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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

***CRIMINAL APPELLATE JURISDICTION***

**CRIMINAL REVISION APPLICATION NO. 368 OF 2017**

**Khalil Abbas Fakir**

**..... Applicant**

**VERSUS**

**Tabbasum Khalil Fakir @**

**Tabbasum Gulam Husain Ghare & Anr.**

**..... Respondents**

Ms.Shaheen Kapadia a/w. Ms.Mahenoor Khan, Mr.Irfan Unwala i/b.  
Ms.Vrushali Maindad for the Applicant.

Mr.Saurabh Butala a/w. Adv. P.V. Shekhawat, Ms.Shagufa Patel,  
Ms.Swati Khot, Ms.Nitita Mandaniyan for the Respondents.

Ms.S.S.Kaushik, APP for the State.

**CORAM: RAJESH S. PATIL, J.**

**RESERVED ON : 13<sup>th</sup> DECEMBER, 2023**

**PRONOUNCED ON : 2<sup>nd</sup> JANUARY, 2024**

**JUDGMENT :-**

By consent of parties, the matter is taken up for final disposal at the admission stage.

2. This criminal revision application has been filed by the applicant (husband) challenging the concurrent findings recorded by the JMFC, Chiplun and Sessions Court, Khed, Ratnagiri.

3. The applicant (husband) and the respondent no.1 (wife)

got married on 9 February, 2005. At the time of the marriage, it was applicant's second marriage, whereas it was respondent no.1(wife's) first marriage.

4. From the said wedlock, a daughter Mehvish was born on 1 December, 2005 at Chiplun, Ratnagiri.

5. Shortly, after the daughter was born, the husband for the purpose of better earning, went to Saudi Arabia, while the wife and the daughter stayed back at Chiplun (Ratnagiri) and were staying with parents of husband.

6. It is the case of the husband that thereafter the wife along with the daughter in June 2007, left her matrimonial house and started residing with her parents in Chiplun, Ratnagiri.

7. The wife subsequently filed a criminal Misc. Application No. 81 of 2007, claiming the maintenance for her under the provisions of Section 125 of the Code of Criminal Procedure, 1973. After the said proceedings were served upon the husband, shortly thereafter he gave

divorce (Talaq) on 5 April, 2008 by registered post to the wife, during the pendency of the maintenance application filed by the wife under section 125 of the Cr.P.C.

8. On 30 June, 2009, the JMFC, Chiplun dismissed the application of maintenance filed by the wife. In the year 2012, the wife filed a Criminal Misc. Application No. 143 of 2012, seeking maintenance for the daughter Mehvish, under the provisions of section 125 of the Cr.P.C. So also, the wife filed an application under section 3(1) (a) of the Muslim Women (Protection of Rights on Divorce) Act 1986, (for short 'MWPA') thereby claiming reasonable and fair provision and maintenance to be paid to her, being the Criminal Misc. Application No. 144 of 2012.

9. On 20 August, 2014, an order of maintenance was passed in the maintenance application filed for daughter Mehvish, thereby directing the husband to pay a sum of Rs.3,000/- to the daughter. The parties have admitted that the said order has been complied with as of today.

10. The husband filed his reply to the application filed by the wife under Section 3(1)(a) of MWPA. It was stated in the reply that the said application claiming maintenance, would not be maintainable in law since there is a divorce.

11. By an order dated 20 August, 2014, the JMFC partly allowed the application of the wife thereby granting Rs.4,32,000/- as reasonable and fair provision and maintenance to be paid within two months from the date of the order. Also further directing the husband to handover the articles mentioned in the Schedule A of the application, except the gold ornaments mentioned in the Schedule, within two months from the date of the order. Further the husband was also directed to pay Rs.3,000/- as cost of the application.

12. Being aggrieved by the order passed by the JMFC, the husband challenged the same by way of Criminal Appeal No. 27 of 2014 before the Sessions Court at Khed, Ratnagiri. So also, the wife challenged the order passed by the JMFC by way of Criminal Revision Application No. 43 of 2014 seeking the enhancement of the said amount granted by the JMFC.

13. It is submitted before this Court that in the meantime, from the year 2014 to 2018, sum of Rs.1,50,000/- was paid to the wife by the husband, in intervals.

14. Thereafter the Sessions Court heard the criminal appeal filed by the husband and the Criminal Revision Application filed by the wife, and by its order dated 18 May, 2017, the Sessions Court, dismissed the criminal appeal filed by the husband and partly allowed the application filed by the wife, thereby granting a sum of Rs.9 lacs, as a reasonable and fair provision of maintenance, to be paid within two months from the date of the order. And if the opponent fails to make the payment within the said period, the said amount will carry interest at the rate of 8%, till realization of the entire amount.

15. Being aggrieved by the order passed by the JMFC and also by the Sessions Court, the husband has filed the present Criminal Revision Application under section 397 read with 401 of the Cr.P.C.

16. By an order dated 4 February, 2019, this Court directed the

husband to deposit a further sum of Rs. 2 lacs in two installments i.e. the first installment on or before 14 February, 2019 and the second installment to be deposited on or before 14 March, 2019. Subject to the deposit of the said amount, the impugned order of issuance of the warrant was stayed. So also, the permission was granted to the wife to withdraw the said amount if deposited by the husband.

17. It is submitted before me that the husband complied with the direction given by this Court on 4 February, 2019, by depositing the said amount of Rs.2 lacs.

18. The wife thereafter re-married to a person called Wasif Yusuf Khan on 15 April, 2018. However, on 3 October, 2018, the wife got divorce by way of Khula Nama.

**SUBMISSIONS :-**

19. Ms. Shaheen Kapadia, learned counsel made her submissions on behalf of the applicant (husband) :-

19.1. Ms.Kapadia submitted that once it is admitted that the respondent no.1 (wife) has remarried, there will be no question of

granting her maintenance.

19.2. Ms. Kapadia further submitted that once respondent no.1 (wife) is remarried and there is a divorce obtained by the respondent no.1 from her second husband, the applicant ceased to be called as a former husband because of remarriage of the respondent no.1 and obtaining a divorce from her second marriage. She further submitted that the respondent no.1(wife) can in such a situation seek maintenance only from the second husband.

19.3. Ms.Kapadia further submitted that the amount which was granted in the impugned judgment and order, was available to the respondent no.1 wife, only till she remarries.

19.4. Ms.Kapadia have also laid emphasis on explanation (b) of section 125 of Cr.P.C. which defines “wife”, which according to her would be a woman who has not remarried.

19.5. Ms.Kapadia further submitted that the application for maintenance was filed after five years, after her client gave a

customary divorce to the respondent no.1. She further submitted that in fact the respondent no.1 (wife), even refused the 'dower'.

19.6. Ms.Kapadia further submitted that the quantum what is payable has to be fair and reasonable. She submitted that the impugned order, both the courts have not decided the quantum fairly and reasonably. She submitted that her client's income was not sufficient, for the Court to grant a sum of Rs.9 lacs to be payable to the respondent no.1 (wife).

19.7. She further submitted that the calculation made by the Sessions Court is for a period of 30 years. How the period of 30 years has been arrived at by the Sessions Court has not been mentioned in the impugned judgment and order. She further submitted that there is a perversity in the impugned judgment and order as her client was directed to pay the entire amount within the 'Iddat Period'.

19.8. Ms.Kapadia further refers to the judgment of Supreme Court passed by the Bench of five Judges of ***Danial Latifi & Anr. Vs. Union of India reported in (2001) 7 SCC 740.*** She stress on



paragraph no.28 of the said judgment. She laid her emphasis more on the last line of paragraph 28 which recorded that “it would extend to the whole life of the divorce wife unless she get married for the second time”. She submitted that therefore it is clear that the amount so granted first has to be reasonable and secondly the said amount could be available only till the wife remarries.

19.9. Ms.Kapadia further submitted that as of today, her client has remarried (for the third time) and the third wife and four children out of the said marriage are dependent on her client, the applicant. Ms.Kapadia further submitted that it could be totally different case if the respondent no.1 (wife) had not remarried, in such a situation, she could probably seek maintenance from the applicant, and in such a situation, the question could have been what should be the quantum payable to the respondent no.1 (wife). Ms.Kapadia further submitted that the amount which was deposited pursuant to the directions given by this Court, has still now not been withdrawn by the respondent no.1 (wife).

19.10. Ms.Kapadia also tendered the photocopy of the salary slip

of the applicant for the year 2013, which shows the salary of the applicant as 700 Saudi Riyal which on conversion as per Indian currency approximately then would be Rs.11,000/-.

19.11. She also produced a photocopy of the salary of applicant as of December 2023 which amount shows that the applicant receives salary of 900 Saudi Riyal, which according to her after conversion to Indian Rupee as of now would be around Rs.20,000/-. She submits that therefore granting of an amount of Rs. 9,00,000/- as a lump-sum payment to the respondent no.1, could not be called as fair and reasonable as the applicant was not earning sufficient amount to grant such a big amount. She submitted that the applicant was not in a position to pay such a huge amount to the respondent no.1.

19.12. Ms.Kapadia also submitted that one has to see the intention of the Legislature in enacting the MPWA Act, which is to avoid vagrancy and destitution of a 'divorced wife'. She submits that directing the applicant to pay a sum of Rs.9 lacs after the respondent no.1 wife remarried and once she is maintained by the second husband of her's, this amounts to luxury.

19.13. Ms.Kapadia submitted that therefore the present criminal revision application is required to be allowed and the order passed by the Sessions Court and the JMFC should be quashed and set aside.

20. Mr.Butala, learned counsel made submissions on behalf of the respondent no.1 (wife) :-

20.1. Mr.Butala submitted that one has to see the conduct of the husband. Mr.Butala furnished a photocopy of minimum wages as of the year 2011 obtained from the website of the Indian Embassy, Abu Dhabi, United Arab Emirates. He submitted that even for a helper in Abu Dhabi as of March 2011, the minimum amount payable as shown as per the chart 1200 UAE Dhiraams which according to him as of March 2011 would be Indian Rupees 15,500/-.

20.2. He further submits that as of December 2023 even though he was not able to find out from the website of the Indian Embassy what would be the amount of minimum payment of a helper, but according to him the lowest expected salary as of December 2023 for

helper would be 2500 UAE Dhiraams. Which according to him after conversion into Indian Rupees as of December 2023 would be Rs.55,000/-.

20.3. Mr. Butala further submitted that the applicant with ulterior motives did not produce on record his income proof. Therefore, the Sessions Judge and the Magistrate Court had to only make the guesswork to arrive at the quantum.

20.4. Mr. Butala further submitted that the false submissions were made before the JMFC, from side of the husband, by stating that the husband was not working in the year 2013. He however submitted that only yesterday while arguing, the photocopy of the so called salary certificate was produced before this Court to show that the applicant was earning around 700 Riyal.

20.5. He further submitted that even in Sessions Court, no documents were produced to show what was the earning of the applicant (husband). He further submitted that an affidavit is filed before this Court on 4 January, 2023 wherein in paragraph (26) it is

specifically mentioned that the applicant (husband) is working at a juice centre at Dubai on minimum wages. Mr. Butala further submitted that the applicant to show his bonafide, could have voluntarily stated in the affidavit, as to what is his monthly income. However, by not mentioning the amount, would amount to suppression on the part of the applicant, and only on this ground, the present application deserves to be dismissed.

20.6. He further submitted that the applicant has not even produced the photocopy of his passport to show his stay in the Gulf countries from the day the application was made under section 3(1)(a) by the respondent no.1 wife, till today.

20.7. Mr. Butala while making his legal submissions, submitted that if an application is made under section 125 of the Cr.P.C. for monthly maintenance, and if a party feels that there is a change in the circumstances, application can be made under section 127 for alteration. He submitted that however under the MWPA Act, there is no such like the one available under section 127 of the Cr.P.C. Mr. Butala submitted that the Legislature was quite clear while enacting

the section 3 of the MWPA Act, which does not allow any kind of enhancement and the said amount payable under section 3(1)(a) is defined as 'reasonable and fair provision' and maintenance to be made and paid by the former husband within 'Iddat Period'. He further submitted that section 3 of the MWPA Act does not use the word 'remarry'. He submits that however section 4 of the MPWA Act, which is for maintenance specifically, from the relatives of woman, and if not paid to be payable by Waqf Board, uses the word 'remarry'. He therefore submitted that the specific exclusion of the word 'remarry' from section 3, puts section 3 on a different pediar. He further submitted that section 4 of MWPA uses the word specifically the maintenance. He submits that in the present proceedings the respondent no.1 wife had filed an application specifically under section 3 of the MWPA.

20.8. Mr. Butala further submitted that initially when the respondent no.1 wife filed the proceedings under section 125 of the Code of Criminal Procedure, for herself, the applicant with an ulterior motives gave her 'Talaq Nama'. By doing so, when he was aware about the provisions of section 3 of MWPA, he has taken that risk. Mr. Butala

further submitted that the applicant had given Talaq to the respondent no.1 (wife) in the year 2008. The Sessions Court order was passed in the year 2017. However, even then the respondent no.1 was not ready to pay, or comply with the directions given by the Sessions Court. Infact, the applicant thought it proper to challenge the same by way of the present criminal application, and only a sum of Rs.1,50,000/- was paid in a span of 2015 to 2018. Thereafter the respondent (wife) remarried. However, unfortunately that marriage lasted only for a period of four months.

20.9. Mr.Butala submitted that it can't be argued by the applicant husband that in case if the full amount of Rs.9 lacs as ordered by the Sessions Court, was paid by the applicant in time, and thereafter the respondent no.1 had remarried, the applicant (husband) could have filed an application for refund of the amount paid by him.

20.10. He further submitted that since there is no provision under the MWPA Act to seek enhancement, the Legislature with such intention has made the provisions of section 3, therefore, the former husband can't seek any deduction. He further submitted that in a

hypothetical case, based on the income as prevailing on the date of the decision taken by the Court under section 3 of MWPA Act, and later if the income of the husband is substantially increased, the former wife would have no right to seek an enhancement.

20.11. Mr. Butala thereafter referred to the judgment of Supreme Court delivered in case of **Danial** (supra). He referred to paragraph nos. 27, 28, 29, 36(1) and 36(2). He further submitted that if one goes through the relevant paragraphs of the Supreme Court judgment in case of **Danial** (supra), it is clear that even though the divorce is filed after performing the second marriage, the amount which is granted by the Court under the provisions of section 3(1)(a) of the MWPA Act, has to be paid by the former husband. He further submitted that there can't be an argument that on the count of two failed marriages, the present applicant ; can seek a remedy from the Court that the respondent no.1 wife should seek similar kind of relief against second former husband.

### **ANALYSIS AND CONCLUSION :**

21. I have heard both the sides and I have gone through the documents produced on record.



22. The Preamble of Muslim Women (Protection of Rights on Divorce) Act, 1986, proposes “to protect the rights of Muslim Women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto”. The said Act proposes to cast an obligation on the husbands to make a reasonable and fair provision and maintenance towards their former wives.

22.1. It is necessary to reproduce certain Sections of the Muslim Women (Protection of Rights on Divorce) Act 1986 :-

Section 2. Definitions.—In this Act, unless the context otherwise requires,—

**Section 2 (a) “divorced woman” means a Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim law;**

**Section 2 (b) “iddat period” means, in the case of a divorced woman,—**

- (i) three menstrual courses after the date of divorce, if she is subject to menstruation;
- (ii) three lunar months after her divorce, if she is not subject to menstruation; and
- (iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier;

**Section 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;

*[Emphasis supplied]*

**Section 4. Order for payment of maintenance.—**

(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the iddat period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine 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 such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit the property and at such periods as he may specify in his order.

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her.

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to sub-section (1), the Magistrate may, by order, direct the State Wakf Board established under section 9 of the Wakf Act, 1954 (29 of 1954), or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

22.2. The word used in section 3(1)(a) is 'provision' and word 'remarry' is absent in section (3).

In other words the Act seeks to prevent the destitution of Muslim Women and ensure their right to lead a normal life even after

a divorce. Hence the legislative intent of the Act is clear. It is to protect 'all' divorced Muslim Women and safeguard their rights.

22.3. The protection referred to in the MWPA is unconditional. Nowhere does the said Act intend to limit the protection that is due to the former-wife on the grounds of the remarriage of the former-wife. The essence of the Act is that a divorced woman is entitled to a reasonable and fair provision and maintenance regardless of her remarriage. The fact of divorce between the husband and wife is in itself sufficient for the wife to claim maintenance under section 3 (1) (a).

22.4. Such entitlement of a reasonable and fair provision and maintenance is crystallised on the date of divorce and the right to a reasonable and fair provision and maintenance is not hampered by the former-wife's remarriage. The sole exception to this norm lies in section 4 of the said Act wherein it is explicitly mentioned that the relatives of the wife inheriting from her are under the obligation to maintain her only till the time she has not remarried. Unlike section 4 ; section 3 is devoid of any such limitation. Section 3 does not absolve the husband of his duty to make and pay a reasonable and fair

provision and maintenance after the remarriage of the former-wife.

22.5. If a condition that 'a husband is absolved of his duty when the wife remarries' is accepted, then the husband would deliberately await his wife's remarriage. Such a condition is unfair and unacceptable on the face of it will frustrates the very essence of the said Act.

23. The judgment of Supreme Court in case of **Danial** (supra) paragraph nos. 27, 28, 29 and 36(1) and 36(2) reads as under :-

27. Section 3(1) of the Act provides that a divorced woman shall be entitled to have from her husband, a reasonable and fair maintenance which is to be made and paid to her within the iddat period. Under Section 3(2) the Muslim divorcee can file an application before a Magistrate if the former husband has not paid to her a reasonable and fair provision and maintenance or mahr due to her or has not delivered the properties given to her before or at the time of marriage by her relatives, or friends, or the husband or any of his relatives or friends. [Section 3\(3\)](#) provides for procedure wherein the Magistrate can pass an order directing the former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may think fit and proper having regard to the needs of the divorced woman, standard of life enjoyed by her during her marriage and means of her former husband. The judicial enforceability of the Muslim divorced womans right to provision and maintenance under Section (3) (1)(a) of the Act has been subjected to the condition of

husband having sufficient means which, strictly speaking, is contrary to the principles of Muslim law as the liability to pay maintenance during the iddat period is unconditional and cannot be circumscribed by the financial means of the husband. The purpose of the Act appears to be to allow the Muslim husband to retain his freedom of avoiding payment of maintenance to his erstwhile wife after divorce and the period of iddat.

28. A careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. It was stated that Parliament seems to intend that the divorced woman gets sufficient means of livelihood, after the divorce and, therefore, the word provision indicates that something is provided in advance for meeting some needs. In other words, at the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provision for her residence, her food, her cloths, and other articles. The expression within should be read as during or for and this cannot be done because words cannot be construed contrary to their meaning as the word within would mean on or before, not beyond and, therefore, it was held that the Act would mean that on or before the expiration of the iddat period, the husband is bound to make and pay a maintenance to the wife and if he fails to do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in [Section 3\(3\)](#) but no where the Parliament has provided that reasonable and fair provision and maintenance is limited only for the iddat period and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time.

29. The important section in the Act is [Section 3](#)

which provides that divorced woman is entitled to obtain from her former husband maintenance, provision and mahr, and to recover from his possession her wedding presents and dowry and authorizes the magistrate to order payment or restoration of these sums or properties. The crux of the matter is that the divorced woman shall be entitled to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband. The wordings of [Section 3](#) of the Act appear to indicate that the husband has two separate and distinct obligations : (1) to make a reasonable and fair provision for his divorced wife; and (2) to provide maintenance for her. The emphasis of this section is not on the nature or duration of any such provision or maintenance, but on the time by which an arrangement for payment of provision and maintenance should be concluded, namely, within the iddat period. If the provisions are so read, the Act would exclude from liability for post-iddat period maintenance to a man who has already discharged his obligations of both reasonable and fair provision and maintenance by paying these amounts in a lump sum to his wife, in addition to having paid his wife's mahr and restored her dowry as per [Section 3\(1\)\(c\)](#) and [3\(1\)\(d\)](#) of the Act. Precisely, the point that arose for consideration in Shah Banos case was that the husband has not made a reasonable and fair provision for his divorced wife even if he had paid the amount agreed as mahr half a century earlier and provided iddat maintenance and he was, therefore, ordered to pay a specified sum monthly to her under [Section 125 CrPC](#). This position was available to Parliament on the date it enacted the law but even so, the provisions enacted under the Act are a reasonable and fair provision and maintenance to be made and paid as provided under [Section 3\(1\)\(a\)](#) of the Act and these expressions cover different things, firstly, by the use of two different verbs to be made and paid to her within the iddat period, it is clear that a fair and reasonable

provision is to be made while maintenance is to be paid; secondly, [Section 4](#) of the Act, which empowers the magistrate to issue an order for payment of maintenance to the divorced woman against various of her relatives, contains no reference to provision. Obviously, the right to have a fair and reasonable provision in her favour is a right enforceable only against the woman's former husband, and in addition to what he is obliged to pay as maintenance; thirdly, the words of the Holy Quran, as translated by Yusuf Ali of mata as maintenance though may be incorrect and that other translations employed the word provision, this Court in Shah Banos case dismissed this aspect by holding that it is a distinction without a difference. Indeed, whether mata was rendered maintenance or provision, there could be no pretence that the husband in Shah Banos case had provided anything at all by way of mata to his divorced wife. The contention put forth on behalf of the other side is that a divorced Muslim woman who is entitled to mata is only a single or one time transaction which does not mean payment of maintenance continuously at all. This contention, apart from supporting the view that the word provision in [Section 3\(1\)\(a\)](#) of the Act incorporates mata as a right of the divorced Muslim woman distinct from and in addition to mahr and maintenance for the iddat period, also enables a reasonable and fair provision and a reasonable and fair provision as provided under [Section 3\(3\)](#) of the Act would be with reference to the needs of the divorced woman, the means of the husband, and the standard of life the woman enjoyed during the marriage and there is no reason why such provision could not take the form of the regular payment of alimony to the divorced woman, though it may look ironical that the enactment intended to reverse the decision in Shah Banos case, actually codifies the very rationale contained therein.



36. While upholding the validity of the Act, we may sum up our conclusions:

1) a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1)(a) of the Act.

2) Liability of Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to iddat period.

[Emphasis supplied]

24. The Supreme Court in the judgment of **Danial** (supra) has clarified that the divorced muslim woman shall be entitled to a reasonable and fair provision and maintenance to be paid to her. The emphasis of Section 3 is not on the nature or duration of any such provision or maintenance, but on the time by which an arrangement for payment of maintenance should be concluded namely, within the iddat period. Full Bench judgment in case of **Karim Abdul Rehman Shaikh vs. Shehnaz Karim Shaikh**, reported in **2000 Cri. LJ 3560 (Bom) (FB)** was considered by the Supreme Court in the judgment of **Danial** (supra).

25. A revision application filed under section 125 of the Criminal Procedure Code by the respondent no.1(wife) was opposed by the applicant (husband). The said application was accordingly rejected. The husband did not produce before the Magistrate Court and the Sessions Court, his salary certificate/details. The husband also filed additional affidavit dated 4 January 2023, before this Court. In paragraph No.26 of the affidavit, the husband stated that he is working in juice centre. However, it is not mentioned in the said affidavit the income/salary of the husband. While arguing the present Criminal Revision Application, the husband has produce document which according to him is salary certificate, wherein his salary is shown as Rs.15,000/-. As per Respondent No.1 (wife), the salary of Petitioner (husband) in the year 2011, would have been Rs.15,500/- as per the information available on the website of Indian Embassy, payable to a helper. According to them, as of today the minimum salary could be around Rs.55,000/-. Under the MPWA, there is no provision for enhancement of amount once granted under Section 3. On the date of passing of impugned order the amount payable by husband got crystallized, therefore, even in future if the divorce wife re-marries, it will not make a difference if the amount is payable in lumsun. The

difference would be only when the amount is payable monthly. Therefore, the amount of Rs.9,00,000/-, in my opinion is fair and reasonable.

26. It is nobody's case that the respondent no.1 (wife) has filed a separate application under the provisions of MWPA Act or under the provisions of section 125 of the Cr.P.C. against her second husband. The Applicant is paying only Rs.3,000/- per month as maintenance to the daughter of Respondent No.1, from the year 2014.

27. Both the Courts have recorded that the applicant (husband) has not produced the income proof. Therefore, without such documents before them they have arrived at the reasonable figure on the basis of some guess work in which I found no fault. Admittedly, as of date the entire amount payable under the impugned order has not been paid or deposited by the applicant. There is a protection order granted by this Court to the applicant.

28. Learned counsel for the respondent no.1 has submitted that after deposit of Rs.2 lacs in the executing court, the respondent no.1,

though tried seek circulation of the present matter so as to take it on the board. However, due to one or the other reason, the matter could not be heard and disposed off.

29. In the circumstances, I find no merit in the present Criminal Revision Application, and the same is dismissed.

30. The sum of Rs.2,00,000/- deposited by the Applicant, is immediately allowed to be withdrawn by Respondent No.1 (wife), along with accrued interest.

31. The Respondent No.1, is also granted liberty to file application for enhancement of maintenance amount to daughter 'Mehvish'. If such an application is preferred the same should be heard and disposed of on its own merits.

**[RAJESH S. PATIL, J.]**

32. At this stage, Ms.Kapadia, advocate appearing for the Applicant (husband) seeks stay to the execution of the order. The request has been opposed by Mr.Butala, advocate appearing for

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Respondent No.1 (wife). The request of Ms.Kapadia is accordingly rejected.

**[RAJESH S. PATIL, J.]**