

GAHC010007842011



2024:GAU-AS:12242

**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : Crl.Rev.P./323/2011

SAFIA BEGUM
D/O LT. FARAJ ALI R/O VILL- BIASPARA, P.S. SIPAJHAR, DIST. DARRANG,
ASSAM.

VERSUS

MD. WAHIDUR RAHMAN
S/O MD RAHIMUDDIN VILL- BAR KALIAJHAR, P.S. SIPAJHAR, DIST.
DARRANG, ASSAM.

Advocate for the Petitioner : MR.M AHMED, MR.A R SIKDAR,MR.M H TALUKDAR

Advocate for the Respondent : MD.M U AHMED, MR.S F CHISTIE,MRD DUARA

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. AR Sikdar, Advocate.

For the Respondent : Mr. A Matin, Advocate

Date of Hearing : 04.12.2024

Date of Judgment : 04.12.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. AR Sikdar, learned counsel for the petitioner and Mr. A Matin, learned counsel for the sole respondent.
2. The present Criminal Revision Petition under Sections 397/401/482 of the Code of Criminal Procedure, 1973 read with Article 227 of the Constitution of India is filed assailing the judgment and order dated 24.07.2009 passed by the learned Sessions Judge, Darrang at Mangaldai in Criminal Revision No. 26 (D-3)/ 2008 reversing the order dated 20.06.2007 passed in MR case No. 226/2005 by the learned Chief Judicial Magistrate, Darrang at Mangaldai in which the learned court awarded the maintenance to the petitioner amounting to Rs. 1,000/- per month till her re-marriage under Section 125 Cr.P.C.
3. The case of the petitioner is that she was married to the respondent in the year 1993 in accordance with Islamic Shariat. According to the petitioner after 3-4 years of her marriage, the respondent started to torture her both physically and mentally and ultimately on 20.06.2000, she was thrown out of her matrimonial home keeping all articles given to her at the time of marriage by her relatives. On 05.01.2001, the respondent divorced the petitioner by executing a registered talaknama in the office of Kazi at Mangaldai and same was sent to her by registered post.
4. According to the petitioner though she was divorced but the respondent did not pay the Mahr amount and maintenance for the Iddat period and also did not return the articles given to her at the time of marriage by her relatives. So, she filed a petition under Section 3 of the Muslim Women (Protection on Rights on Divorce) Act, 1986 praying for an order to direct the respondent to pay her maintenance for the Iddat period and Mahr amount and also delivery of articles given at the time of marriage. Said case was registered as MC No. 15/2001 and

the same was disposed of by judgment and order dated 07.08.2002. By the said order the respondent was directed to pay Rs. 501/- to the petitioner as her Mahr amount and a sum of Rs. 1,000/- was granted as maintenance for the Iddat period.

5. It is the further case of the petitioner that as the maintenance amount was meagre, she also prayed for maintenance at Rs. 2,000/- per month from the respondent in MR case No. 226/2005 filed under Section 125 Cr.P.C. The respondent contested the same case by filing written statement.
6. Said prayer was also allowed by the learned Chief Judicial Magistrate, Darrang, whereby the Magistrate opined that as the petitioner got a meagre amount as maintenance for the Iddat period, she is entitled to a reasonable amount of Rs. 1,000/- per month.
7. Aggrieved by the aforesaid decision, the respondent filed a revision petition being Criminal Revision No. 26 (D-3)/ 2008, which was disposed of by reversing the judgment and order dated 20.06.2007 passed by the learned Chief Judicial Magistrate, Darrang. This order is under challenge in the present case.
8. Mr. AR Sikdar, learned counsel for the petitioner submits that the impugned judgment is bad in law and facts and same is liable to be set aside and quashed and the learned Revisional Court miserably failed to appreciate the evidence available on record and arrived at perverse finding. The learned counsel for the petitioner also submits that the learned Sessions Judge acted beyond his jurisdiction in passing the impugned judgment and order and accordingly same is liable to be set aside and quashed. Mr. Sikdar relying on the determination made by the Hon'ble Apex Court in ***Iqbal Banu vs State of UP and Anr*** reported in **(2007) 6 SCC 785, Shabana Bano Vs Imran Khan** reported in **(2010) 1 SCC 666** and **Danial Latifi @ Ors Vs. Union of India** reported in **(2001) 7**

SCC 740 argues that the learned Magistrate has rightly passed the order following the settled preposition of law laid down by the Hon'ble Apex Court, however, the learned Revisional Court by the impugned judgment reversed such reasoned order in total disregard of settled proposition of law.

9. Per contra, Mr. Matin, learned counsel for the respondent submits that it may be permissible for a divorced Muslim woman to avail the remedy under Section 125 Cr.P.C, however, in absence of any application, the learned Magistrate could not have granted such benefits to the woman.
10. The issue formulated by the learned Revisional Court was to the effect that whether a divorced Muslim woman is entitled to get maintenance allowance under the provision of Section 125 Cr.P.C. After taking note of provisions of Sections 3 and 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 and also the provisions of chapter IX of the Cr.P.C. (Section 125 to 128), more particularly Clause b of Subsection 3 of Section 127 Cr.P.C., the learned Revisional Court concluded that a divorced Muslim woman would not be entitled to receive maintenance allowance under Section 125 Cr.P.C., if the whole sum, which under the Customary or Personal Law applicable to the parties, which was payable on such divorce, has been paid and received by woman. According to the learned Revisional Court as the woman was already awarded the Mahr amount and maintenance for Iddat period, she will not be entitled for any benefit under Section 125 Cr.P.C, which was granted by the learned Chief Judicial Magistrate, Darrang.
11. This issue should not detain this court any further inasmuch as in the case of **Iqbal Banu (supra)**, at paragraph 10, after dealing with the determination made in **Shabana Bano (supra)**, it was held by the Hon'ble Apex Court that proceeding under Section 125 Cr.P.C. are civil in nature and even if court notices that there was a divorced woman, it was open to treat it as a petition under the

Act, 1986 considering the beneficial nature of the legislation and proceeding under Section 125 Cr.P.C. and claims made thereunder can also tried by the same court.

12. In ***Danial Latifi & Ors (supra)***, the Hon'ble Apex court laid down a proposition of law that a divorced Muslim woman is entitled to a fair and reasonable provision for her future being made by her former husband, which must include maintenance for the future extending beyond the Iddat period. It was further held that a reasonable and fair provision under Section 3(1)(a) of the Act, 1986 is not restricted only for the period of Iddat, but a divorced Muslim woman is entitled to a reasonable and fair provision for her future being made by her former husband and also to maintenance be paid to her for Iddat period. It was further held that liability of a Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act, 1986 to pay maintenance is not confined to the Iddat period.
13. There is no iota of doubt in the mind of this court that the law of maintenance including Section 125 of the Cr.P.C. are beneficial laws and has been enacted to ensure that wife, children and parents of an able and capable man are not left to destitute when they themselves are not capable of maintaining. Therefore, in the totality of the matter the learned Magistrate taking note of the meagre amount of Mahr and maintenance during the Iddat period ordered for payment of additional maintenance under Section 125 Cr.P.C. till her remarriage. Such determination cannot be said to have patent defect or illegality or against law warranting interference at the hand of Revisional court. Accordingly, the argument advanced by Mr. Ahmed, learned counsel does not find favour of this court.
14. Therefore, this court is of an unhesitant view that it is the Revisional Court who has committed patent illegality in interfering with the decision of the learned Chief Judicial Magistrate, Darrang in MR case No. 226/2005 inasmuch as while

doing so, the Revisional Court has passed the impugned judgment in total disregard of settled proposition of law. Accordingly, the present petition stands allowed by interfering with the judgment and order dated 24.07.2009 passed by the learned Sessions Judge, Darrang at Mangaldai in Criminal Revision No. 26 (D-3)/ 2008 and affirming the judgment and order dated 20.06.2007 passed by the learned Chief Judicial Magistrate, Darrang at Mangaldai in MR case No. 226/2005.

15. While parting with the record, it is made clear that the present determination shall not bar the parties to approach the appropriate forum under Section 127 Cr.P.C.

JUDGE

Comparing Assistant