

IN THE COURT OF SESSIONS JUDGE :: NALBARI

Present: Smti S. Bhuyan.
Sessions Judge,
Nalbari.

Criminal Revision Case No. 28/18

[Revision against the Judgment & order dated 31-03-2018 passed by learned JMFC, Nalbari in MWP Case No. 2^M/17 u/s- 3 & 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986]

Hasina Begum

D/o- Kader Ali

R/o- village Billeswar, PS- Belsor

Dist- Nalbari, Assam Revisionist/ 1st party.

-Versus-

Isa Ali

S/o- Muzafar Ali

R/o- village Billeswar, PS- Belsor

Dist- Nalbari, AssamOpp. Party/ 2nd Party.

Advocates appeared : None appeared

Judgment delivered on : 26-08-2021

JUDGMENT

1. The instant revision has been preferred u/s-397/399 CrPC by Hasina Begum being aggrieved with the impugned judgment and order dated 31-03-2018 passed by learned

JMFC, Nalbari in connection with M.W.P. Case No. 2^M/17 u/s- 3 & 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

2. Fact leading to the revision petition is that 1st party/ revisionist Hasina Begum filed a petition u/s- 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 before the learned CJM, Nalbari claiming Mahr amount of Rs. 15,000/-, maintenance of Iddat period amounting Rs. 9,000/- as well as prays for grant of future maintenance allowance of Rs. 2,00,000/- in total Rs. 2,24,000/- from the 2nd party citing that her marriage was solemnized with 2nd party on 10-05-2010 and after few days of marriage 2nd party used to assault and torture her in demand of Rs. 1 lakh and ultimately on 16-11-2014 2nd party beaten her mercilessly and driven her out from his house and since then she has been taking shelter at her parents house. Thereafter, she tried to reconcile with the 2nd party but all her effort went in vain. As such she instituted a maintenance case against the 2nd party. It is further stated that on 23-12-2014 2nd party pronounced her Talaq but till date 2nd party has neither paid the MAHR amount of Rs. 15,000/- nor the maintenance of Iddat period to her.

3. On receipt of the petition, learned CJM, Nalbari registered a case vide MWP Case No. 2^M/17 u/s- 3 & 4 of

the Muslim Women (Protection of Rights on Divorce) Act, 1986 and transferred the case to the court of learned JMFC, Nalbari for trial and disposal. Accordingly, learned JMFC, Nalbari took up the case and issued notice to the 2nd party. On receipt of notice 2nd party submitted written statement where he admitted that he pronounced Talaq to 1st party and he has not paid the entire MAHR amount and maintenance for the period of Iddat to the 1st party. However, he denied about demanding Rs. 1 lakh from the 1st party and torture upon the 1st party. It is further stated that he has already paid Rs. 501/- to 1st party out of Rs. 15,000/- MAHR amount on the date of marriage and he has been paying maintenance allowance of Rs. 2000/- per month to the 1st party in maintenance case vide No. 5^M/15 u/s- 125 CrPC and prays for dismissal of prayer of 1st party for future maintenance of Rs. 2,00,000/-.

4. 1st party to establish her case adduced her evidence as PW-1 and 2nd party adduced evidence of himself as DW-1 in support of their claim. Learned trial court after recording evidences of both the parties and hearing learned counsel for both the parties delivered judgment directing the 2nd party to pay the balance MAHR amount of Rs. 14,500/- and Rs. 6000/- as the maintenance of Iddat period in two equal installments within two months from the date of order passed by the learned trial court.

However, learned trial court has rejected the prayer of 1st party for one time maintenance allowance of Rs. 2,00,000/-.

5. On the date of argument, none appeared to move the case at the time of taking up and as this is revision pending since 2018, case is posted for judgment. However, both the parties were given 10 days time to submit their written argument from the date of argument but none of the counsels submit their argument.

6. Points for determination

- i) Whether the learned trial court has rightly rejected the prayer of 1st party for grant of one time future maintenance amount of Rs. 2,00,000/- in her favour?

Discussion, Decision & Reasons Thereof

7. I have scrutinized the revision petition, trial court case record and entire materials on record to arrive at a just decision. 1st party Hasina Begum as PW-1 deposed that she got married with 2nd party on 10-05-2010, since few days after marriage her husband started torturing her in demand of Rs. 1 lakh and other dowry article and finally on 16-11-2014 2nd party driven her out from his house and since then she has been living at her parents house. Thereafter on 23-12-2017 2nd party pronounced Talaq to her but he did not pay her any maintenance, MAHR

amount or maintenance for Iddat period, MAHR amount was fixed as Rs. 15,000/- and she claimed for Rs. 9,000/- as maintenance for the Iddat period. It is stated that she instituted a maintenance case against 2nd party vide case No. 5^M/2015 and learned trial court granted maintenance amount of Rs. 2,000/- per month in her favour.

8. 2nd party as DW-1 admitted his marriage with 1st party and stated that he pronounced Talaq to 1st party in the year 2016, MAHR amount was fixed @ Rs. 15,000/- and he has already paid Rs. 501/- of the MAHR amount. He further deposed that he has been paying maintenance allowance of Rs. 2,000/- per month to the 1st party as directed by the court in maintenance case filed by 1st party.

9. From the evidence of both the parties, there is no dispute regarding MAHR amount and revisionist nowhere raised objection regarding maintenance amount for Iddat period granted by the learned trial court. Accordingly, I find the order passed by the learned trial court in respect to MAHR amount and maintenance of Iddat period does need interference by this court.

10. Now let me discuss whether 1st party is entitled for future maintenance amount of Rs. 2 lakhs from the 2nd party u/s- 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 or not. **Section 3** of the **Muslim**

Women (Protection of Rights on Divorce) Act, 1986

says as follows:

“3. Mahr or other properties of Muslim woman to be given to her at the time of divorce.—

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to—

(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after the marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or anyone duly authorized by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that—

(a) her husband having sufficient means, has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her.

Make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman: Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973 (2 of 1974) and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code."

11. Evidence of 1st party shows that she has already been getting monthly maintenance allowance of Rs. 2,000/- from the 2nd party in maintenance case No. 5^M/15 u/s- 125 CrPC. The maintenance allowance granted in favour of the 1st party u/s- 125 CrPC is also a future maintenance allowance and no one is entitled for the same benefit on same ground under different provisions of law. There is enough opportunity u/s- 127 CrPC to claim enhancement of monthly maintenance allowance on account of change of circumstances and accordingly, learned trial court rightly granted the Mahr amount which was unpaid to 1st party and Iddat period maintenance and rejected the prayer for grant of one time future maintenance allowance as 1st party is already getting the same under a separate provision of law u/s- 125 CrPC.

12. In view of the aforesaid discussion, I find nothing to interfere with the judgment and order passed by the learned trial Court. Accordingly, judgment and order dated 31-03-2018 passed by learned JMFC, Nalbari in connection with MWP Case No. 2^M/17 u/s- 3 & 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 is hereby upheld.

13. In the light of the above order, revision petition is dismissed being devoid of merit. However, no cost.

14. Send down the trial court record with a copy of this court judgment to the learned trial court immediately.

Judgment delivered under hand and seal of this court on this 26th day of August, 2021 at Nalbari, Dist-Nalbari.

(Smti S. Bhuyan)
Sessions Judge, Nalbari.

Dictated & corrected by me

(Smti S. Bhuyan)
Sessions Judge, Nalbari

Typed by
Jitumani Talukdar, Computer Typist