



Mohd. Abdul Samad v. State of Telangana

July 10, 2024

Supreme Court of India

Judgment

The prime contention of the Appellant while moving this Court is that the provisions of Section 125 of CrPC do not prevail in light of the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

Furthermore, it is contended that even if a “divorced Muslim woman” seeks to move the court under the secular provision of Section 125 of CrPC, it would not be maintainable, rather the correct procedure would be to file an application under Section 5 of the 1986 Act, which is not the case herein.

Before perusing the submissions made by the Counsel, it is paramount to also consider the bare text of the concerned provisions vis-à-vis their comparative dissection. Under Section 3 of the 1986 Act, the entitlements or rights of a divorced Muslim woman, wider than the ambit of maintenance, arise as against the obligations of her former husband emanating from their divorce. Per contra, under Section 125 of CrPC, a woman seeking maintenance has to establish that she is unable to maintain herself. The right to seek maintenance under Section 125 of CrPC is invokable even during the sustenance of marriage and, thereby is not contingent upon divorce.

Another distinction vis-à-vis the aforementioned provisions, relates to the time period within which proceedings initiated thereunder are to be decided. While a petition moved under Section 3(2) of the 1986 Act is to be decided in regard to a



husband's liability under Section 3(1) of the 1986 Act within a period of one month, there is no such statutory time frame prescribed under Section 125 of CrPC.

However, there is an obligation to determine the interim maintenance within a period of 60 days while dealing with a petition under Section 125 of CrPC. Moreover, failure to comply with such order passed under Section 3(2) of the 1986 Act may lead to issuance of a warrant for levying the amount of maintenance as directed under the said order and may also sentence him to imprisonment till the payment is made or for a term which may extend to one year. On the other hand, equivalent noncompliance of an order passed under Section 125 of CrPC may result in imprisonment for a term of one month or until the payment is made.

To begin with the contention in regard to the existence of non-obstante clause in Sections 3 and 4 of the 1986 Act, it is undoubtedly clarified by the Constitution Benches of this Court that the same cannot promptly be deemed to override any other rights so provided by the enactments of the legislature. We are, accordingly, also bound by the Doctrine of stare decisis contemplated through Article 141 of the Constitution of India to accept the said observations.

Furthermore, a bare perusal of Section 7 of the 1986 Act, reflects the same to be transitional in nature and the interpretations in respect of Section 5 of the 1986 Act, as highlighted above through numerous decisions, reflect our inability to accept the passionate contentions of the learned Senior Advocate on behalf of the Appellant.

From the aforementioned, we are inclined to conclude that equivalent rights of maintenance ascertained under both, the secular provision of Section 125 of CrPC 1973, and the personal law provision of Section 3 of the 1986 Act, parallelly exist in their distinct domains and jurisprudence, thereby, leading to their harmonious construction and continued existence of the right to seek maintenance for a divorced Muslim woman under the provisions of CrPC despite the enactment of the 1986 Act.

ORDER

What emerges from our separate but concurring judgments are the following conclusions:

- a) Section 125 of the CrPC applies to all married women including Muslim married women.
- b) Section 125 of the CrPC applies to all non-Muslim divorced women.
- c) Insofar as divorced Muslim women are concerned, -
 - i) Section 125 of the CrPC applies to all such Muslim women, married and divorced under the Special Marriage Act in addition to remedies available under the Special Marriage Act.
 - ii) If Muslim women are married and divorced under Muslim law then Section 125 of the CrPC as well as the provisions of the 1986 Act are applicable. Option lies with the Muslim divorced women to seek remedy under either of the two laws or both laws. This is because the 1986 Act is not in derogation of Section 125 of the CrPC but in addition to the said provision.
 - iii) If Section 125 of the CrPC is also resorted to by a divorced Muslim woman, as per the definition under the 1986 Act, then any order passed under the provisions of 1986 Act shall be taken into consideration under Section 127(3)(b) of the CrPC.
- d) The 1986 Act could be resorted to by a divorced Muslim woman, as defined under the said Act, by filing an application thereunder which could be disposed of in accordance with the said enactment.
- e) In case of an illegal divorce as per the provisions of the 2019 Act then,

- i) Relief under Section 5 of the said Act could be availed for seeking subsistence allowance or, at the option of such a Muslim woman, remedy under Section 125 of the CrPC could also be availed.
- ii) If during the pendency of a petition filed under Section 125 of the CrPC, a Muslim woman is 'divorced' then she can take recourse under Section 125 of the CrPC or file a petition under the 2019 Act.
- iii) The provisions of the 2019 Act provide remedy in addition to and not in derogation of Section 125 of the CrPC.
