

REHANA SULTANA BEGUM V. HASHMI SYED MUJIB

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- **Citation of the case-** 2016 SCC Online Bom 5263
- **Judgement date-** August 11, 2016
- **Judges/Coram-** N.M. Sambre, J.

1. Introduction-

This case deals with the case of maintenance (mata). The wife can get the maintenance till the date of iddat. The petitioner asked for the maintenance under section 125 of Criminal Procedure Code. And also, this case gave rise to section 2 & 3 of the Divorce Act.

Since the case includes the divorce and maintenance, mere oral confession cannot be considered as a justifiable in the eyes of law. Here, under the case, the husband alleged the wife of having an unchaste character; she was living separately with her daughter. And the husband is liable to pay the compensation.

Under the Muslim law, only those females are liable for maintenance, who is unable to maintain ourselves till the date of iddat.

Certain reforms took place after the decision of this case was given.

- Every woman is entitled for the maintenance until she got re-married.
- Liability of Muslim husband to his divorced wife arising under section 3(1)(a) of the Act to pay the maintenance is not confined to iddat period.
- The provisions of the Act do not offend Article 14, 15 and 21 of the Constitution of India.
- It is to be noted that even if the parties are governed by the Muslim Law and provisions of Divorce Act are applicable, still the maintenance is not required to be confined only to iddat period but till the female gets re-married.
- The court made Rehana Begum entitle for compensation of Rs. 1000 per month.

2. Facts-

After a long wait of 27 years hoping to get maintenance from her husband divorced his wife, the Muslim wife filed a case for relief at the Bombay High Court. There was landmark judgment given by the court stating that even if the parties are governed by Muslim Law and provisions and rules of Muslim Women Act of 1986 are applicable, still the maintenance is not required to be confined only to iddat period but it extends upto the time till the Muslim women gets re-married. (*Rehana Sultana Begum v. Hashmi Syed Mujib*).

The facts of the case are as follows- The petitioner Rehana got married to Hashmi who is the respondent in this case in 1996. Out of their wedlock, they have Sayeeda as their daughter. It was alleged by the husband that the wife had unchaste character, where on the other hand it was claimed by the wife that there was demand for dowry, due to which she was the victim of assault as her husband tried to kill her by putting her on fire. Due to all this torture, Rehana approached the court and claimed that she was unable to maintain to herself. The application was filed under Section 125 of the CRPC and it was claimed by the petitioner that the respondent is a skilled welder and earning Rs.1000 on a daily basis. She prayed that appropriate maintenance to be given to maintain herself. The husband repelled the claim by stating the marriage and birth of daughter and also put forward that notice of divorce was given to the wife beforehand. In respect of the claim, both parties were examined by respective exhibits.

After observing all the relevant facts and circumstances and record, the learned Magistrate noted that both the parties are Muslim by religion and they are governed by the Muslim Women (Protection of Rights on Divorce) Act, 1986, and according to the above act, the claim of the wife was rejected whereas it allowed the claim to the extent of daughter which was Rs.300p.m. the Learned Magistrate decided that an amount of Rs.500 p.m. to be given to the petitioner for the iddat period of three months, simultaneously rejecting the claim for future maintenance. When it went for revision, it was dismissed by the Additional Sessions Judge in 2003.

Arguments advanced by the counsels-

Mr. Sakolkar who appeared for the petitioner submitted various arguments including the special attention to the landmark judgment of Danial Latifi &anr. v. Union of India¹.

Various Quranic reference were also mentioned. Shah Bano case was also stated during the proceedings, as it clearly enunciated the way the present law should be. It made various distinctions between the legislations to be made and the amount of maintenance to be paid. It stated that the maintenance to be given upto the iddat period, but in cases where the divorced Muslim woman is unable to maintain herself; she is entitled to get Mata.

Adding to the arguments, the counsel for the petitioners urged that unless the divorce is proved, the burden normally lies on the husband to maintain his wife, and by refusing the maintenance the courts are committing error. By citing the case of Dadgu Chotu Pathan vs. Rahimbi Dagdu Pathan and other² he said that with the factum of Talaq, the conditions which are required to be followed preceding to the stage of Talaq shall also be proved. By stating the above statement, the counsel mentions that in this very case, there is no announcement of divorce, so still the husband needs to maintain his wife.

Ms. Ansari, who appeared for the respondent, focused on the Section 3&4 of the Divorce Act³ and stated that once the notice for divorce is served, the same is established as well. And because the initiation of this claim started after the Talaq was given, the claim for maintenance stands rejected as there does not exist any relationship between the petitioner (Rehana) and respondent (Hashmi). To prove the above contentions, various evidences, records were placed before the court.

3. Issues-

- i) Whether there is neglect and refusal on the part of respondent (husband) to maintain the petitioners?
- ii) Whether the cast has burden the petitioner to prove that there was Talaq, which was never a case of present petitioner?

¹ (2001) 7 SCC 740

² 2002(3) Mh.L.J. 602

³ Muslim Women (Protection of Rights on Divorce) Act, 1986

4. Judgement-

Lastly, by allowing the criminal writ petition in above terms, the court gave its order that Rehana Sultana Begum (petitioner) was entitled for a maintenance of Rs. 1000 to given by Hashmi Syed Mujib(respondent). The wife has the liberty to move to the appropriate court for modification under section 127 of the CRPC as the case was initiated since 1989.

5. Analysis-

By analysing the above arguments, from both sides, the court stated that the court have committed error in shifting the burden of proving Talaq on the wife. Also, the Learned Magistrate has erred in recoring the finding that there was Talaq, and also the Additional Sessions Judge has failed to record relevant findings to prove that there was Talaq, which was never pleaded by the wife, it was a defence set up by the husband, the respondent. Once a valid Talaq is proved, it has to be noted that the provisions of Divorce Act no longer applies. In the judgemint of Danial Latifi the court held that divorced women are entitled for maintenance not only up to iddat period but even beyond that. Referring to the decision, it was stated that even if the parties are governed by the Muslim law and the provisions of Divorce Act are involved, the maintenance is not limited only up to iddat period instead till the period the wife gets re-married.

6. Conclusion-

Lastly, by upholding the provisions of the Act, the court summed up certain conclusions-

1. The Muslim husband is liable to make necessary provision which should be fair and reasonable for the future of the divorced wife which includes maintenance. Such maintenance shall extent beyond the iddat period in terms of section 3(1)(a) of the act.
2. Liability of husband for maintaining wife under section 3(1)(a) of the act is not limited up to iddat period.

3. Under section 4 of the act, a divorced muslim woman who is not re-married and not able to maintain herself can proceed against her relatives who has the liability to maintain her in respect of the property they inherit on her death according to Muslim law. And in case, the relative are unable to maintain, the Magistrate shall direct the state Wakf board which is established under the Act.
4. There is nothing in the act which offend Article 14, 15, 21 of the Constitution of India.

