

Patna High Court

Haroon Rashid And Anr. vs Raqueeba Khatoon And Ors. on 8 October, 1996

Equivalent citations: 1997 (1) BLJR 93

Author: N Singh

Bench: S Chattopadhyaya, N Singh

JUDGMENT N.N. Singh, J.

1. By order dated 25.8.1995 passed in criminal revision No. 199 of 1994 (R), this matter was referred by the learned Single Judge to a larger Bench, on the ground that two Single Bench Judgments of this Court reported in 1987 PLJR 65-Md. Yunus v. Bibi Phenkani alias Tasrun Nisa and Anr. and Anr. reported in 1989 (2) BLJ 671-Md. Arif v. Bibi Jamila Khaton were of conflicting view regarding determination and interpretation of Section 3(1)(a) and Section 4 of the Muslim Women (Protection of Rights and Divorce) Act, 1986 (hereinafter to be referred to as 'the Act') and regarding period of maintenance to a divorced Muslim Women. As the same question was involved in Criminal Revision No. 73 of 1994 (R), by order dated 18.10.1995, another learned Single Judge ordered that it would be heard alongwith Criminal Revision No. 199 of 1994 (R).

2. Criminal Revision No. 199 of 1994 (R) was filed against the order dated 31.8.1994 passed by Sri U.N. Mishra, Judicial Magistrate, First Class. Ranchi in Misc. Case No. 57 of 1985 by which he ordered petitioner husband to pay maintenance allowance under Section 125 of the Code of Criminal Procedure from 11.11.1985 to 10.7.1988 (date of divorce) at the rate of Rs. 400 (rupees four hundred) per month amounting to Rs. 12, 800 and at the rate of Rs. 600 (six hundred) per month for next three months (Iddat period) with direction that interim maintenance allowance granted earlier @ Rs. 200 and' Rs. 600 respectively would be adjusted. The opposite party-divorced wife was also ordered to be paid Rs. 75, 000 in lump sum for he further maintenance beyond iddat period under Section 3 of the Act. The petitioner husband challenged the impugned order mainly on the ground that under the Act, the husband has no liability to pay maintenance to his divorced wife beyond the period of iddat, as provided under Section 3 of the Act and that the impugned order was passed without considering the fact that the opposite patty-wife, had withdrawn the maintenance amount for the period of iddat period and that the impugned order was contrary to the remand order dated 12.11-1990 passed by the High Court in Cr. Misc. No 347 of 1990 (R).

3. Briefly stated, the fact of the case is that on 11.11.1985, opposite party No. 1 (Raqueeba Khatoon) filed Misc. Case No. 57 of 1985 under Section 125 of the Code of Criminal Procedure claiming that she was married with the petitioner Haroon Rashid on 25.12.1969, according to the Muslim law and customs and Goloota marriage her elder brother Gulam Rabbani was married to the sister of the petitioner Haroon Rashid and that in retaliation of bad relationship between her brother and his wife, she was neglected and had to go to her parents' house. On 14.7.1988, the petitioner informed the court that on 11.7.1988 he had divorced the opposite party No. 1 and on 4.2.1989, he filed application that in view of the provision of the Act, he was prepared to pay the dower debt and reasonable and fair provision and maintenance for the Iddat period. By order dated 22.4.1989, the learned Judicial Magistrate directed the petitioner to pay a sum of Rs. 8800 to the opposite party (Rs 5000 as Dain Mahar + Rs. 2600 for 2 Dinars and Rs. 1200 for maintenance for Iddat period at the rate of Rs. 400 per month) Rs. 8200 (rupees eight thousand and two hundred) was deposited by

petitioner, which was withdrawn by the opposite party under protest. The petitioner preferred a revision application (criminal revision No. 52 of 1989) against the above order of the Judicial Magistrate dated 22.4.1989, which was heard and disposed of by the 5th, Additional Judicial Commissioner by judgment date 9.1.1990, whereby the criminal revision application was dismissed holding that the proceedings under 125, Cr. PC will continue even after divorce. Therefore, the petitioner filed an application under Section 482 of the Code of Criminal Procedure (Criminal Misc. No. 347 of 1990 (R)), which was heard and disposed of by a Division Bench of this Court on 12.11.1990, allowing the parties to adduce evidence, whereafter Judicial Magistrate would pass a final order in respect of claim of maintenance, both in relation to the period prior to the date of divorce under Section 125 of the Cod of Criminal Procedure, as also after the date of divorced and other sums, which may be payable by the petitioner to the opposite party under Section 3 of the Act. Thereafter, the Judicial Magistrate passed the impugned order against which this criminal revision No. 199 of 1994 (R) was filed.

4. Criminal Revision No. 73 of 1994 (R) was filed by the petitioner wife Ayesha Khatoon against the order dated 19..2.1994 passed by the Third Judicial Commissioner, Ranchi in Criminal Revision No. 35 of 1992, which was preferred by her husband, Ali Ashaf against the order passed by the Judicial Magistrate, 1st Class, Ranchi in Misc. Case No. 45 of 1988 on 27.11.1991 under Section 3 of the Act. The Additional Judicial Commissioner had set aside the order allowing Rs. 500 per month as maintenance to the petitioner and had also reduced the sum of Rs. 10, 000 to Rs. 5000, which was allowed to the petitioner in lieu of articles given to her at the time of her marriage.

5. Short history of that case is that petitioner Ayesha Khatoon had, on 12.12.1988, filed an application under Section 125 of the Code of Criminal Procedure for her, as well as maintenance of her minor son Ashlam, aged about 8 years, claiming, inter alia that she was married with opposite party in 1973 according to Muslim rites, in which 'Dain Mehr' was fixed at Rs. 7, 200 and ornaments, furniture, clothes, etc. worth Rs.-10, 000 were given to her. It was also claimed that a son Aslam, was born out of her wed-lock, but the opposite party neglected her and her son and she was divorced by the opposite party on 12.4.1988. She also asserted that the opposite party firstly offered to pay Rs. 1000 for her maintenance for Iddat period, which also he did not pay and that the opposite party refused to return articles, ornaments etc. She also claimed fair provision for herself including two rooms her residence. The application of the petitioner-wife under Section 125, CrPC was converted into an application under Section 3 of the Act. The opposite party challenged the maintainability of the application in Criminal Revision No. 98 of 1989 (R), which was dismissed on 25.10.1989. The stand of the opposite party was that nothing was payable to the petitioner beyond the period of Iddat. Four witnesses on behalf of the petitioner and two witnesses on behalf of opposite party were examined and after hearing the learned.judicial Magistrate, directed the opposite party to pay Rs. 5000 as expenses for maintenance of her son for two years, Rs. 7200 as agreed 'Dian Mehr', Rs. 1000 as Iddat money Rs. 500 per month as provision for their future needs.

6. According to the reference made in both these criminal revision application, the question which arises for determination is as to whether maintenance contemplated under Section 3(1) of the Act is restricted only for the period of Iddat or a fair and reasonable provision has to be made in further also, within the period of Iddat. In order of reference dated 25.8.1995 passed in Cr. Revision No. 199

of 1994 (R), reference was made towards two conflicting single Bench rulings reported at 1987 PLJR 65 and at 1989 (2) BLJ 671. In the former case Md. Yunus v. Bibi Phenkani alias Tasrun and Anr. it was held that Section 3(1)(a) of the Act was curtailed the right of a divorced Muslim woman to get maintenance for the period of Iddat only from her former husband, whereas in the latter ruling (Md. Arif v. Bibi Jantila Khatoon) it has been held that fair and reasonable provision under the Act is not for the period of Iddat only, as maintenance for the Iddat period is already provided and that the fair and reasonable provision under the Act is for the period beyond the period of Iddat.

7. Sri P.K. Prasad, learned Advocate for the petitioner of Criminal Revision No. 199 of 1994 (R) challenged the impugned order on the date that under the Act, the liability of the husband of a divorced Muslim woman is confined to the period of Iddat and hence the direction to pay maintenance to the opposite party beyond the period of Iddat was without jurisdiction. The impugned order was also challenged on the ground that there was no basis for fixing Rs. 75, 000 as lump-sum for future maintenance, especially when Rs. 8200 deposited in court was withdrawn by the opposite party, without protest. Sri Prasad contended that the Division Bench in Cr. Misc. No. 347 of 1990 (R) referred to above, held that till date of divorce, i.e. till 10.7.1988, provision of Section 125 of the Code of Criminal Procedure will apply and after that provision of the Act will be applicable, in absence of option exercised by the husband and wife under Section 5 of the Act, opting to be governed by Section 125 or the Code of Criminal Procedure. Mr. Anwar appearing for the opposite party divorced wife, fairly conceded that after coming into force of the Act, proceeding under Section 125 of the Code of Criminal Procedure will not be applicable in view of para 45 of the judgment of the Division Bench referred to above [Cr. Misc. No. 347 of 1990 (R)] Mr. Anwar, emphasised that a reasonable and fair maintenance should be made as provided under Section 3(1)(a) of the Act and that the words used 'within Iddat period' signified only that the amount has to be paid within that period and it cannot for the Iddat period. He also pointed out that the object of the Act is to protect the rights of divorced Muslim Women and not to snatch the rights which were available to them.

8. In this connection, it appears necessary to quote and examine the relevant provisions of the Act, which are as follows:-

2. Definitions:-In this Act, unless the context otherwise requires, :-

(a) 'divorced woman' means Muslim woman who was married according to Muslim law and has been divorced by, or has obtained divorced from, her husband in accordance with Muslim law;

(b) Iddat period' means, in the case of divorced woman,-

(i) three mensrual courses after the date of divorce, if she is subject to menstruation;

(ii) three lunar months after her death, if she is not subject to menstruation; and

(iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of there child or the termination of her pregnancy, whichever is earlier;

(c) 'Magistrate' means a Magistrate of the First Class exercising jurisdiction under the Code of Criminal Procedure 1973, (2 of 1974), in the area where the divorced woman resides.

(d) 'prescribed' means prescribed by rules made under this Act.

3. Mahr or other properties of Muslim woman to be given to her at the time of divorce.- (1) Notwithstanding anything contained in any other 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 child born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two form 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 the time of her marriage or at the time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her 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 only 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 or 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 stand 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 the 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) If any person against whom an order has been made under Sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for leaving the amount of maintenance or mahr or dower due in the manner provided for levying fines the Code of Criminal Procedure, 1973 (2 of 1974) and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.

4. Order for payment of Maintenance.- (1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the Iddat period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine 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 such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order:

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share or such relative's in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in Sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to Sub-section (1). the Magistrate may, by order direct the State Wakf Board established under Section 9 of the Wakf Act, 1954 (29 of 1954), or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under Sub-section (1) or, as the case may be to pay the shares of such of the relatives who are unable to pay such periods as he may specify in his order.

5. Option to be governed by the provisions of Sections 125 to 128 of Act 2 of 1974- If, on the date of the first hearing of the application under Sub-section (2) of Section 3, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of

Sections 125 to 128 of the Code of Criminal Procedure, 1973 (2 of 1974) and file such affidavit or declaration in the Court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation.- For the purposes of this section 'date of the first hearing of the application' means the date fixed in the summons for the attendance of the respondent to the application.

7. Transitional Provisions.- Every application by a divorced woman 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. The Act received the assent of the President on 19.5.1986 and the same was published in Gazette of India on 19.5.1986 itself. The Preamble of the 'Act reads as such;

An Act to protect the rights of Muslim Woman who have been divorced by, or have obtained divorced from, their husbands and to provide for matters connected therewith or incidental thereto.

It was argued that the Act is for protect the rights of Muslim women and as such it is clear that it cannot be for taking away some rights which a Muslim woman was having either under personal law or under the general law and that it is also enacted for making other provisions for matters connected therewith or incident thereto.

10. Mr. S. Anwar, Advocate, submitted that accordance to Section 3(1) of the Act, notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to get 'a fair provision and maintenance' to be paid to her within the iddat period by her former husband.

(emphasis added) He also submitted that the word used therein is a fair provision and maintenance and not fair provision for maintenance, which is to be made and paid to her within the iddat period. Mr. Anwar emphasised that the word 'within iddat period' should not be read as 'for the iddat period' and the word 'within iddat period' in Section 3(1)(a) of the Act clearly means that a divorced Muslim woman shall be entitled to have from her former husband-

(1) a reasonable and fair provision; and (2) a reasonable and fair maintenance;

to be made and paid to her within iddat period. According to him, provision is always to be made for future use for known liabilities, which cannot be quantified accurately. In support of his contention, Sri Anwar relied on decision reported at - Shah Bano's case, 1989 (2) BLJ 671 (one of the judgments mentioned in the order of reference) and 1996 (1) Crimes 176 (Kerala D.B.) Mr. Anwar further submitted that in decision of Md. Yunus v. Bibi Phenkani, reported in 1987 PLJR 65, the court considered about the word 'maintenance' only and has not discussed about reasonable and fair provision:

11. Mr. P.K. Prasad, appearing for the husband of both the revision petitions, submitted that the fact cannot be lost sight of that in 1986, it was the after-math of Shah Bano's case, when the Parliamentarians had to mend, not only renovate the maintenance provision, but to pass a full-fledged Act relating to maintenance for Muslim divorces in accordance with Shariat. He further submitted that when Shah Bano's case was decided by the Supreme Court a great controversy in Muslim Circle detonated, deprecating and deprecating the line of reasoning taken by the Supreme Court, which was, according to them contrary to the Shariat and they demanded statutory protection of their Personal law relating to maintenance, which led to passing of the 'Act' with a view to satisfy the spirit of Shariat regarding the maintenance. Sri P.K. Prasad emphasised that the Act was not point for consideration in 1989 (2) BLJ 671. He relied on the decisions reported at - Mohd. Yunus v. Bibi Phenkani.

12. In Arif Ben's case 1989 (2) BLJ 671, Abidi, J. has made extensive and through study of Muslim law regarding maintenance and has observed that in last 1400 years, the Muslim law has been meeting the changed situations from time to time and from country to country and that they have not been rigid, rather they have been flexible and responsive to the needs of the hour and demands of social justice, public policy. His Lordship, in aforesaid decision, has referred to provisions regarding maintenance in the Holy Quran and other provisions.

13. According to the Holy Quran, a husband is ordained to maintain the wife, as it is mentioned in introduction to Surah (An-Nisaa). Section 6, Aiyat 34, in the 'Holy Quran English translation of the meaning and commentary' published by the custodian of two Holy Mosques (of Saudi Arabia):

Men are the protectors And maintenance of women, Because Allah has given The one more (strength) Then the other and because They support them From their means.

Therefore the righteous women Are devoutly obedient and guard In (the husband's) absence What Allah would have then guard...

The above connotation reveals that husband is under mandatory obligation to maintain the wife during the continuance of marriage tie if the wife is obedient and maintains the strict discipline of chastity. Additional, J. in paragraph 20 of the judgment reported in 1989 (2) BLJ 671 (at 688) observed as such:

20. Further according to the Muslim Law a divorced wife is entitled to maintenance not only during the period of Iddat, but also during period of pregnancy on account of carrying the child of the divorcing husband in her womb and even after the period of delivery of child, if she gives sucking to the child." The Quranic provision in this regard is-

(In Iddat) in the same Style as ye live, According to your means;

Annoy them not, so as To restrict them.

And if they are pregnant, then Spend (your substance) on them Until they deliver Their burden; and if They suckle your (off-spring) Give them their recompense:

..." [Section 65 Aiyat 6]

14. It was rightly pointed out that in Section 3(1)(a) of 'the Act' no such provision has been made and it cannot be said that 'the Act' was brought to codify the Muslim Personal law on the point. These are following other situations which go to show that 'the Act' did not incorporate and codify the Islamic Personal Law on the point:

(a) The definition of the term "Iddat" in Section 2(b) of the Act does not indicate as to upon whom observance of Iddat' is mandatory. In Islamic law, a woman who has been divorced before consummation of marriage is not required to observe Iddat.

(b) Despite a clear humane rule, as mentioned in Section 65 Aiyat 6 of the Holy Quaran (quoted above) regarding maintenance of a breast-feeding divorce, Section 3(1)(b) of the Act does not make any such provision.

(c) The provision relating to payment of Mahr or dower as provided under Section 3(1)(c) of the Act, is not true representation of principle of Islamic Law as according to the said provision of the Act, an amount equal to sum of Mahr or dower, agreed to be paid, has to be paid to her, but in Islamic Law, there are many situations, in which its payment varies.

(d) In different schools of Islamic Law, the period of 'Hazarat' (custody) of a child is different. Mother is entitled to the custody of the child, in preference of all relations, including the father. Islamic Jurists are in unanimity that the mother, in custody of the child, is entitled to be maintained by her former husband. Hanafi School prescribes the duration of custody for male child till he attains the age of seven years and for female child until she attains the age of puberty. This means that a Hanafi divorcee mother, who has the custody of a son, is entitled to be maintained by her former husband, so long as the son does not attain the age of seven years and in case of a female child, so long as she attains the age of puberty.

15. These examples go to show that it is not correct to say that by passing of 'the Act', it was intended to satisfy the canons of Islamic Law or that the provisions of 'the Act' were made to represent the true principles of Islamic Law. It further goes to show that it is incorrect to say that according to Muslim Law, a divorced wife in all cases is required to be maintained by her former husband till the period' of Iddat only.

16. In granting the maintenance to Shah Begum, (in ) till her re-marriage or her life-time under the provisions of Section 125 of the Code of Criminal Procedure, 1973, the Supreme Court relied and quoted the following two verses (Aiyat No. 241 and 242) of Surah Baqara of the Holy Quran with their translation;



WALIL MOTLLA	"For divorced women
QATAY BIL MAAROOFA	Maintenance (should be provided)
HAQQAN	On a reasonable (scale)
ALAL MUTTAQEENA	This is a duty on the righteous."
KAZALEKA YUBAIYY-	"Thus doth God
ANULLAHO	Make clear his signs
LAKUM AYATEHEE	To you : in order that
LAALLAKUM	Ye may understand."
TAQELOON	

Quoting translations by different authors, the Supreme Court observed that "these ayats leave no doubt that the Quran imposes an obligation on the Muslim husband to make provision for or to provide maintenance to the divorced wife." Besides the abovementioned, Ayat 236 and 237 of the Holy Quran mention about payments and provisions to a divorced woman:

AIYAT 236	There is no blame on you If ye divorce women Before consummation or the fixation of their dower; But bestow on them (A suitable gift) The wealthy According to his means, And the poor According to his means:- A gift of a reasonable amount Is due from those Who wish to do the right thing."
AIYAT 237	"And if, ye divorce them Before consummation, But after the fixation of a dower of them, Then the half of the dower (Is due to them), unless They remit it or (the man's half) is remitted By him in whose hands Is the marriage tie And the remission (of the man's half) If the nearest to righteousness And do not forget Liberality between ourselves For Allah sees well All that ye do.

17. There is no iddat for virgin divorces and the law declares that in such a case of virgin divorce, half the dower fixed shall be paid by the man to the woman, but it is open to the virgin divorce to remit the half due to her or to the man to remit the half, which he is entitled to deduct and thus pay the whole. According to Hanifi doctrine this is the husband himself, who can, ordinarily, by his act dissolve the marriage. It, therefore, behoves him to be all the more liberal to the woman and pay her the full dower even if the marriage was not consummated.

18. Keeping in mind the above provision of maintenance permitted by the liberal and humanistic Islamic Law, it may be noted that in Section 536 of the oldest Code of Criminal Procedure and then in Section 488 Criminal Procedure Code, 1898, a statutory right was created in favour of wife and a child from her husband and his/her father respectively, irrespective of religion, caste etc. in order to prevent social disorders like vagarancy and destitution. In New Cr.PC of 1973, corresponding provision for maintenance was made in Sections 125 to 128 parents and divorced wife were also included in the category of persons to get maintenance. Section 125 of the Code of Criminal Procedure, 1973 has included a divorced wife also in the category of wife till she remarried only for the purposes of maintenance, provided she was unable to maintain herself. It is applicable to divorced Muslim Woman also irrespective of the fact that in Muslim Personal Law, the wife ceases to be a wife on Talaq. The question as to whether Section 125 of the Code of Criminal Procedure applied to Muslim also is concluded by two decisions of the Supreme Court reported at Bai Tahira v. AH Hussain Fissoli, Chothia reported at 1979 Cr. LJ 151 and in Fuzlunbi v. Khader Vali reported at , in which it was held that a Muslim wife is entitled to get maintenance under Section 125, Cr.PC even after the expiry of iddat period. The latest Supreme Court decision in Shah Bano Begum's case reported at A.I.R. 1985 SC is very important on the issue of maintenance of a Muslim divorce in which it was held that Muslim husband is liable to provide maintenance for divorced wife, who is unable to maintain herself and that Clause (b) of Explanation to Section 125(1) of Cr.PC which defines 'wife' includes a divorced Muslim woman, so long as she has not remarried.

19. With this background and the legal position regarding maintenance of a Muslim divorced wife, we can now proceed to examine the relevant provisions of 'the Act', with this clear understanding that there is no express provision in the Act showing that it repeated any order law, though in Section 5 of the 'Act', it is provided that the couple may opt for being governed by the provision of Sections 125 to 128 of the Code of Criminal Procedure and Section 7 of the 'Act', provides that notwithstanding anything contained in the Code of Criminal Procedure and subject to the provisions of Section 5 of the 'Act' every application under Section 125 or under Section 127 of the Code of Criminal Procedure pending before a Magistrate shall be disposed of in accordance with the provisions of the 'Act.'

20. Section 3(1)(a) of the Act provides that ' notwithstanding anything contained in any other law for the time being in force, a divorced Muslim Woman is entitled to a reasonable and fair provision to be made and paid to her within the period by her former husband. Clause (b) specified the period of two years from the date of birth for which she is entitled to get maintenance for her children ; under Clause (c), she is entitled to get Mahr or dower and under (d) she is entitled to get all the properties given to her, before or at the time of marriage by her relatives, friends, husband or relatives and friends, husband. In Section 4 of the Act, the parents and relatives as well as the persons, who are

entitled to inherit properties as also Wakf Board has been made to maintain her under the specified conditions and circumstances, detailed in that section, detailed at paragraph 8 at page 10 of this judgment. The main point for controversy is regarding the use of words 'fair provision and maintenance' and "within the period of iddat" used in Section 3(1) of the Act. In ruling reported at 1987 PLJR 65- Mohd. Yunus v. Bibi Phenjani and relief upon by Sri P.K. Prasad, appearing for husband, only maintenance for the former was mentioned and the word 'for the period of iddat was used for the expression 'within period of iddat'. This decision reported at 1987 PLJR 65: 1986 BBCJ 736- Mohd. Yunus v. Bibi Phenkani was cited and considered in the case of Mohd. Arif v. Bibi Jamila Khatoon, reported at 1989 (2) BLJ 671 (at paragraph 51 at page 709). Another decision cited and relied upon by Sri. P.K. Prasad was Usman Khan Bahamani v. Fathimunnisa Begam and Ors. reported at . In that decision majority view is:

Therefore, the word 'within' occurring in Section 3(1)(a) clearly means that there is an obligation on the part of the husband to provide fair and reasonable maintenance to his divorced wife within the period of iddat and for the period of iddat only. It is also clear that the liability of the husband cannot be extended beyond the period of iddat to make any reasonable and fair provision or to pay maintenance beyond the period of iddat of his divorced wife. Much has been said to which reference is to the made later about the use of the word 'within' rather than 'for' which has been employed in Section 3(1)(a). We are clearly of the opinion that the use of the word 'within' does not permit an interpretation to be put the section that the liability of the husband to make a reasonable and fair provision and maintenance to his divorced wife extends beyond the period of iddat. The intention of the legislature is manifestly clear that it envisages the making of reasonable and fair provision and payment of maintenance to the divorced wife commensurate with the period of iddat to be paid within the period of iddat. To take a contrary view would result in complete negation of the principles envisaged under Section 3(1)(a) of the Act of 1986 defeat the very purpose to which the Act of 1986 was enacted.

21. It was rightly that it appears that the above view was taken with the purpose and the idea as if 'the Act' was enacted to completely take away the right of Muslim divorced Woman under Section 125 of the Code of Criminal Procedure declared by the Supreme Court. The best way to know the intention is to consider the object of 'the Act' as mentioned in the preamble, which is to protect the interest and rights of divorced Muslim Woman. The intention of the Parliament must be deduced from the language used in 'the Act' and definitely in the name of protecting the interest of divorced Muslim women, they cannot be deprived of all that they were entitled to get, before the enactment of 'the Act'. In Union of India and Anr. v. Pradeep Kumari and Ors. reported at JT 1995 (9) SC 644, the Supreme Court held that 'in relation to beneficent legislation, the law is well settled that while construing the provisions of such legislation, the Court should adopt a construction which advances, the policy of the legislation to extend the benefit rather than a construction which has the effect of curtailing the benefits conferred by it."

22. In paragraph 44 of the judgment in the case of Mohd. Arif v. Bibi Jamila Khatoon, it was held as such:

Under the Act the time-limit for payment of such reasonable and fair provision and maintenance is the period of iddat, as after the iddat period the relation as wife and husband ceases. Further fair and reasonable provision is not for the iddat period only, as the maintenance for iddat period is already provided. This fair and reasonable provision is for the period of iddat. If this reasonable and fair provision had been only for the period of iddat, then the legislature would not have said reasonable and fair provision and maintenance to be made and paid to her within the iddat period." So reasonable and fair provision is in addition to the maintenance during the period of iddat...

23. This point was considered and decided by the Gujarat High Court in the case of Arab Ahemadhia Abdulla and etc. v. Arab Babi Mohmuna Saiyabhai and Ors., reported at , wherein, it was held that-

Taking into consideration the object and reason for enacting the Muslim Women Act as well as the preamble and the plain language of Section 3, it cannot be said that the Muslim Women Act in any way adversely affects the personal rights of a Muslim divorced as laid down by the Supreme Court in Shah Bano's case.

It was further held therein that by the phrase used in Section 3(1)(a) of the Act, 'reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband', the Parliament intended to see that the divorced woman gets sufficient means of livelihood after the divorce and that she does not become destitute or is not thrown on the streets without a roof over her head and without any means of sustaining herself and her children. It was further held that the word provision itself indicates that something is provided in advance for meeting some needs, which meant that at the time of giving divorce the husband is required to visualize or contemplate the extent of the future needs and make preparatory arrangement in advance for meeting the same. Reasonable and fair provision may include provision for her residence, clothes, food etc. and as provision itself contemplated future needs, therefore, it cannot be said that under Section 3(1) of the Act, divorced woman is entitled to provision and maintenance only for iddat period. It was further held therein that the word 'within' used in Section 3(1)(a) of the Act, cannot be read as 'for' or 'during', as words cannot be construed contrary to their meaning.

24. Similar view was taken by the Kerala High Court (D.B.) in the case of Kunhammed Haji v. Atnina, reported at 1996 (1) Crimes 176. It was held therein that the legislature has deliberately used the two expression "provision" and "maintenance" with the intention of expressing two different things and if they meant the same thing, one of the expression is redundant. It was further held that if the intention of the legislature was to restore the liability of the husband to its pristine form unconditionally there was no necessity to incorporate the word 'reasonable and fair provision' in addition to the word "maintenance" in Section 3(1) of 'the Act'. Regarding Section 4 of the Act, the court was of the view that by it the Parliament has devised a strategy for providing additional safeguards to protect the interest of the divorced women, who if in spite of reasonable and fair provision made for the post-Iddat period, faced destitution, Section 4 of the Act comes to her rescue. In the case of Md. Arif v. Bibi Jamila Khatoon, 1989 (2) BLJ 671, it was held that reasonable and fair provision for maintenance should not be illusory amount and the sum must have potentiality as a provision for the entire period of life as a capitalised substitute for the maintenance payment to give her a decent living according to the status and position of the family of the husband. A reasonable

and fair provision is thus virtually a lump sum maintenance payable in monthly instalment or in lump sum.

25. Summing up the entire discussion made above and relying at the decision reported at and 1996 (1) Crimes 176, it has to be held that, according to Sections 3 and 4 of 'the Act', a divorced Muslim woman is entitled to the following rights:

(a) She is entitled to get a reasonable and fair maintenance for the iddat period and fair and reasonable provision to be made and paid to her within the iddat period in lump sum or in monthly instalments, which should be determined according to reasonable need of the divorced wife for the rest of her life or remarriage, the standard of living enjoyed by her during her marriage and the means of her former husband. In addition, she is entitled to have Mahr or dower amount and all the properties given to her;

(b) If she has not re-married after iddat period and if in spite reasonable and fair provision made for the post-iddat period, she faces destitution and is unable to maintain herself, then she is entitled to her maintenance from the relatives who are entitled to inherit her property, on her death for the period as directed by the Magistrate; and

(c) If her relatives are also not in a position to pay such maintenance, she is entitled to get it from the Wakf Board, at such period, as specified by the Magistrate.

The reference is, thus answered supporting the view taken in the case, Md. Arif v. Bibi Jamila Khatoon, reported at 1989 (2) BLJ 671, on the points involved in the two cases under reference.

26. In Criminal Revision No. 199 of 1994 (R), the Judicial Magistrate directed the husband to pay maintenance for the period from 11.11.1985 to 10.7.1988 (the date of divorce) at the rate of Rs. 400 per month (total Rs. 12, 800/-) and the rate of Rs. 600 per month for three months of iddat period (total Rs. 1, 800) and Rs. 75, 000 as reasonable and fair provision in lumpsum for future maintenance of post-iddat period. The quantum of maintenance of pre-divorce period upto 10.7.1988 and for iddat period of three months has not been challenged, but directions to pay a lump-sum of Rs. 75, 000 as reasonable and fair provision for post-iddat period has been challenged on the ground that the husband was not liable to pay any sum beyond the period of iddat and that there is no basis for quantifying the said provision for post-iddat period. It has been held above that under Section 3(1) of 'the Act' such fair and reasonable provision for maintenance for post-iddat period can be made in lump-sum, keeping in view the future needs of the divorced lady including provision for her residence, clothes, food medicines, etc. according to the status of the family and the capacity of the husband to pay.

27. The Judicial Magistrate has not spelt out as on what basis he had fixed the lumpsum of Rs. 75, 000 (rupees seventy-five thousand) for post-iddat period. The petitioner was married with the opposite party on 25.12.1969. Presuming that she would have been about 18 years at the time of marriage, her year of birth would be around 1951 and she would have been 37 years of age in 1988, when she was divorced. She was given maintenance at the rate of Rs. 600 (rupees six hundred) per

month during iddat period. Presuming she would need round-about the same amount for her future maintenance, her requirement would be Rs. 7, 200 (rupees seven thousand and two hundred) per annum. If an amount of Rs. 50, 000 (fifty thousand) is deposited in her name in any Bank for long term deposit at the rate of 12% interest thereon she would get 6000 per year as interest and withdrawing Rs. 2000 per year from the principal, this deposited amount of Rs. 50, 000 in any Bank would meet her future provision for at least 20 years after she was divorced. The impugned order of the Judicial Magistrate requires modification to this extent only that the petitioner's husband would pay her Rs. 50, 000 as reasonable and fair provision for her maintenance for post-iddat period in lump-sum, in addition to other sums to be paid as directed by the Judicial Magistrate. Of course, the amount under different heads paid to the opposite party will be adjusted. With this modification in the impugned order, this Criminal Revision is dismissed but without cost.

28. In Criminal Revision No. 73 of 1994 (R), the case was that the Judicial Magistrate under Section 3 of the Act directed the opposite party-husband to pay Rs. 5000 as expenses for maintenance of her son for two years, Rs. 7,200/- as agreed 'Dain Mehr' ; Rs. 1000 as iddat money and Rs. 500 per month as provision for their future needs and Rs. 10, 000 as value of ornaments, furnitures, clothes etc. given to the petitioner-wife at the time of marriage. The husband Ali Ashraf filed Criminal Revision No. 35 of 1992 against the said order and the 3rd Additional Judicial Commissioner, Ranchi set aside the orders allowing Rs. 5000 per month as provision for her future maintenance, on the ground that monthly maintenance after iddat could not be given. The Additional Judicial Commissioner, Ranchi, reduced the amount of Rs. 10, 000 awarded by the Judicial Magistrate to Rs. 5, 000 on the ground that her own witness Manjoor Ahmad, related to both parties, valued the properties given to her worth Rs. 5000. For coming to that conclusion, the Additional Judicial Commissioner relied upon the evidence of Manjoor Ahmad, as a witness on her behalf but Manjoor Ahmad is opposite party Witness No. 3, appearing on behalf of the husband and admission of opposite party-husband Ali Ashraf, that ornaments were worth Rs. 7000 was not considered by the Additional Judicial Commissioner. The divorced wife claimed that she was not maintained by her husband since 1981, when she came to Ranchi after birth of her son in 1981. She was divorced on 20.3.1989. From the order of the Additional Judicial Commissioner as to what order was passed regarding her maintenance for the period prior to divorce, the order of Judicial Magistrate is also silent on this point. It is important in view of the fact that both courts below allowed maintenance for the son born in 1981, for two years. this Court, in revisional jurisdiction is not in a position to examine and decide the matter on this point.

29. In the result, we are left with no alternative, but to set aside the order of the Additional Judicial Commissioner, dated 19.2.1994 passed in Criminal Revision No. 35 of 1992 and to remit the case to the court of the Judicial Magistrate for fresh decision on the points involved in the light of the discussions made above in this order and in accordance with law. There will be no order as to cost.

S.K. Chattopadhyaya, J.

30. I agree.