

**AFR**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMP No.1232 of 2023**

***Mohammad Hamid Siddiqui*** ..... ***Petitioner***  
Mr. Trilochan Nanda, Advocate

*-versus-*

***Najibun Begum*** ..... ***Opp. Party***  
Mr. D. Biswal, ASC

**CORAM:  
JUSTICE CHITTARANJAN DASH**

**ORDER**  
**12.09.2023**

**Order No.**

01. 1. Heard learned counsel for the Petitioner and the State.
2. By means of this application, the Petitioner seeks to quash the order dated 20.04.2023 passed by the learned Judge, Family Court, Sonepur in Cr.P. No.7 of 2023 under Annexure-1.
3. The background facts of the case are that the Opposite Party filed a Petition for maintenance U/s.125 of CrPC before the learned Judge, Family Court, Sonepur registered as Cr.P. No.7 of 2023. In the said petition, she stated, inter alia, that the present Petitioner is the husband and the Opposite Party is the wife. The parties are Muslim and they are guided by the Muslim Personal Law. The marriage between the parties was performed on 02.01.2021 in accordance with ceremonies as laid down in their personal law and it was consummated. The relationship between the parties

continued only for a period of nine months and ten days. It is further contended that after the marriage, the Petitioner and his family members subjected her to ill-treatment and torture demanding more dowry for which the Opposite Party instituted a criminal case against the Petitioner and his relatives registered vide Tarbha P.S. Case No.270 of 2022 under Section 498-A/506/34 of IPC. She alleged to have no source of livelihood and is completely dependent on her relation for her survival and as such she is leading a miserable life. The Opposite Party further stated that her husband is having a wholesale shop dealing with bangles and his monthly income is more than four lakhs. On this background the Opposite Party prayed for grant of maintenance of Rs.60,000/- per month in her application before the learned Judge, Family Court.

4. The Petitioner having caused his appearance filed his show-cause before the learned court of Judge, Family Court traversing the averments made by the Opposite Party in her petition under Section 125 of CrPC.

5. Learned counsel Mr. Nanda appearing for the Petitioner submitted that the Petitioner categorically stated in his show cause that he married the Opposite Party on 02.01.2021 and after marriage, there was no demand of dowry as alleged by the Opposite Party. On the contrary, the Opposite party, after marriage, started misbehaving the parents and sister of the Petitioner. Thereafter, on enquiry from her father, the Petitioner came to know that she had mental disorder and was under treatment. The Petitioner also got her treated for the same. The Petitioner made several attempt

requesting the Opposite Party and her father to extend co-operation in her treatment but they refused to accede to the request of the Petitioner and the Opposite Party willfully deserted the Petitioner. Under the circumstances, the Petitioner as per the Muslim personal law applicable to the parties gave Talaq to the Petitioner in the month of June, 2022, July 2022 and August, 2022 completing the three Talaqs over a period of three months. Accordingly, the Opposite Party has been legally and validly divorced by the Petitioner since 22.08.2022.

6. It is also contended by Mr. Nanda that after the Talaq, a reasonable and fair provision of maintenance was given by the Petitioner within the “Iddat” period to the Opposite Party. He also gave an amount larger than the amount which was fixed as “Mahr” or “Dower”. According to the Mohammedan Law, all the marriage presentations brought by the Opposite Party were duly returned to her at the time of the third Talaq. After the Talaq, the Opposite Party was residing separately in her parental home. After the Opposite Party got divorced, she remarried in accordance with the personal law of the Muslim. As such, the Opposite Party has no claim over the Petitioner. According to the Petitioner he is working in a shop and is receiving a paltry remuneration of Rs.1500/- per month and it is difficult for him to make both ends meet. According to the Petitioner, it is preposterous to say that he would pay maintenance to the Opposite Party.

7. Raising a contentious point, it is contended by the learned counsel that the Petitioner in his show-cause submitted that as per

Muslim Women (Protection of Rights on Divorce) Act, 1986 only a Magistrate has jurisdiction to entertain the claim of maintenance of the divorced woman and Family Court does not have jurisdiction to entertain an application U/s.125 of the CrPC. The Petitioner accordingly asserted that in the proceeding, the learned Judge, Family Court is barred by the Provision of Muslim Women (Protection of Rights on Divorce) Act, 1986. On the prayer of the Petitioner before the learned Judge, Family Court, Sonapur to resolve the point of jurisdiction as a preliminary issue, the Opposite Party filed her objection to the Petition and stated that as per the provision of Family Court Act, all matrimonial disputes including U/s.125 of CrPC is to be tried and disposed of by the Family Court. The learned Judge, Family Court, Sonapur having heard the parties rejected the aforesaid petition filed by the Petitioner vide the order impugned under Annexure-1 and the learned court below held that it has jurisdiction to try the proceeding initiated by the present Opposite Party. The said order dated 20.04.2023 passed by the learned court below has been impugned herein this application.

8. It is submitted by Mr. Nanda, learned counsel for the Petitioner that the learned Judge, Family Court, Sonapur has erred in law by holding that the Family Court has jurisdiction to try the proceeding initiated by the Opposite Party - divorced wife. He also submitted that in view of the specific provision under ***Muslim Women (Protection of Rights on Divorce) Act, 1986*** only a Magistrate has jurisdiction to entertain the present claim. It is further submitted that the learned Judge, Family Court does not have jurisdiction to entertain the application under Section 125 of CrPC and as such the

proceeding is not maintainable as being barred under the said Act. It is also submitted that the learned court below has not followed the harmonious reading of the provisions of Muslim Women (Protection of Right on Divorce) Act, 1986 and the provisions of Family Court Act. According to him, the Opposite Party has been divorced by the present Petitioner in accordance with Muslim Personal Law and after Talaq, she was given a reasonable and fair amount of maintenance within the "Iddat" period and she was also given the amount which was fixed as "Mahr" or 'Dower'. Given the aforesaid facts, the provision of Family Court Act does not apply to the proceeding initiated by the present Opposite Party. The learned counsel also submitted that the court below misread the facts of the case and misconstrued the provisions of law and arrived at a wrong conclusion while deciding the preliminary issue regarding jurisdiction and as such the order impugned deserves to be quashed.

9. Having heard the parties this Court finds it worth to mention that the law as enumerated under Section 125 of CrPC, as said, perhaps is one of the most secular enactments ever made in this country. Right of maintenance available to wife from the husband is an absolute right and divorce can not affect this right unless the wife is disqualified on account of remarriage or sufficient earning.

10. Article 21 of the Constitution of India guarantees every person, right to live with dignity. Dignified life is not possible unless a fair and reasonable provision is made by the husband towards the maintenance of divorced wife. However, coming to the case in hand, the sole point needs to be decided herein is whether the

provision under Section 125 of CrPC can be resorted to by the Muslim woman (divorcee) in seeking maintenance and the same comes for disposal within the jurisdiction of the family court.

11. Needless to say that all the provisions regarding maintenance are beneficial legislation. While interpreting and applying this beneficial legislation, therefore, it is read in consonance with the Constitution of India as to the right of equality, liberty and justice more so the social justice to the human and marginalized sections of the society.

12. The law of maintenance in the Muslim Personal Law has evolved through various cases such as in the case of ***Bai Tahira vs Ali Hussain 1979 SCR (2) 75***, wherein it was held that since the dower amount comes under the meaning of the term “sum payable” as given under Section 127(3)(b) of the CrPC, a woman who has already received it is not entitled to further maintenance under Section 125 of the CrPC. In the case of ***Fuzlunbi vs K. Khader Vali And Anr (1980) 4 SCC 125*** it is decided that only after judging the sufficiency of the amount of ‘Mahr’, the husband be released on making any further payment. In the light of the landmark case of ***Mohd. Ahmed Khan vs Shah Bano Begum And Ors, AIR 1985 SC 945*** it was finally cleared that ‘Mahr’ does not come under Section 127(3)(b) as it is an obligation on the husband and is paid as a mark of respect for the wife and not the amount payable to the wife on divorce. After that, the ***Muslim Women (Protection of Rights on Divorce) Act, 1986*** was passed, where it is provided that reasonable and fair provision is to be made and maintenance is to be paid

within the 'iddat' period. Subsequently, the constitutional validity of the said Act was challenged and the Apex Court in the case of the *Danial Latifi & Anr vs Union of India* dealt in Civil Miscellaneous Petition No.552 of 1987 (W.P. (C) No. 868 of 86) held that the same is constitutionally valid and though the maintenance has to be paid within the 'iddat' period, it must be enough to maintain for her whole life. Finally in the case of *Abdul Latif Mondal vs Anuwara Khatun And Anr., in 2002 Cr..LJ 2282* it was discussed that since the objective of Section 125 of CrPC was to prevent the woman from destitution and it is speedier, the Muslim woman can still claim maintenance under Section 125 of CrPC.

13. In the matter of *Sahaba Bano vrs. Imran Khan reported in Criminal Appeal No. 2309 of 2009 (Arising out of S.L.P.(Crl) No.717 of 2009* the Apex Court held as follows:

“28. Learned Single Judge appeared to be little confused with regard to different provisions of [Muslim Act](#), [Family Act](#) and [Cr.P.C.](#) and thus was wholly unjustified in rejecting the appellant's Revision.

29. Cumulative reading of the relevant portions of judgments of this Court in *Danial Latifi (supra)* and *Iqbal Bano (supra)* would make it crystal clear that even a divorced Muslim woman would be entitled to claim maintenance from her divorced husband, as long as she does not remarry. This being a beneficial piece of legislation, the benefit thereof must accrue to the divorced Muslim women.

30. In the light of the aforesaid discussion, the impugned orders are hereby set aside and quashed. It is held that even if a Muslim woman has been divorced, she would be entitled to claim maintenance from her husband under [Section 125](#) of the Cr.P.C. after the expiry of period of iddat also, as long as she does not remarry.

31. As a necessary consequence thereof, the matter is remanded to the Family Court at Gwalior for its disposal on merits at an early date, in accordance with law. The respondent shall bear the cost of litigation of the appellant. Counsel's fees Rs.5,000/-.”

14. From the discussion as above, it emerges that the Muslim woman can claim maintenance under the CrPC and unlike the Muslim personal law even the divorced women are given right to maintenance under the CrPC. It is therefore, no more *resintegra* to hold that the Muslim divorced woman can claim the right to maintenance under the CrPC even after receiving the 'dower' as has been settled once for all in the matter of *Abdul Latif Mondal vs Anuwara Khatun And Anr* and *Danial Latifi & Anr vs Union Of India (Supra)*.

15. Further, Section 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 also provides that the parties can opt to be ruled by the secular law under Section 125 and 128 of the CrPC instead of the Muslim Personal Law. Thus, woman can claim maintenance under the CrPC or the Muslim Women (Protection of Rights on Divorce) Act, 1986. Broaderly, however, the CrPC is a more appropriate recourse in this scenario as it provides for maintenance for both married and divorced wife, unlike the personal law. Also, the quantum of maintenance is more reasonable under the secular law, whereas just the payment of 'Mahr' is considered to be enough under the personal law.

16. Coming to the case in hand, the Opposite Party-wife has opted for the maintenance under the CrPC and has rightly moved the court of the learned Judge, Family Court having territorial jurisdiction as well as the jurisdiction to entertain the application under Section 125 CrPC who too has rightly exercised its jurisdiction and there is no infirmity in the order impugned and the



same being in consonance with the law requires no interference by this Court. In the result, the CRLMP is dismissed being devoid of merit. Copy of the order be communicated to the learned court concerned for reference.

**(Chittaranjan Dash)**  
**Judge**

*AKPradhan*

