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Case Commentary: Mohd. Ahmed Khan vs Shah Bano Begum and Ors.

Prateek Saxena and Avnip Sharma

Mohd. Ahmed Khan vs Shah Bano Begum and Ors.

1985 AIR 945, 1985 SCR (3) 844

Bench:

Chandrachud, Y.V. ((C)), Desai, D.A., Reddy, O. Chinnappa (J), Venkataramiah, E.S. (J), Misra Rangnath

INTRODUCTION

Some sections of the society have faced brutality from time immemorial, Women are one such segment. "*Nastree Swatantramarhati*" said Manu, the lawgiver: Women do not deserve independence. And it is alleged that the 'fatal point in Islam is the degradation of women', fighting against such stereotypes and upholding the constitutional value of "Equality" is the case of "Shah bano begum" which dealt with the issue of maintenance to aggrieved Muslim women under Section 125 Cr.P.C¹. The various issues arose in the case of ***Mohd. Ahmed Khan vs. Shah Bano Begum and Ors***², are of common interest not only to Muslim women but, to all those who, aspire to create an equal society for both men and women and people who believe that mankind has achieved a remarkable degree of progress in this direction.

HISTORICAL BACKGROUND

From the time immemorial, the Muslim men are enjoying the privilege of being able to discard their wife whenever they chooses to do so, for reasons good, bad or indifferent. The orthodox Personal laws and Islamic legal commentaries have from time and again interpreted the *Holy Quran* in such a way, suppressing the rights of Muslim women making them weak and vulnerable, one such excerpt from *Mulla's Mohomedan* Law states that " After divorce, a Muslim woman is entitled to maintenance only during the iddat period", such propositions are a direct assault on the moral and legal rights of Muslim women. Further in order to remove the hardship faced by the women in general and to fight against the male-dominated society that, the

¹ Ratanlal & Dhirajlal, *The code of Criminal Procedure*(17ed. 2005)

² 1985 AIR 945, 1985 SCR (3) 844

joint committee recommended that the benefit of the provision regarding maintenance under Section 488 of the code of 1898 be, extended to a divorced woman, as long as she has not remarried after the divorce. But, despite all such developments in legal history, the Muslim orthodox society is still resistant to such changes.

FACTS

Mohd. Ahmed Khan (Appellant), who is an advocate by profession, was married to Shah Bano Begum (Respondent) in 1932. Two daughters & three sons were born of that marriage. In 1975, the appellant drove the respondent out of the matrimonial home. In April 1978, the respondent filed a petition against the appellant under section 125 of the code of criminal procedure in the court of learned judicial magistrate (first class), Indore seeking maintenance at the rate of Rs 500 per month. On November 8, 1978, the appellant divorced the respondent by an irrevocable *talaq*. his defense for the respondent's petition for maintenance was that she had ceased to be his wife by reason of the divorce granted by him, and was therefore under no obligation to maintain her, that he had already paid her maintenance at the rate of Rs 200 per month for about two years and that, he had deposited a sum of Rs 3000 in the court by way of dower during the period of the *iddat*. August 1979 the learned magistrate directed the applicant to pay a princely sum of Rs 25 per month to the respondent by way of maintenance. It may be mentioned that the respondent has alleged that the appellant earns a professional income of about Rs 60,000 per year. In July 1980, in a revision application filed by the respondent, the high court of Madhya Pradesh enhanced the amount of maintenance to Rs. 179.20 per month. The husband by special leave appealed before the Division Bench which further refers this appeal to a larger bench by an order dated 03.02.1981.

ISSUES

- Whether a Muslim divorced wife is a wife for the purpose of 125 Cr.P.C?
- Whether there is any conflict between the provisions of section 125 Cr.P.C and those of the Muslim Personal Law on the liability of the Muslim husband to provide for the maintenance of his divorced wife?

- Whether section 125 Cr.P.C overrides the Muslim Personal Law if there is any conflict between the two?
- Whether the respondent's application under section 125 Cr.P.C is liable to be dismissed because of the provision contained in section 127(3) (b) of Cr.P.C?

JUDGMENT

- Muslim divorced wife is a wife for 125 Cr.P.C- Clause (B) of the explanation to section 125(1) which defines "wife" as divorced women who have not remarried and it nowhere contains any words of limitation to justify the exclusion of Muslim women from its scope, Section 125 is truly secular in nature.
- There is no conflict between the provisions of 125 Cr.P.C and those of Muslim personal law on husband's liability to provide for the maintenance of divorced women unable to maintain herself- If the divorced women 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 Cr.P.C, and the husband is bound to maintain herself even after the expiration of the "iddat" period.
- Section 125 Cr.P.C overrides the Muslim personal law if there is a conflict between the two- The court held that-" A Muslim men can have as many as four wives at the same time but not more when he marries a fifth wife when he has already four, the marriage is not void, but merely irregular". This explanation confers upon the wife the right to refuse to live with her husband if he contracts another marriage, leave alone 3 or 4 other marriages.
- The payment of Mehar by the husband on divorce is not adequate to exculpate him of any obligation to pay maintenance to the wife- Justice Krishna Iyer in *Bai Tahira V. Ali Hussain Fidaalli Chothia*³ held that "The payment of illusory amounts (referring to 'Mehar') by way of customary or personal law requirement is to be considered within the reduction of maintenance rate but cannot annihilate that rate unless it's a reasonable substitute." The SC in this case held "There is no escape from the conclusion that a divorced Muslim wife is entitled to apply for maintenance

³ 1979 SCR (2) 75, 1979 AIR 362

under section 125 and that, Mehar isn't a sum which, under the Muslim Personal Law, is payable on divorce."

ANALYSIS

- That Muslims are protected under section 125 of the Law. Referring to Section 125 of the Code, the Court stated: "In the scheme of these provisions, the religion professed by a spouse or by the spouses has no place. If the partners are Hindus or Muslims, Christians or Parsis, pagans or heathens, the interpretation of this clause is entirely meaningless. The explanation for this is axiomatic, in the sense that Section 125 is part of the Criminal Procedure Code, not of the Civil Laws specifying and regulating the rights and duties of the parties belonging to different faiths, such as the Hindu Adoptions and Maintenance Act, the Shariat, or the Parsi Matrimonial Act.
- Whether there is any conflict between the provisions of Section 125 and those of the Muslim Personal Law regarding the Muslim husband's liability to provide for his divorced wife's support. The true condition is that if the divorced wife is willing to maintain herself, the husband's duty to provide care for her ends with the expiry of the iddat term. If she cannot sustain herself, she is entitled to resort to Section 125 of the Code. The consequence of this debate is that there is no inconsistency between the terms of Section 125 and those of the Muslim Personal Law on the issue of the duty of the Muslim husband to give assistance to a divorced wife who is unable to sustain or maintain herself.
- "There is no ambiguity in it that a divorced Muslim woman has an equal right to claim maintenance under Section 125 and that Mehr is not a sum payable on divorce under Muslim Personal Law. That the Muslim Personal Law provides for any clause in which an amount is payable to the wife 'on divorce'-Referring to the views expressed by the learned scholars (Mulla, Tyabji and Paras Diwan), the Court concluded that "*These statements in the textbook are inadequate to establish the assumption that the Muslim husband is not obliged to provide for the maintenance of his divorced wife, who is unable to maintain herself.*" "The amount deposited through Mehr is usually required to take care of the wife's ordinary requirements, during and after the marriage.

AFTERMATH

The judgment given in Shah Bano's Case was largely criticized among Muslims, especially by the Muslim jurists because according to them this decision was in direct conflict with the rules of "Quran" and "Islamic Laws/ Islam". So in order to satisfy the Muslim population, Parliament of India in 1986, (Under the leadership of Rajiv Gandhi government) decided to enact the Muslim women (Protection Of Rights Of Divorce) Act, 1986. The so called objective of this act was to protect the right of the divorced Muslim women i.e. those who have got divorce from their husband's and vice-versa.

The enactment of this act was done by the congress government, to nullify the decision/decreed passed by Supreme Court in Shah Bano's Case. According to this act,

- Muslim divorced women would be entitled to adequate and reasonable amount of maintenance only during the Iddat period.
- When a divorced woman gives birth to a child whether before or after divorce, the husband is under legal obligation to provide a certain amount of maintenance to the child for a period of 2 yrs, from the birth date of a child.
- The women is also authorized to obtain "Mahr" or "dower" and can claim all the properties or estate which is provided to her by her parents, friends, relatives, husband or husband's friends. If such possessions are not received by the divorced Muslim women from her former husband, she can approach to magistrate for ordering him to provide her with maintenance/alimony or amount of "Mahr" or dower or her estate or properties.
- The validity of the Muslim Women Act was challenged in *Danial Latifi & Anr v. Union of India*⁴ which held that "the husband has to provide maintenance till the wife remarries and not just limit it to the *Iddat* period"

CONCLUSION

The Shah Bano judgment although attracted a lot of opposition was according to be a landmark judgment because the Supreme Court even though dirty politics passed the verdict that was impartial and that had maintained the trust and faith of citizens in the judiciary. The

⁴ CW. 868, 1986 SC (Mohd. Ahmed Khan v. Shah Bano Begum, 1985)

case had spurred the debate in India on the Uniform Civil Code, and enormous pressure was exerted by radical orthodox Muslim organizations as according to them it was against the provisions of Islamic law and teachings. This judgment has marked the significance of maintenance which ought to be given to the divorced Muslim women and they should not be thrown on the streets without the roof over their heads and without any means of sustaining themselves and their children. This case will be marked in the history of the Indian judiciary as in this case, "Justice and equality has overcome religion". According to me this lawsuit was without any ambiguity a milestone in the judiciary as it was courageous, bold, and impartial and in a true sense a unique decision.