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to maintenance if she



Under Muslim personal law, the husband's liability to maintain his divorced wife terminates after the expiry of Iddat even if she remains unmarried. But, under the Criminal Procedure Code, divorced wife is entitled to be maintained by her former husband beyond the period of Iddat provided she remains unmarried. However, a divorced wife's claim of maintenance is subject to Section 127(3) of the Act which provides that the order for the maintenance in favour of a divorced woman shall be cancelled, and such woman shall not be entitled to maintenance, under the following circumstances: (a) Where the divorced woman has remarried, (b) Where such woman has received the whole sum due to her on divorce under any customary or personal law, and (c) Where the woman, after obtaining divorce from her husband, has voluntarily surrendered her right to maintenance. It is interesting to note that the expression " she has received..... the whole of the sum which under any customary or personal law of the parties was payable on such divorce.....

" As provided in Section 127(3) (b) may be interpreted to mean that a divorced Muslim wife is not entitled to maintenance if she has obtained her dower and the maintenance during her Iddat. But, in Bai Tahira v. Ali Hussain, the Supreme Court held that a divorced Muslim wife is entitled to maintenance even if she has already received the whole amount due to her under her personal law. Briefly, the facts of this case were that Ali Hussain had married Bai Tahira in 1956 and a son was born to them. Tahira was living in one of the flats of her husband. In 1962 Ali Hussain divorced his wife Bai Tahira and transferred the ownership of the flat to his divorced wife in lieu of dower and maintenance during Iddat. Bai Tahira remained unmarried.

Some years later, she found herself in financial difficulties and filed a petition for her maintenance under Section 125 of the Criminal Procedure Code, 1973. The Magistrate ordered for a monthly maintenance allowance. Ali Hussain challenged this order on the ground that since she has already received maintenance during Iddat and also the 'whole sum due to her under personal law' (i. e.

dower) in the form of a house, she was not entitled to get any further allowance under the Criminal Procedure Code. The Bombay High Court decided in favour of the husband. Bai Tahira then made an appeal in the Supreme Court which restored the maintenance allowance granted by the Magistrate and reversed the judgment of the Bombay High Court. The Supreme Court held that irrespective of the amount settled as Mahr, a reasonable amount is always due to a Muslim wife for her maintenance.

The court observed that payment of Mahr money, as a customary discharge, is within cognizance of Section 127(3) (b) but until this (reasonable amount) is discharged the divorced woman continues to be entitled to maintenance under Section 125 of the Criminal Procedure Code, 1973. The Court further observed that wife's surrender of her right to dower does not in any way defeat her right under Section 125 of the Criminal Procedure Code, 1973 if she be entitled to it otherwise and has not remarried. The appeal was accordingly allowed and the Apex Court held that Bai Tahira was entitled to the maintenance allowance granted by the Magistrate. In Mohd.

Ahmad Khan v. Shah Bano Begum, the Supreme Court reiterated its stand and held that a divorced Muslim woman, so long as she has not remarried, is

a 'wife' for the purposes of Section 125 and is entitled to maintenance from her former husband. Quoting Ayats 241 and 242 of Quran the Supreme Court observed that Section 125 of the Criminal Procedure Code is not un-Islamic. Facts and the judgment of this much publicised leading case are given as under: Mohd. Ahmad Khan v. Shah Bano Begum: Facts: Mohd. Ahmad Khan married Shah Bano in 1932.

Two sons and three daughters were born to them. In 1975 Mohd. Ahmad drove away his wife Shah Bano out of the matrimonial home. Thereupon she filed a petition under Section 125 of the Criminal Procedure Code in the court of Judicial Magistrate, Indore asking for maintenance at the rate of Rs. 500 per month. In November 1978, Mohd. Ahmad Khan divorced his wife Shah Bano pronouncing irrevocable Talaq.

After her divorce, Shah Bano did not remarry. In defence to Shah Bano's petition for her maintenance, Mohd. Ahmed Khan took the plea that since she ceased to be his wife after Talaq; he has no obligation to maintain her. As regards the maintenance during Iddat (as required under Muslim personal law) and the payment of dower, his contention was that he had already paid the required maintenance to her at the rate of Rs.

200 per month for about two years -and that he had deposited Rs. 3, 000 in the court by way of dower. However, the Magistrate directed Mohd.

Ahmad Khan to pay a nominal amount of Rs. 25 per month to his divorced wife Shah Bano. Against this order of the Magistrate Shah Bano filed a revision application in the Madhya Pradesh High Court praying for the

enhancement of maintenance allowance. The High Court enhanced the maintenance rate to Rs. 179. 20 per month.

Mohd. Ahmad Khan preferred an appeal to the Supreme Court. The Supreme Court dismissed the appeal and confirmed the judgement of the High Court. Held: The Supreme Court held that clause (b) of Expl to Section 125(1) of the Criminal Procedure Code which defines 'wife' as including a divorced wife contains no words of limitation to justify the exclusion of Muslim women from its scope. The court observed that the right available under Section 125 is a statutory right and remains unaffected and also overrides the provisions of personal law if there be any conflict between the two. However, the court observed that there is no conflict between Section 125 and rules of Muslim law as regards the husband's liability to maintain his divorced wife. Section 125 deals with cases in which a person who is possessed of sufficient means neglects or refuses his wife (including divorced wife who had not married) who is unable to maintain herself.

The Muslim personal law, which limits the husband's liability to provide for the maintenance of divorced wife upto the period of Iddat, does not contemplate the situation envisaged by Section 125, i. e. whether or not the divorced wife is capable of maintaining herself. The true position is therefore, that 'if the divorced wife is able to maintain herself, the husband's liability to provide maintenance for her ceases with the expiration of the period of Iddat. If she is unable to maintain herself she is entitled to take recourse to Section 125 of the Code.' The court concluded that because of these reasons there is no conflict between the provisions of Section 125 and the rules of Muslim law. As regards Section 127(3)(b) under which the divorced wife

cannot claim maintenance if she had received the whole sum due to her under her personal law 'on divorce', the court held that Mahr is not the amount payable by husband to wife 'on divorce'. Mahr is given by husband to wife as a mark of respect towards her, therefore, it cannot be said that it is that amount which is payable on divorce.

One may settle a sum upon his wife as a mark of respect for her but he cannot divorce her as a mark of respect. Accordingly, the court held that Mahr does not fall within the meaning of Section 127(3)(b) and a divorced wife is entitled to claim maintenance even though she had already received the whole amount due to her by way of Mahr. Rejecting the plea taken by husband that provisions of the Criminal Procedure Code in respect of maintenance to divorced wife beyond the period of Iddat was un-Islamic, the Supreme Court held that these provisions are not un-Islamic. Quoting Ayats 241 and 242 of Sura II of the Holy Quran, the Supreme Court observed that these Ayats leave no doubt that the Quran imposes an obligation on a Muslim husband to make provisions for the divorced wife. Accordingly, the court held that Section 125 Criminal Procedure Code is not un-Islamic. It is significant to note that the Supreme Court's judgment in the Shah Bano's case had become a much debated verdict in the recent time.

A section of the Muslim community in India opposed this verdict as being against the Shariat and alleged that maintenance to a divorced wife beyond the period of Iddat is un-Islamic. Whereas the others among the Muslim community favoured this judgment being in accordance with Shariat and in the larger interest of Muslim women. The spate of arguments of the two groups in support of their stand and also the socio-political developments is

beyond the scope of this book and is being avoided. However, conceding to the demands of a section of the Muslim community, the Parliament enacted Muslim Women (Protection of Rights on Divorce) Act, 1986.