

Andhra High Court

Shamsunnisa Begum vs G. Subban Basha And Anr. on 29 June, 1994

Equivalent citations: 1994 (2) ALT Cri 143, I (1995) DMC 338

Author: D J Raju

Bench: D J Raju

JUDGMENT D.J. Jagannadha Raju, J.

1. This is petition filed under Section 482, Cr.P.C. against the order in Criminal Revision Petition No. 5 of 1992 on the file of the II Additional Sessions Judge, Kurnool.

2. The facts leading to the present petition are as follows :--The present petitioner-Smt. Shamsunnisa Begum--was married to the 1st respondent, G. Subban Basha--in the year 1972. According to the material available on record their marriage took place on 14.5.1972. After a period of 5 years there was disharmony between the spouses and, hence, Maintenance Case No. 68 of 1977 was filed and maintenance was granted to the wife at Rs. 100/- per month, and, subsequently, from stage to stage, it was increased to Rs. 250/-, per month. It is an admitted fact that the husband was regularly paying the maintenance. While things stood thus, the Parliament passed Muslim Women (Protection of Rights on Divorce) Act, 1986, popularly called as "Act 25 of 1986". It received the assent of the President on 19.5.1986 and it was published in the Gazette on 3.7.1986. Subsequent to this law coming into force, on 14.5.1989, the husband divorced the wife Subsequent to the divorce the present petitioner wife filed Maintenance Case No. 23 of 1989 under Section 3 of Act 25 of 1986. While that Maintenance Case No. 23 of 1989 was pending, the husband filed Criminal Miscellaneous Petition No 996 of 1990 in Maintenance Case No. 68 of 1977 requesting the Court to cancel the order of maintenance in Maintenance Case No. 68 of 1977. The learned Magistrate by order, dated 21.11.1991, cancelled the maintenance order from the date of enforcement of Act 25 of 1986. The action of the Magistrate brings the cancellation to a date anterior to the divorce that took place on 14.5.1989.

3. Aggrieved by the retrospective effect given for this cancellation order, the wife filed Criminal Revision Petition No. 5 of 1992. The learned II Additional Sessions Judge by a very elaborate order, dated 16.6.1993, thoroughly examined the matter and came to the conclusion that in the background of the facts of this particular case the order of maintenance passed in Maintenance Case No. 68 of 1977 is not liable to be cancelled with effect from the date of enforcement of Act 25 of 1986, viz., 3.7.1986, and it stands cancelled with effect from 14.8.1989, i.e., 3 months after the date of the divorce, giving due allowance to the Iddat period. Aggrieved by the order of the Sessions Judge, the present petition under Section 482, Cr.P.C. was filed.

4 Sri K. Palaksha Reddy. the learned Counsel for the Petitioner, relying upon the decision of this Court in Shaik Raj Mohd. v. Shaik Ameena Bee. 1993(1) A L.T. (Cri.) 579, contends that the order of maintenance passed under Section 125, CrI. P.C Prior to the Act 25 of 1986, is final and valid and it cannot be affected by the promulgation of the Act. He contend that the Magistrate as well as the Sessions Judge were not justified in cancelling the order of maintenance in Maintenance Case No. 68 of 1977. A perusal of the above decision of Subhashan Reddy, J. clearly shows that in that particular case the Court was dealing with a case where the order of maintenance was passed prior to the Act 25 of 1986 and without any further changes, like a divorce being effected between the parties. After the Act came into force when the husband pleaded as defence that the maintenance order is no longer valid by virtue of the Act 25 of 1986, the Court came to the conclusion that Act 25 of 1986 is

prospective in operative and it does not have the effect to in validate the orders of maintenance which have been granted prior to the Act 25 of 1986 and have become final. The principle laid down in that decision is not applicable to the facts of the present case, because, in the present case, there is a change of circumstances and change of status of the parties. After the Act 25 of 1986 came into force the husband divorced the wife on 14.5.1989 and, in fact, the wife recognizing this factum of divorce, has sought relief under Section 3 of the Act 25 of 1986 by filing M. C. No. 23 of 1989. Her only contention is that till all the amounts specified under Sections of the Act 25 of 1986 are paid, the order of maintenance passed earlier under Section 125, Cr. P.C. cannot be cancelled.

5. A reading of the provisions of Act 25 of 1986 clearly shows that this particular enactment has an overriding effect. Section 3(1) begins with the words 'Notwithstanding anything contained in any other law for the time being in force'. The Act is also a special enactment meant to protect the rights of Muslim Women, who have been divorced or who have obtained divorce from their husbands. On 14.5.1989, by reason of divorce, the status of the parties has changed. So, after 14.5.1989 the rights of the wife are governed by the provisions of special enactment--Act 25 of 1986. Under Section 3 of the Act she is entitled to approach the Court and seek the relief for a reasonable and fair provision and maintenance for the period of Iddat from her former husband. She is also entitled to claim maintenance for two years for her children if the children are being brought up by her. She is also entitled to Mehr or Dower amount agreed to be paid at the time of marriage and also for return of all the properties given to her before or at the time of marriage or after the marriage by her relatives, friends or husband or relatives of the husband or his friends. Sub-section (2) of Section 3 of the Act contemplates the procedure by which the divorced woman can obtain relief under this Act. She has to approach the Magistrate by way of an application. In the present case she did file Maintenance Case No. 23 of 1989 under Section 3 of the Act. Section 4 of the Act deals with the order for payment of maintenance under the Act and the various "if persons who would be liable to pay the maintenance to a divorced Muslim woman. Section 5 of the Act provides an option for a divorced woman to be governed by the provisions of Sections 125 to 127, Cr. P.C. in spite of the enactment. In the present case on hand it is an admitted fact that no such option was given by the divorced wife.

6. The order passed by the learned II Additional Sessions Judge has clearly set out the various facts and the legal provisions and the learned Sessions Judge drew the correct conclusions on the material placed before him. He clearly mentioned in para 3 of the order that the wife in her application under Section 3 of the Act 25 of 1986, v/z., Maintenance Case No. 23 of 1989, claimed Rs. 2,00,000/- towards fair and reasonable provision and the said application is pending. Considering the fact that the divorce is subsequent to the passing of the Act 25 of 1986, the right of the parties after 14.5.1989 have to be governed under the provisions of the Act 25 of 1986. The learned Sessions Judge rightly modified the order of the Magistrate and came to the conclusion that the order of maintenance passed in Maintenance Case No. 68 of 1977 would stand cancelled from 14.5.1989.

7. I do not find any justification to interfere with the order of the II Additional Sessions Judge, Kurnool, passed on 16.6.1993 in Criminal Revision Petition No. 5 of 1992.

8. In the result, the petition is dismissed. The present petitioner-wife is entitled to pursue her remedy in Maintenance Case No. 23 of 1989 and obtain appropriate orders. Considering the fact that Maintenance Case No. 23 of 1989 was filed long ago, I would direct the concerned Magistrate to dispose of the same expeditiously, at any rate, within a period of four months from this date.