Hanif on 17th March 1977 and who had a son by the name of Imran born in March 1978 came to be divorced by the husband on 16th July 1979. She had filed Maintenance Application No. 915 of 1979 before the learned Additional Chief Metropolitan Magistrate, 34th Court, Vikhroli, who by order dated 14th October 1980 ordered payment of Rs. 150/- per month by way of maintenance to the wife and Rs. 150/- per month to the son Imran. The wife thereafter filed Application No. 440 of 1983 for enhancement of the maintenance of his son from Rs. 50 to Rs. 100/- per month which was granted by order dated 15th November 1984. Thereafter the husband filed Application No. 633 of 1986 after the coming into force of the new Act for an order suspending the payment of maintenance. This application came to be dismissed by the learned Magistrate on 12th October 1988 and the husband was directed to continue paying maintenance as before. It is against this order that the Criminal Revision Application No. 357 of 1988 was filed and Judge Ghare of the City Civil Court at Bombay, who heard the matter, made a reference to the High Court because in his opinion, the judgment of Mohta, J., in Mahaboob Khan v. Parveenbanu, was at variance with the view expressed by Loney, J., in the case of Zahid Ali v. Smt. Fahmida Begum, reported in 1988(3) Crimes 373. The difficulty posed by the learned Judge was that whereas Mohta, J., had taken the view that after the promulgation of the new Act the right of recovery of maintenance from the husband was no longer available since sections 125 to 127 of the Code of Criminal Procedure stood repealed, Loney, J., had held that the divorced wives' vested right to recover the amount of maintenance was not totally extinguished by the provisions of section 7 of the Act. Expressing the view that there was inconsistency between the two judgments, the learned Judge had made a reference to the High Court which came to be numbered as Criminal Reference No. 9 of 1989. A Division Bench of this Court (Jahagirdar and Nirgudkar, JJ.) by their judgment dated 16th August 1989 resolved the position to the extent that it was pointed out that Loney, J., had noted the fact that the proceeding before him related to a Muslim women who had not obtained divorce and who was governed by the provisions of the Code of Criminal Procedure, but who came to be divorced prior to the passing of the order by the Court. In so far as the new Act dealt only with rights of divorced Muslim women, her claims in respect of the earlier period were held to be unaffected by the new Act. The Division Bench further clarified that Loney, J., had, in fact, followed the law as laid down by Mohta, J., in Mahaboob Khan's case by limiting the claim for maintenance after divorce to the Iddat period.

However, in view of the importance of the point involved and the fact that the decisions of several other High Courts require consideration, the Criminal Revision Application was transferred by virtue of the High Courts power under section 407 of the Code of Criminal Procedure from the Court of Session to the High Court and numbered as Criminal Revision Application No. 289 of 1989. These are the circumstances in which the writ petition and the Criminal Revision Application came up for hearing before Dhabe, J.

5. The learned Single Judge, after considering the facts of the two cases, expressed the view that the fundamental question as to whether the operation of the Act was prospective or retrospective requires to be decided conclusively by a larger Bench and, therefore, made a reference to the Division Bench. Undoubtedly, this is an aspect of crucial importance because it would decide the question as to whether in all those cases prior to 19th May 1986 where divorced Muslim women have obtained maintenance orders in their favour, those orders stand extinguished by operation of law or whether they are saved and if the latter be the case whether those orders are enforceable after 19th May 1986.

6. We have heard Counsel appearing on behalf of the applicants, the respondents, as also on behalf of the State, all of whom have assisted us by taking us through the pleadings, through the different decisions of the courts in question and, more importantly, by making their submissions in respect of the case-law on the point, which is quite considerable. We need to clarify at this stage that the learned Counsel debated extensively on the main issue involved in the Shahbanu case, namely, the right of a Muslim women to claim maintenance after divorce. In two earlier decisions Bai Tahira v. Ali Hussain Fissali Chothia & another, and Fuzlunbi v. Khader Vali & another, , the Supreme Court held that section 125 of the Code of Criminal Procedure applied to every divorcee women and no exception could be carved out for a divorced Muslim wife, despite provisions of section 127(3)(b) of the Code of Criminal Procedure and Muslim Personal Law. The correctness of this view was doubted when the former case of Mohd. Ahmed Khan v. Shah Bano Begum & others, , reached the Supreme Court and the matter was referred to a larger Bench principally on the ground that some of the fundamental concepts of divorce and its consequences under Muslim law, which had been protected by section 2 of the Muslim Personal Laws (Shariat) Application Act, 1937, had not been noticed by the aforesaid decisions. A larger Bench of five learned Judges of the Supreme Court heard the matter and held that (i) even according to his Personal Law, a Muslim husband is under an obligation to provide maintenance beyond the period of Iddat to his divorced wife who is unable to maintain herself and that there was no conflict between the two laws on the subject, and (ii) even if there is any conflict, section 125 of the Code of Criminal Procedure will have an overriding effect. See Mohd. Ahmed Khan v. Shah Bano Begum & others, . As a result of a controversy and an agitation that followed this decision, the Legislature introduced a Bill that ultimately resulted in the new Act and the objects and reasons of the Bill are reproduced below :--

"The Supreme Court, in Mohd. Ahmed Khan v. Shah Bano Begum and others, has held that although the Muslim law limits the husband's liability to provide for maintenance of the divorced wife to the period of iddat, it does not contemplate or countenance in the situation envisaged by section 125 of the Code of Criminal Procedure, 1973. The Court held that it would be incorrect and unjust to extend the above principle of Muslim law to cases in which the divorced wife is unable to

maintain herself. The Court, therefore, came to the conclusion that if the divorced wife is able to maintain herself, the husband's liability ceases with the expiration of the period of iddat, but in cases where she is unable to maintain herself after the period of iddat, she is entitled to have recourse to section 125 of the Code of Criminal Procedure.

This decision has led to some controversy as to the obligation of the Muslim husband to pay maintenance to the divorced wife. Opportunity has, therefore, been taken to specify the rights which a Muslim divorced women is entitled to at the time of divorce and to protect her interests. The Bill accordingly provides for the following among other things, namely :

(a) A Muslim divorced women shall be entitled to a reasonable and fair provision and maintenance within the period of iddat, by her former husband and in case she maintains the children born to her before or after her divorce, such reasonable provision and maintenance would be extended to a period of two years from the dates of birth of the children. She will also be entitled to mehr or dower and all the properties given to her by her relatives, friends, husband and the husband's relatives. If the above benefits are not given to her at the time of divorce, she is entitled to apply to the Magistrate for an order directing her former husband to provide for such maintenance, the payment of mehr or dower or the delivery of the properties;

(b) Where a Muslim divorced women is unable to maintain herself after the period of iddat, the Magistrate is empowered to make an order for the payment of maintenance by her relatives who would be entitled to inherit her property on her death according to Muslim law in the proportions in which they would inherit her property. If any one of such relatives is unable to pay his or her share on the ground of his or her not having the means to pay, the Magistrate would direct the other relatives who have sufficient means to pay the shares of these relatives also. But where a divorced women has no relatives or such relatives any one of them has not enough means to pay the maintenance of the other relatives who have been asked to pay the shares of the defaulting relatives also do not have the means to pay the shares of the defaulting relatives the Magistrate would order the State Wakf Board to pay the maintenance ordered by him or the shares of the relatives who are unable to pay."

7. The Muslim Women (Protection of Rights and Divorce, Act, 1986 (No. 25 of 1986) came into effect from 19th May 1986. The liability of a Muslim husband to pay maintenance to a divorced wife beyond the period of iddat has been the subject-matter of a considerable amount of controversy where it is argued very forcefully on behalf of the husband that the Act prescribes a total prohibition and that it overrides the provisions of sections 125 and 127 of the Code of Criminal Procedure for the award of maintenance beyond the period of iddat. It has been canvassed on behalf of the wives that a correct interpretation of the provisions of the Act will entitle a Muslim divorced women to claim fair and reasonable maintenance even after that period if she is unable to maintain herself. The Gujarat High Court in the cases of Arab Ahemadbai Abdulla v. Arab Bali Mohura Sai Vadbhai, , and the Kerala High Court in the case of A. Abdul Gafoor Kunju v. Avva Ummal Pathumma Beevi, 1989 Cri.L.J. 1224, support this view. Shah, J., of the Gujarat High Court has analysed the position in meticulous detail and held that the right to claim maintenance is not altogether extinguished. A Full Bench of the Andhra Pradesh High Court in the case of Usman Khan Bahamani v. Fathimunisa

Begum, , has taken a contrary view that a divorced Muslim women cannot claim maintenance from the husband after the period of iddat.

8. As indicated by us earlier, the learned Counsel appearing on both sides have advanced detailed submissions on this issue for the reason that they have proceeded on the assumption that it will first have to be determined as to whether the right to claim maintenance subsists beyond the iddat period or not. Even though this issue is completely outside the scope of the reference, it is contended by both sides that the enforceability of an old order for maintenance is dependent on the question as to whether under the new Act maintenance could be claimed or awarded beyond the iddat period. In our considered view, the limited controversy before us is not as to whether such maintenance can be claimed and awarded by a Court to a divorced Muslim women after the iddat period because that question does not arise in the present set of disputes. It would also be improper to decide that issue in a proceeding where it has not been raised merely because arguments were advanced touching that question of law. Suffice it to say that as pointed out by us earlier, three of the High Courts have expressed view in support of both propositions and even the case law is, therefore, not unanimous. The real issue before us is as to whether any rights have been vested in the divorced Muslim women who are applicants before us by virtue of orders in their favour under the Criminal Procedure Code prior to the passing of the new Act, and if so, whether the new Act extinguishes or saves those rights and if the latter is true, whether they are enforceable in law. The entire controversy has been generated by virtue of section 7 of the new Act, which reads as follows :

"7. Every application by a divorced women under section 125 or under section 127 of the Code of Criminal Procedure, 1973 (2 of 1974), pending before a Magistrate on the commencement of this Act, shall, notwithstanding anything contained in that Code and subject to the provisions of section 5 of this Act, be disposed of by such Magistrate in accordance with the provisions of this Act."

9. Mohta, J., in Mahaboob Khan's case has relied on the following two passages from Blackstone and Craies and observed as follows :

"Now, from the Legislative history and the background, it seems that in a sense, the Act is declaratory in character. When is the Act declaratory? According to Blackstone (I Comm. 86) "where the old custom of the realm is almost fallen into disuse or has become disputable, in which case Parliament has thought proper, in perpetuum rei testimonium, and for avoiding all doubts and difficulties, to declare what the law is, and over has been."

Craies on Statue Law, Seventh Edition at page 58 states :

"The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of a statutes". It is well-settled that where the Act has declaratory character, the usual presumption against retrospectively does not arise. Indeed such Acts are generally restrospective. No doubt the word "declared" is not mentioned in the Act but the presence or the absence of the said word is not conclusive of the matter."

10. Mohta, J., has thereafter relied on a passage from the decision in Gopi Chand v. Delhi Administration, , which reads thus :

"Since the impugned Act does contain an appropriate saving section the appellant would be entitled to contend that after the expiration of the Act, the procedure laid down in it could be no longer be invoked in the cases then pending."

The learned Judge has referred to a decision of the Madhya Pradesh High Court in the case of Mohd. Shafi v. Smt. Badrunnisa & others, 1988(1) Crimes 819, and of the Patna High Court in the case of Yunus v. Bibi Phenkani Tasrun Nisa and another, 1987(II) Crimes 241. In the first of these cases, the divorce had taken place after the commencement of the Act and it is, therefore, not material. The Patna High Court, however, supported the view that the Act is retrospective in operation and Mohta, J., has concurred with that finding. The learned Judge has concluded as follows in para 7:

"That on coming into force of the Act provisions of sections 125 or 127 of the Cr.P.C. stand repealed is clear from the language of section 7. No longer the right of getting maintenance from the husband after the iddat period is available to a Muslim divorced women. It is pertinent to notice that no exception about sub-section (3) of section 125 Cr.P.C. has been made in section 7 of the Act, which means that even such applications were intended to be brought into the net of section 7. Under the circumstances, to make exception about sub-section (3) and to restrict the operation only to sub-section (1) of section 125 would be doing violence to the plain language of section 7. The Legislative intention seems to be quite clear. It is of extreme relevance to notice that neither the order passed under section 125 Cr.P.C. nor liability already incurred earlier to the Act has been saved. The inevitable consequence is that not only right under section 125(1) but also remedy under section 125(3) are lost. Section 7 thus envisages complete effacement of the right and remedy under section 125 Cr.P.C. and therefore, there can be no question of enforcing the same under sub-section (3) of section 125 Cr.P.C."

Learned Counsel appearing on behalf of the respondents heavily relied on this judgment and draw considerable support from the Full Bench decision of the Andhra Pradesh High Court.

11. Learned Counsel appearing on behalf of the applicants advanced the view that as held by Loney, J., the judicial orders passed in favour of the applicants prior to the commencement of the Act have created vested rights in their favour. It is their contention that de hors the facts in that decision, that the Gujarat High Court and the Kerala High Court have gone to the extent of holding that even an application, in the first instance, for maintenance would be maintainable after the iddat period. All that they concede is that such an application would have to be made under the provisions of the new Act, that it would not be circumscribed to the financial limitations of the Code of Criminal Procedure and that the reference to a reasonable and fair maintenance does heavily support the view that the right to claim is not totally extinguished. Considerable reliance is also placed on the wording of section 5 of the new Act whereby an option is given to the parties to apply the provisions of the Code of Criminal Procedure, if they so desire. Learned Counsel also pointed out that whereas Mohta, J., has taken the view that the absence of a saving clause would ipso facto entail a repeal of the old provisions, that in fact the absence of a specific provision repealing the old provisions would

necessarily imply that even vis-a-vis the category of divorced Muslim women to whom the new Act applies that the old provisions of the Code of Criminal Procedure have only been suspended and replaced by the provisions of the new Act. The main ground on which Mohta, J., has held that the Act has retrospective application was because in his considered view the Act is declaratory. A scrutiny of all the 7 sections of this Act which starts with the wording. "An Act to protect the rights of Muslim women who have been divorced by or have obtained divorce from their husbands and to provide for matters connected therewith or incidental thereto which is the preamble, or in any of its provisions do we find any reference even directly to the intention to declare something. It is unambiguous that the Act envisages the protection of certain rights of a certain category of women and provides for connected and incidental matters thereto.

12. In a later judgment to the one referred to by Mohta, J., (supra), the Supreme Court in the case of Central Bank of India & others v. Their Workman, , has referred to Craies on Statute Law, Fifth Edition, pages 56-57 and has reproduced the following passage :--

"For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law or the meaning or effect of any statute. Such Acts are usually held to be retrospective."

13. It is useful to refer in this context to the decision of the Privy Council in the case of Harding v. Queens Land Stamp Commissioner, 1898 A.C. 769 (at pages 775, 776), wherein it was held that even though the words "it is declared" are used, that they are not conclusive to show that the Act is declaratory for these words may, at times, be used to introduce new rules and the Act in the latter case will only be amending the law and not necessarily retrospective. It is further held in the aforesaid case that in determining the nature of the Act regard has to be had to the substance rather than to the form. In a later decision of the Supreme Court to the one relied on by Mohta, J., Sakuru v. Tanaji, , it was held that it is necessary to bear in mind that in the case of an amending statute when the amended provision is clear and unambiguous, in the absence of definite wording indicating that the amending Act is declaratory, as it cannot be construed to be so.

14. In our considered view, all that the new Act has brought about is an amendment of the law in certain circumstances in relation to a specified category of persons, namely, divorced Muslim women. It would, therefore, not be permissible to hold that the Act is declaratory or for that matter that sections 125 to 127 of the Code of Criminal Procedure stand repealed by implication. The effect of the non-obstante clauses in this statute would only mean that in relation to this class of women, sections 125 to 128 of the Code of Criminal Procedure stand suspended since new provisions have supersede those sections, but it is necessary to bear in mind that by virtue of section 5 of the new Act, it is open to the parties to be still governed by the old provisions which, in that case, will be treated as being alive and operative.

15. On the question as to whether the new Act is retrospective or prospective, in the light of the aforesaid observations that the Act is not declaratory in character, the conclusion that it is necessarily retrospective would not follow. It is well-settled law that statutes have normally to be construed as being prospective in operation unless there are provisions which indicate that they are

to act retrospectively. Bindra in his book on Interpretation of Statutes (7th Edition) in Chapter XXX on Retrospective Operation of Statutes" has reproduced the passage from corpus juris at page 896 in which it is observed that retroactive legislation changing rights or impairing vested rights is not favoured. Loney, J., in his judgment cited supra has also expressed the view that vested rights are not to be affected unless there are clear provisions to affect such rights.

16. It is a fundamental rule of interpretation that no statute can be considered to have a retrospective operation unless its language is such as plainly to require such a construction and the same rule involves another and a subordinate rule to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary. See Gadgil S.S. v. Lal & Co., and Ahemdabad Pristin Co. v. S.G. Mehta, .

17. In our considered view, it is settled law that in the absence of specific provisions, an Act cannot be given retrospective application, thereby affecting or extinguishing rights that have vested. Nowhere in the new Act is there even the faintest glitter of any intention on the part of the legislature to affect or extinguish existing or vested rights or for that matter to apply the Act retrospectively. Such a conclusion is not permissible by implication and it would, therefore, necessarily follow that the applicability is not retrospective but prospective.

18. Section 7 of the Act will, therefore, have to be construed strictly in the manner in which it is defined. This section appears under the sub-heading "Transitional Provisions". It is, therefore, explicit that it is to take into account the transition or the change from the previous situation to that which now prevails. If the Act were to be effective retrospectively, such transitional provisions would be redundant. It only supports the view that it is only an amending Act and that section 7 prescribes the manner in which the law is to apply after the promulgation of this statute. All that it provides for is that applications pending before a Magistrate under section 125 or section 127 of the Code of Criminal Procedure shall be disposed of in accordance with the provisions of this Act in those of the cases where the option under section 5 to be governed by the old provisions is not exercised. It would also mean that in all such cases where an application for maintenance, in the first instance, or variation of that order, therefore, is pending, that the change in the law brought about by this Act shall be given effect to for the obvious reason that the law in operation on the date of the decision of the application, namely, the new law and not the one in operation on the date of the filing of the application would apply. In the case of these applications, like the present one where the right to receive maintenance has already vested in the parties, in the absence of any specific provision in the present Act extinguishing that right it would be improper to hold that the right is not enforceable. It is necessary to take note of the fact that there would be a large number of cases wherein women of this category are entitled to receive maintenance under orders passed under the relevant provisions of the Code of Criminal Procedure prior to 19th May 1985 and merely because there are no applications pending for enforcement of these orders, it would be illogical and impermissible to conclude that only those beneficiaries would continue to be entitled to their maintenance; whereas in the few cases where applications for enforcing those orders are pending that the right to receive would stand extinguished. Furthermore, divorced wives in whose cases defaults are made and who, therefore, had to approach the courts for executing the orders cannot be placed in a worse position than those who are receiving maintenance under orders wherein no default is committed.

19. We are reinforced in this view by the fact that the legislature has bodily incorporated in sub-section (4) of section 3 the very provisions of section 125(3) of the Code of Criminal Procedure which prescribe the method of enforcement for orders of maintenance. It is necessary to record here that the applications referred to in section 125 or section 127 of the Code of Criminal Procedure, in section 7 in the context in which the new Act refers to them, will necessarily have to be limited to those applications wherein the Court is being asked to determine the award of maintenance for the first time or where the application is for alteration or enhancement of maintenance. In cases where the application is not for determination of the quantum of maintenance, but where it is only for assistance from the Court to enforce the Court's order, the provisions of section 3, sub-clause (4) would be applicable. This is the only permissible view because even though the new Act has superseded the provisions of section 125 and 127 of the Code of Criminal Procedure, it has still retained as far as the enforcement of orders are concerned, the provisions of section 125(3) of the Code of Criminal Procedure, which are bodily reproduced in section 3(4) of the new Act. To the extent that orders of maintenance passed prior to the coming into operation of the new Act are concerned, they shall, therefore, be enforceable in the manner provided by section 3(4) of the new Act. The decision in Mahaboob Khan's case stands overruled.

20. The reference made to the Division Bench by Dhabe, J., is answered accordingly and stands disposed of. In the light of the aforesaid findings, it will be necessary to pass appropriate orders in respect of the two proceedings out of which the reference arose.

21. Criminal Writ Petition No. 1160 of 1988, by which petition the judgment and order dated 30-7-1988 passed by the 3rd Additional Sessions Judge, Nasik, in Criminal Revision Application No. 279 of 1987 has been impugned, is allowed. The rule is accordingly made absolute in terms of prayer (a) to the petition. The interim stay to stand vacated.

22. As regards Criminal Revision Application No. 289 of 1989 is concerned, the revision-applicant, who is the husband, has challenged the correctness of the order dated 12-10-1988 passed by the learned Metropolitan Magistrate, 34th Court, Dadar, Bombay, dated 12-10-1988 whereunder the husband was directed to continue to pay to the respondent-wife and to the son Imran maintenance as per the order dated 14-10-1980. In the view that we have taken, the order passed by the learned Metropolitan Magistrate does not require any interference with and the same is liable to be confirmed. The Criminal Revision Application accordingly fails and the same is dismissed. The rule to stand discharged. The interim orders to stand vacated.