

Patna High Court

Bibi Shahnaz @ Munni vs State Of Bihar And Anr. on 21 August, 1998

Equivalent citations: 1999 (1) ALD Cri 161, II (1999) DMC 589

Author: M Eqbal

Bench: M Eqbal

ORDER M.Y. Eqbal, J.

1. In this case a very interesting point of law is involved regarding right of a divorced wife to claim maintenance in a proceeding under Section 125 of the Code of Criminal Procedure.

2. The petitioner in this case has challenged the order dated 18.8.1997 passed by the 3rd Addl. Sessions Judge, Darbhanga, in Criminal Revision No. 676 of 1993 whereby the learned Sessions Judge modified the order dated 27.8.1993 passed by the Judicial Magistrate, 1st Class, Darbhanga and allowed the petition of the petitioner so far as it relates to claim of maintenance for the children only.

3. The facts relevant for the purpose of deciding this question are that the petitioner in the year 1990 filed a petition against her husband (opposite party No. 2) under Section 125 of the Code of Criminal Procedure (for short 'Cr. P.C) stating inter alia that she was married with the opposite party No. 2 in the year 1982 and gave birth to two children. It is stated that although she is legally married wife, but opposite party No. 2 refused to maintain her and her children. It was alleged that the petitioner is the second wife of opposite party No. 2 and first wife has also been seeking relief for maintenance as she has also been neglected by opposite party No. 2. Opposite party No. 2 filed show cause on 16.11.1991 and took defence that the petitioner did not like to live with him and he divorced her and returned her all articles, utensils and expenses for maintenance during Iddat period. The case of opposite party No. 2 is that after divorce he is not liable to pay any amount by way of maintenance to the petitioner and her children. Lastly in the show cause opposite party No. 2 claimed that he got no issue from the petitioner and he has no other sources of income except from monthly salary of teaching.

4. The learned Judicial Magistrate after hearing the parties allowed the application and directed the opposite party No. 2 to pay Rs. 250/- as maintenance to the petitioner and Rs. 100/- each for the maintenance of two minor children. The learned Magistrate held that the plea of opposite party No. 2 regarding divorce has not been proved and, therefore, she continued to be the legally married wife. Aggrieved by the said order, opposite party No. 2 filed Criminal Revision No. 676 of 1993 before the learned Sessions Judge, Darbhanga, which was eventually transferred for disposal to the file of the 3rd Additional Sessions Judge, Darbhanga, hereinafter referred to as the Revisional Court. The Revisional Court disposed of the revision in terms of the order dated 18.8.1997 and modified the order passed by the learned Judicial Magistrate. The Revisional Court took the view that the husband-opposite party No. 2 has categorically stated in his show cause that he divorced the petitioner. Even if the statement made in the show cause is not accepted, at least from the date of his deposition dated 11.8.1993 it will be deemed that the petitioner's wife got knowledge about divorce and from that period, the period of Iddat will be taken into consideration. The Revisional Court held that in view of the fact that opposite party No. 2 has divorced the petitioner, she would be entitled to

maintenance only during Iddat period. The learned Revisional Court, therefore, modified the order and directed opposite party No. 2 to pay the sum awarded for the maintenance of children only. Hence this revision application.

5. Mr. Md. Wasi Akhtar, learned Senior Advocate appearing on behalf of the petitioner assailed that part of the impugned order by which the claim of the petitioner for maintenance has been set aside. The learned Counsel firstly submitted that once the learned Revisional Court treated the petitioner to be divorced woman, the revision application ought to have been disposed of in terms of Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and not in terms of Section 125 of the Code of Criminal Procedure. The learned Counsel secondly submitted that the Revisional Court while passing the order for maintenance to the divorced wife, only up to Iddat period committed error of law in not directing the opposite party No. 2 for payment of reasonable and fair maintenance. The learned Counsel lastly submitted that the Revisional Court while modifying the order ought to have directed the opposite party No. 2 to pay the amount of Mehar (Dower) to the petitioner and to return of her properties in terms of Clauses (c) and (d) of Sub-section (1) of Section 3 of the aforesaid Act. The learned Counsel, however, made an alternative argument that in view of the ratio laid down by a Division Bench of this Court in the case of Haroon Rashid v. Reqiba Khatoon, (1997) 1 Pat. LJR 278, opposite party No. 2 still liable to pay maintenance to the petitioner.

6. On the other hand, Mr. S.S. Nayyar Hussain, learned Counsel appearing on behalf of opposite party No. 2 submitted that the order passed in revision by the learned Sessions Judge is perfectly correct and in accordance with law, inasmuch as after enactment of the aforesaid Act the divorced wife is entitled to maintenance only during Iddat period and not beyond that. Learned Counsel then submitted that after opposite party No. 2 divorced the petitioner, all her belongings and articles have been returned back. It is stated that in fact the petitioner herself came to this opposite party No. 2 and took away all her articles and further submitted that in any event the petitioner is not entitled to maintenance under Section 125 of the Code of Criminal Procedure after the enactment of the aforesaid Act. Learned Counsel relied upon decisions of this Court in the case of Md. Yunus v. Bibi Phenkani, 1987 Pat. LJR 65, and Full Bench decision of the Andhra Pradesh High Court in the case of Usman Khan Bahamani v. Fathimunnisa Begum, AIR 1990 Andh Pra 225 (FB).

7. Before answering the question involved in this case I would like to state, in brief, the law with regard to maintenance under the Mohammedan law and the reasons why the Parliament enacted the aforesaid Act, namely, Muslim Women (Protection of Rights on Divorce) Act, 1986, hereinafter referred to as the Act of 1986.

8. So far as the Muslim Personal Law on the point of maintenance is concerned, it is well settled that a divorced wife is entitled to maintenance only during the period of Iddat. This finds support from the Holy Quran and also from the classical authorities on this subject. Although not necessary, but in order to explain the background of the enactment of the Act of 1986 by the Parliament it is necessary to give short reference of all those authorities.

9. Under the Mohammadan Law, maintenance is called "Nafqa". Maintenance of wife and children is primary obligation of the husband. In the book "Outline of Mohammedan Law" by Asaf A.A.

Faizee. The author explained the obligation in the following words:

"The highest obligations arise on marriage, the maintenance of wife and children is a primary obligation. The second class of obligation arise when a certain person has 'means' and another is 'indigent'. The test appears to be: Are you prevented by Islamic Law from accepting 'alms' ? If you are, you are possessed of means, otherwise you are indigent. For instance, in one case, according to Fatawa Alamgiri, the possession of a surplus 200 dirhams (60- 80 rupees) over a man's necessities was deemed sufficient to prevent him from begging and to include him in the class which is designated as being possessed of means."

The author further explained :

"Duration of right.-The wife's right to maintenance ceases on the death of her husband, for her right of maintenance supervenes. The widow is, therefore, not entitled to maintenance during 'iddat' on death, it is otherwise in the case of divorce, where she is entitled to maintenance during Iddat."

Similarly in the Book "The Hedaya", a Commentary on the Muslim Law by Charles Hamilton (2nd Edition, 1870), Chapter XV, explained the law with regard to Nafqa' or maintenance. A relevant passage at pages 140 and 145 are quoted below :

"When a woman surrenders herself into custody of her husband it is incumbent upon him henceforth to supply her with food, clothing, and lodging, whether she be a Musalman or infidel, because such is the precept, both in the Koran and in the tradition, and also because maintenance is recompense for the later matrimonial restraint; hence it is that where a person is in custody of another on account of any demand or so forth, his subsistence is incumbent upon that other; as for example, when a public Magistrate for instance, is imprisoned on account of any mal-administration, in his office, for which case, his subsistence must be provided from the public treasury, and as the authorities upon which this proceeds make any distinction between Musalman and infidel. The rule holds the same with respect to any other in the present case."

The author further stated at page 145 :

"Where a man divorced his wife, her subsistence and lodging are incumbent upon him during the term of her Edit (Iddat) whether the divorce be a reversible or irreversible kind - Shafei says that no maintenance is due to woman repudiated by irreversible divorce unless she became pregnant."

In another Book "An Introduction on Islamic Law" by Joseph Shacht (Oxford University Publication) the author has explained the outline of the system of Islamic Law. At page 167, the author says :

"The maintenance of the wife comprises food, clothing and lodging i.e. a separate house or at least a separate room which can be locked, for the well- to-do also, a servant; she is not obliged to bear any part of the expenses of the matrimonial establishment. Her claim to maintenance is suspended if she is a minor, is disobedient (in particular, if she leaves the house unauthorised or defuses to marital

intercourse), is imprisoned for debt, performs the pilgrim- age without her husband, or is abducted (by ghasb), all cases in which she cannot fulfil her marital duties. If the husband absents himself without providing for the maintenance of the wife, kadi authorises her to provide for it by pledging her husband's credit. The claim to maintenance continues during iddat, provided the marriage has not been dissolved through a fault of hers."

(Emphasis given) In another Classical Book, namely, "Mohammedan Law" by Syed Ameer Ali (Vol. 2,5th Edition) which is accepted as an authority on Mohammedan Law. In Chapter XI under the heading "Rights and Duties of married parties" the author explained the law with regard to maintenance at page 419 which reads thus :

"When the woman abandons the conjugal domicile without any valid reason. She is not entitled to maintenance xxxxxxxx."

"The husband's liability to support the wife continues during whole period of probation, if the separation has been caused by any conduct of his, or has taken place in exercise of right possessed by her. The husband would not, however, be liable to support the wife during 'iddat' if the separation is caused by misconduct."

The author has further quoted the passage of the Book "Fatwaa-e-Alamgiri" which is reproduced herein below :

"A woman is undergoing 'iddat' says Fatwai Alamgiri on account of Talak, is entitled to maintenance and lodging whether the Talak is revocable or irrevocable, whether she be pregnant or not, the principle of this is, that when separation is induced by any cause proceeding from the husband, or by any cause proceeding from the wife in exercise of a right or by any cause proceeding from a third party, the wife is entitled to maintenance during her iddat. But if separation is induced by any fault of the wife, she is not entitled to it."

10. It must not forget to refer the book "Principles of Mohammedan Law" by D.F. Mulla which is most successful book on Mohammedan Law, both in India and Pakistan, and has been accepted as an authority for the last nine decades. 9th Edition of this book has been revised by Mr. M. Hidayatullah, the then Chief Justice of India. Section 279 of that book makes provision with regard to maintenance after divorce. It reads thus :

Section 279 :

Maintenance on divorce-(1) after divorce, the wife is entitled to maintenance during the period of iddat. If the divorce is not communicated to her until after expiry of that period, she is entitled to maintenance until she is informed of the divorce.

(2) A widow is not entitled to maintenance during the period of iddat consequent upon her husband's death.

11. The next important authority on this subject is the classical work of Faiz Badruddin Tayabji in the Book "Principles of Mohammedan Law". The author has also subscribed the law on this subject stating that under the Hanafi Law, on divorce, a wife is entitled to maintenance during her iddat period irrespective of the fact that the divorce is revocable or irrevocable. For better appreciation Section 300 of the Book of page 337 (Second Edition, 1919) reads as under:

"300(1). According to Hanafi Law a wife who is divorced is entitled to maintenance during her 'Iddat', whether the divorce is revocable or irrevocable (or triple), and whether or not she is pregnant, unless the marriage has been dissolved for some cause of a criminal nature, originating from the woman.

(2) According to Shiah and Shafi Law-(a) a wife who is revocably divorced is entitled to maintenance during her 'Iddat'; (b) but not a wife who is irrevocably divorced; provided that (c) if, at the time when an irrevocable divorce is pronounced, the wife is pregnant, she is entitled to maintenance during her pregnancy."

12. Last but not the least I must also take guidance on this subject from one important Book "Institutes of Mussalman Law" by Nawab A.F.M. Abdul Rahman (1907 Edition). This is the excellent and classical work of the author with reference to the original Arabic sources. The provisions of law have been arranged in this book under different Articles. Article 324 deals with the maintenance to a wife which reads as under:

"Article 324:

No dissolution of marriage, proceeding from the husband, release him from the obligation to pay for the wife's maintenance during her period of Iddat, however, long its duration. Thus, in the following cases the wife, during Iddat, is entitled to maintenance :

1. When, pregnant or not, she is repudiated under a revocable or irrevocable, imperfect or perfect form.
2. When the marriage is dissolved by reason of an oath of imprecation, or a vow of continuance or when the wife is repudiated in Khula form, unless at the time of such Khula repudiation she renounces her right to maintenance.
3. When, after conversion to Islam, she is separated from her husband, consequent upon her husband's refusal to accept that faith.
4. When, the husband on attaining puberty, exercises his right of option and dissolves the marriage.
5. When, the marriage is dissolved by reason of her husband's apostasy."

Article 312 prescribes the period of Iddat as under :

"Article 312-For every wife who is not subject to menstruation, whether this is due to her not having reached the age of puberty or to advance, years, and for every young wife, who has attained the age of puberty and is not subject to menstruation the duration of Iddat is three months. When Iddat commences on the first day of the month, the three months are to be counted by the appearance of the moon even when the number of day is less than thirty."

13. It is, therefore, clear from the authorities referred to hereinabove, that there is no two opinions on the principles of Mohammedan Law that a divorced wife is entitled to a provision for maintenance only for a period of Iddat. In fact, there should not be difference of opinion because the Holy Quran imposes obligation on the Muslim husband to make provision for maintenance to a divorced wife. The relevant verses (Aiyat) of Holy Quran with their translation is reproduced hereinbelow:

Arabic version - English version Ayat No. 241 WA LIL MOTALLA-QATAY For divorced women MATA UN Maintenance (should be provided) BIL MAAROOFAY On a reasonable (scale) HAQQAN This is a duty ALAL MUTTA-QEENA On the righteous.

It is also relevant to quote here AIYAT No. 242 of the Holy Quran which has also been considered by the Supreme Court. Ayat No. 242 KAZALEKA YUBA-IYYANULLAHO Thus doeth God LAKUM AYATEHEE Make clear His Signs LA ALLAKUM TAQELOON To you : in order that you may understand.

14. It is, therefore, evident from the translation of Quran, correctness of which is not in dispute, that a divorced woman is entitled to maintenance on reasonable scale and this is the duty on the righteous. The word "Mata" as used in Aiyat 241 means reasonable and fair provisions and maintenance. The controversy as to the manner of the 'provision' and 'maintenance' has only been clarified by the Supreme Court in Shah Bano's case, AIR 1985 SC 945 holding that there is no difference between these two words as that is nothing but a distinction without any difference.

15. The controversy arose only after the decision rendered by the Supreme Court in Shah Ratio's case (supra) when the Apex Court interpreted the relevant Aiyat of Quran, originally as well as in translation, and held that these Aiyat leave no room for doubt that the Quran imposes a clear obligation on the Muslim husband to make provision for or to provide maintenance to the wife even after divorce and that such obligation is not confined to the period of Idat only. Their Lordships of the Supreme Court further held that if the divorced wife is able to maintain herself, the husband's liability to provide maintenance for her ceases with the expiry of period of Iddat. If she is unable to maintain herself she is entitled to take recourse to Sectibn 125 of the Code of Criminal Procedure.

16. As stated above, the decision of the Supreme Court generated a good deal of sound and fury amongst the Muslim community of India who agitated strongly against the Supreme Court decision on the ground, inter alia, that the Courts have no jurisdiction to interpret Quran in its own way and against the interpretation given by Imams. In other words, the decision said to be against the accepted principles of interpretation of Statutes. For example, the Privy Council, in one case delivering judgment in 1897 held that once the rule was found in 'Hedaya' or 'Imamiya', their

Lordships would not have to consider whether the same could at all be reconciled with the text in the Quran as it would be wrong for the Court to attempt to put their own constructions on the Quran in opposition to express ruling of such Court in which antiquity and high authority (1897) 24 Ind. App. 196. Reference may also be made to another decision of the Privy Council in the case of Bakar Ali Khan v. Anjum Ara Begum, (1903) 30 Ind. App. 94 (111), where it was observed that it would be extremely dangerous to accept the general principles that new rules of law are to be introduced because they seem to be lawyers of the present. day to follow logically from an ancient text, however, authoritative when the English Doctors of Law have not themselves drawn those conclusions.

17. A hue and cry agitation by the Muslims against the interpretation given by the Apex Court has resulted in the enactment of 1986 Act by the Parliament. The aims and objects of the enactment was to remove the difficulties that have arisen as a result of decision of the Apex Court in regard to the liability of the husband to pay maintenance to his divorced wife. It would be rather important to reproduce the statement of objects and reasons for the introduction of Bill in the Parliament on 25th February, 1986 (Bill No. 10 of 1986) published in the Extraordinary Gazette of India, Part II dated 25.2.1986. The objects and reasons as under :

The Statement of Objects and Reasons:

"The Supreme Court, Mohd. Ahmad Khan v. Shah Banu Begum, AIR 1985 SC 945, 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 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 if 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.

2. 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 woman is entitled to at the time of divorce and to protect her interest. The Bill accordingly provides for the following amongst other things, namely:

(a) a Muslim divorced woman shall be entitled to a reasonable and fair provision and maintenance within the period of Iddat by her former husband and in case who 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 date of birth of the children. She will also be entitled to tnehar or dower and all the properties given to her by her relatives, friends, husband and 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 mehar or dower or the delivery of the properties;

(b) where a Muslim divorced woman 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 properties 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 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 woman has no relative or such relatives or any one of them has not enough means to pay the maintenance or the other relatives who had 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.

(3) The Bill seeks to achieve the above objects." It is made clear that even purpose of enactment of Muslim Women (Protection of Rights of Divorce) Act, 1986 was to restore its original position.

18. Now I shall refer to some of the provisions of the aforesaid Act in order to analyse the present legal position on this subject. Section 2(a) defines the word "Divorced Woman" and Section 2(b) defines the word 'Iddat' period which reads as under:

Section 2(a): "Divorced woman means a Muslim 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."

Section 2(b): "Iddat period has been defined in section 2(b) thus :

'Iddat period' means in the case of a divorced woman:

- (i) three menstrual courses after the date of divorce, if she is subject to menstruation;
- (ii) three lunar months after her divorce if she is subject to menstruation, and
- (iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier."

Section 3 begins with the non-obstante clause and gives right to a divorced woman to claim maintenance, dower and other properties from her former husband. Sub-section (1) of Section 3 provides that a divorced woman shall be entitled to a reasonable and fair provision and maintenance within the iddat period by her former husband. She is also entitled to maintenance from her former husband in order to maintain the children for a period of two years. Divorced woman shall also be entitled to the amount of Mehar or dower which was paid to her at the time of marriage or at any time thereafter and all the properties given to her before or at the time of marriage. Sub-section (2) of Section 3 gives right to a divorced woman to make an application to the Magistrate for an order for payment of such provision and maintenance, dower and other properties if the same has not been paid by her former husband as provided under Sub-section (1). Sub-section (3) of Section 3 lays down the procedure which shall be adopted by the Magistrate before passing an order directing

former husband for payment of maintenance and for delivering the dower amount and other properties. Sub-section (4) of Section 3 gives power to Magistrate to take a punitive action against the former husband for compliance of the order and direction passed by the Magistrate.

Similarly Section 4 of the Act further empowers a Magistrate to pass appropriate order for payment of maintenance to a divorced woman after the period of iddat. According to this section, if a divorced woman has not been remarried and is not able to maintain herself after iddat period, the Magistrate 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. It further provides that where a divorced woman is unable to maintain herself and she has no relative or such relatives or any one of them have not enough means to pay maintenance then the Magistrate may by order direct the State Wakf Board functioning in the area in which the divorced woman resides to pay such maintenance as determined by him.

19. From bare perusal of Sub-section (1) of Section 3 of the said Act, it is manifest that a divorced wife shall be entitled to reasonable and fair provisions and maintenance from her former husband for and within the period of iddat. A divorced wife is also entitled to get maintenance for the children born from the wedlock of former husband for a period of two years. Besides the maintenance, Sub-section (2) of Section 3 entitled a divorced wife the amount of Mehar (dower) due and payable to her. Sub-section (2) of Section 3 further provides manner and procedure for payment of the aforesaid amounts.

20. Similarly, from reading of Section 4 of the said Act, it will appear that the Legislature was conscious of the position and the effect of the limitation put under Section 3 of the Act. It has, therefore, provided sufficient safeguard to a divorced wife by making other person liable for payment of maintenance after the period of iddat. According to Section 4, if a divorced woman has not re-married and is not able to maintain herself after iddat period, the Magistrate may make an order directing such of her relatives, who would be entitled to inherit her property on her death according to Muslim Law, to pay such reasonable and fair maintenance to her. In the event a divorced woman has no relative or has not enough means to pay the maintenance, the Magistrate may ultimately by order direct the State Wakf Board established under the Act and function in the area to pay such maintenance as determined by him under Sub-section (1) of Section 4.

21. It is, therefore, clear that under the Act the liability for payment of maintenance to a divorced wife is created against the former husband for and during the period of iddat and after expiry of iddat period, the liability has been fastened on the relatives and the Wakf Board as the case may be.

22. A question then arises as to what would be the meaning and interpretation of the word "Reasonable and fair provision and maintenance" as used in the Act. This has been answered by a Full Bench of Andhra Pradesh High Court in the case of Usman Khan Bahamani v. Fatimunnisa Begum, AIR 1990 Andh Pra 225. The Full Bench considered the matter and observed thus :

"24. The second question which requires consideration is what is meant by "reasonable and fair provision and maintenance" mentioned in Section 3(1)(a) of the Act.

Does it mean that husband should provide reasonable and fair provision and maintenance as a compendious whole or is to be taken that a reasonable and fair provision is something distinct and separate from maintenance. This aspect of the matter is of considerable importance because the learned Advocate General appearing for the State has contended that the concept of 'reasonable and fair provision' must be read as distinct and separate from that of 'maintenance'. While he concedes that there is no liability on the part of Muslim husband within the meaning of Section 3(l)(a) of the Act of 1986 to pay maintenance to the divorced wife beyond the period of iddat, he insists that there is a liability on the husband to make a reasonable and fair provision for the wife even after the period of iddat. This argument is advanced on the premises that while there is an absolute injunction in the Muslim law that the wife is not entitled to any maintenance beyond the period of iddat, there is nothing which limits the rights of the divorced wife to claim a reasonable and fair maintenance beyond the period of iddat. The first and foremost point to be considered in this regard is that if the concept of reasonable and fair provision is to be read as one meaning that it is payable even for the period beyond the period of iddat, that it would be defeating the very purpose for which the Act of 1986 has been enacted. The primary object of the Act is to bring the State of law in regard to payment of a reasonable and fair provision and maintenance to a divorced Muslim woman in consonance with the principle of Muslim Law. The language of Section 3(l)(a) is clear and it is provided that a reasonable and fair provisions and maintenance should be made and paid 'within' the period of iddat. If it is recognised that the liability of the husband to pay maintenance is limited to the period of iddat, then there is no justification to hold that the liability of making a reasonable provision extended beyond the period of iddat under Section 3(l)(a) of the Act of 1986. What has been recognised on one end is regarded to maintenance cannot be taken away by the other for providing reasonable and fair maintenance. There is another difficulty which clearly demonstrates the fallacy inherent in such a submission if reasonable and fair provision is to be made by the husband for a period beyond the iddat period of a divorced woman then it is clear that such provision will have to be made within the period of iddat which is normally a period of approximately three months. The essential fact to realise is that making of a reasonable and fair provision and payment of entire maintenance is to be made in lump sum within the period of iddat because the second clearly stipulates that the provision and maintenance must be made and paid in full within the period of iddat. The question is, is possible to make such a payment within the stipulated period of iddat which may be deemed to be a reasonable and fair provision to cover up the necessities of life of the divorced woman for the entire period of her remaining life or until she gets re-married. In other words, how an assessment can be made that a provision is reasonable and fair provision payable within the period of iddat forecasting the future need that may arise 50 to 60 years hence. Let us test the strength of this argument from another angle. Suppose a fair and reasonable provision is made by the husband on the assumption that the wife is not going to get re-married. But if after a year or two, the wife re-married again, what will happen to the reasonable and fair provision made and paid by the husband during the period of iddat ? Would an actionable claim lie on behalf of the husband to recover the sum paid as a fair and reasonable provision ? The obvious result of such discussion seems to be that the term "fair and reasonable provision and maintenance" will have to be read in a compendious form. Even if there is a concept of reasonable and fair provision to be made for the upkeep of the divorced wife during the period of iddat only. No liability can be cast on the husband to make any reasonable and fair provision for the divorce wife beyond the period of iddat."

23. This Court in the case of Haroon Rashid v. Raqeeba Khatoon (supra), is of the view that the Islamic Law does not provide anywhere that a divorced wife would not be entitled to maintenance beyond the period of iddat. According to their Lordships, the provisions of the Code of Criminal Procedure created a statutory right to a Muslim divorced wife and she can still maintain an action claiming maintenance after the period of iddat under the provision of Section 125, Cr. P.C. Their Lordships further provide :

"The question as to whether Section 125 of the Code of Criminal Procedure applies to Muslim women also is concluded by two decisions of the Supreme Court in the case of Bai Tahira v. Ali Husain Firsoli Chothi, reported in 1979 Cri. LJ151, and in Fazludin v. Khader Wali, reported in AIR 1980 SC1730, in which it was held that the Muslim wife is entitled to get maintenance under Section 125, Cr. P.C. even after the expiry of iddat period. The latest Supreme Court decision in Shah Bano's case reported in AIR 1985 SC 945, is very important on the issue of maintenance of a Muslim divorced wife 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 of Section 125(1), Cr. P.C. which defines wife including a divorced Muslim woman so long as she has not re-married."

24. It is, therefore, evident that the object and statement of the Act 1986 published in the Extraordinary Gazette of India was not brought to the notice of the Court in the aforementioned case which expressly mentioned the intention of the Legislature while enacting the Act in order to restore the Islamic Law which was prevailing before the decision rendered in Shah Bano's case (supra). At this stage it is worth to quote one passage of Full Bench decision of the Andhra Pradesh High Court in the case of Usman Khan Bahamani v. Fathimunnisa Begum (supra), where their Lordships referred the principles laid down in the case of Holme v. Guy, (1877) 5 Ch. D 901 (at p. 905), George Jessel M.R. observed :

"The Court is not to be oblivious of the history of law and legislation and I have cited from the authorities to which I have referred to show that such is the case, the history of law and legislation. Although the Court is not at liberty to construe an Act of Parliament by the motives which influenced the Legislature, yet when the history of law and the legislation tells the Court and prior judgment tells this present Court what the object of Legislature was, the Court is to see whether the terms of the sections are such as fairly to carry out that object and no other, and to read the section with a view to extending it to something that was not intended."

25. It is well settled that it is within the authority of the Legislature to amend an earlier Act or to declare its meaning by enacting a new Act or even to enact new Act as and when needed. It is equally well settled that the Legislature may at any time, in exercise of its plenary power conferred on it by Articles 245 and 246 of the Constitution render the judicial decision ineffective by enacting valid law. There is no prohibition against retrospective power of Legislature to pass law postulates the power to pass it prospectively or retrospectively. That of course, is subject to legislative competence and subject to other constitutional authority. Rendering ineffectiveness of the judgments Or orders of the competent Courts by changing their basis by legislative enactment to well known doctrine of validating Acts. Such validating legislation which removes the causes for ineffectiveness or invalidity of actions or proceedings is not an encroachment on judicial powers. In this connection reference

may be made to the various decisions of the Supreme Court viz. AIR 1972 SC 2205; AIR 1976 SC 2250; AIR 1977 SC 1686, and AIR 1978 SC 804.

26. As noticed above, the main object of the enactment of 1986 Act is to settle the crisis and restore back the law prevailing amongst the Muslims as per their personal law. It is, therefore, necessary to interpret the Act of 1986 in the light of its object of enactment. In the case of *Sk. Gulfan v. Sanat Kumar*, AIR 1965 SC 1839, Gajendragadkar, C.J. while delivering the judgment, observed as under:

"Normally the word used in a statute have to be construed in their ordinary meaning, but in many cases, judicial approach finds that the simple device of adopting the ordinary meaning of words does not meet the ends of a fair and a reasonable construction. Exclusive reliance on the bare dictionary meaning of words may not necessarily assist a proper construction of the statutory provisions in which the words occur. Often enough, in interpreting a statutory provision, it becomes necessary to have regard to the subject matter of the statute and the object which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provisions, the context in which the words occur, the object of the statute in which the provision is included and policy underlying the statute assume relevance and become material. As Halsbury has observed: "the words should be construed in the light of their context rather than what may be either their strict etymological sense or their proper meaning apart from that context". This position is not disputed before us by either party."

27. From bare perusal of Sections 3 and 4 of the Act it is manifest that the Legislatures have provided that the maintenance to a divorce woman should be provided from two sources. Section 3 contemplates the liability of the former husband to pay maintenance to the divorced wife for and during the period of iddat. Section 4 on the other hand creates a liability on the relatives of the divorced woman and/or to the Wakf Board for payment of maintenance to a divorced woman after expiry of the period of iddat. It is worth to be noticed here that Section 3 begins with a non-obstante clause which means that it overrides any other provision contained in any other law for the time being in force. In other words the Act of 1986 has completely obliterated the right of divorced woman to claim maintenance under the provisions of Section 125 of the Code of Criminal Procedure. If inspite of non- obstante clause contained in Section 3 of the Act it is held that a divorced woman is entitled to get maintenance from her former husband even after the period of iddat by invoking Section 125, Cr. P.C. then it will be incomplete contravention of the intention of the Legislature and will amount to frustrate the very object of the Act for which it has been enacted.

28. It is, therefore, clear that the object of the Legislature in incorporating non- obstante clause in Section 3 of the Act was to restrict the right of the divorced woman to claim maintenance only under the provisions of the Act and not under any other Act. A similar question arose before the Apex Court with regard to the effect of non- obstante clause incorporated in the newly introduced Sections 14A and 25A of the Delhi Rent Control Act. Their Lordships in the case of *Sarwan Singh v. Kasturi Lal*, AIR 1977 SC 265, observed :

"As indicated by us the special and specific purpose which motivated the enactment of Section 14A and Chapter IIIA of the Delhi Rent Control Act would be wholly frustrated if the provision of Slum

Area Clearance Act requiring permission of Competent Authority were to prevail over them. Therefore, the newly introduced provision of the Delhi Rent Act must hold the field and be given full effect despite anything to the contrary contained in the Slum Area Clearance Act."

29. Having regard to the facts and circumstances of the case and the principle of law discussed hereinabove, I come to the following conclusion :

"(i) A divorced Muslim woman is entitled to and can claim maintenance only under the provision and in accordance with the procedure provided under Sections 3 and 4 of the Muslim Women (Protection of Rights on Divorce) Act.

(ii) She is entitled to claim maintenance from her former husband for and during the period of iddat and beside that she is also entitled to claim dower amount agreed at the time of marriage and other properties which were given to her by her relatives and friends at the time of marriage or thereafter.

(iii) In case a divorced woman is not re-married and is not able to maintain herself after the expiry of iddat, she may bring an action claiming maintenance and she may be entitled to get maintenance in accordance with the procedure provided under Section 4 of the said Act.

(iv) After the enactment of the aforesaid Act a divorced woman is not entitled to bring an action for the said remedy under Section 125 of the Code of Criminal Procedure."

30. Coming to the instant case, as noticed above, on the application filed by the petitioner under Section 125 of the Code of Criminal Procedure the learned Magistrate held that she is entitled to maintenance from her former husband and directed the opposite party to pay Rs. 250/- per month as maintenance to the petitioner and Rs. 100/- per month each to two minor children. The opposite party moved in revision before the learned Sessions Judge, Darbhanga in Criminal Revision No. 676 of 1993 which was eventually transferred to the Court of the 3rd Additional Sessions Judge allowed the revision in part holding that the petitioner is entitled to maintenance during the period of iddat only. The rest part of the order has been confirmed. The Revisional Court on the basis of the show cause and the evidence came to the conclusion that the opposite party divorced the petitioner and for payment of maintenance the period of iddat will run from the date when the opposite party deposed in Court about the divorce given to the petitioner. The Revisional Court further held that opposite party is liable to pay maintenance for the children. In the facts and circumstances of the case and the principles of law discussed hereinabove, in my opinion, the order of the learned Additional Sessions Judge is perfectly in accordance with law and there is no illegality or infirmity in the said order.

31. Mr. Wasi Akhtar, learned Senior Counsel for the petitioner, however, submitted that the petitioner is in any case entitled to the amount of dower and other properties which were given to her at the time of marriage and thereafter. Learned Counsel further submitted that the Court below ought to have directed the opposite party for return of the dower amount and other articles which have been kept by the opposite party. It appears that in the show cause filed by the opposite party it was stated that when the petitioner did not like to live with him, he divorced and has returned all the

articles, utensils and expenses of iddat period. Whatever may be the factual position, such direction cannot be issued in the instant proceeding under Section 125 of the Code of Criminal Procedure. If, in fact, the petitioner has not been paid her agreed amount of dower (Mehr) and other articles which were given to her at the time of marriage and thereafter then she will be at liberty to initiate action against the opposite party for the recovery of dower amount and other properties under the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986.

32. In the result, the petitioner is not entitled to any relief and this application is dismissed with the observation/direction made above.