

Secretary, Tamil Nadu Wakf Board and Another

Vs

Syed Fatima Nachi

Criminal Appeal No. 687 of 1996

(M. M. Punchhi, Mrs. Sujata V. Manohar JJ)

09.07.1996

JUDGEMENT

PUNCHHI, J.:-

1.Special Leave granted.

2. The Secretary of the Tamil Nadu Wakf Board, Madras, and the Superintendent of Wakfs, Tirunelveli, the appellants herein, are aggrieved against an order of the High Court of Madras, dated 16-3-1994 in CrI. O.P. No. 3557/93 declining to interfere and quash a proceeding in M.C. No. 11/92 pending on the file of the Court of the Judicial Magistrate, Tiruchendur, in which the respondent - Syed Fatima Nachi - is claiming maintenance as the applicant.

3. The respondent is a Muslim divorced wife. She filed a petition against the appellants under Section 4(2) of the Muslim Women (Protection of Rights of Divorce) Act, 1986 (for short 'the Act') seeking maintenance at the rate of Rs.750/- per mensem. The petition was found on the facts that she was married to one Syed Ahmed Moulana on 10-6-1980 in accordance with the tenets of Muslim Law and out of the wedlock, she had procreated female twins on 6-4-1981. Her husband divorced her on 12-6-1986 and since then she has not remarried. Claiming that the respondent had no income or means to maintain herself, as well as her minor female children, none of them owning any property, she was, thus, unable to maintain herself and required intervention of the Court in providing her a suitable sum for maintenance. She claimed that she had earlier been leading a good life as a married woman but after divorce, was in dire straits and in suffering. She claimed that under the Mohammedan Law, a Muslim woman, in such circumstances, can get maintenance from her prospective heirs. According to her, a host of relatives as given in the Act as well as under the Mohammendan Law are responsible to provide maintenance to her and if those are unable to do so, the claim of maintenance must be met by the Wakf Board. It was also maintained that neither her prospective heirs nor her parents were in a position to provide maintenance to her and thus there lay a bounded duty on the Wakf Board to that effect; hence claim of Rs.750/- per mensem.

4. Instead of facing the petition on merit to its logical end, the appellants, who were the only respondents in that petition, moved the High Court of Madras praying for quashing of proceedings in exercise of its diverse powers under the Code of Criminal Procedure, but the High Court declined to do so. They have, in turn, approached this Court for the same purpose, basing their claim on the same grounds as before the High Court.

5. The Parliament enacted the Act to undo the effect of a Constitution Bench decision of this Court in *Mohd. Ahmad Khan v. Shah Bano Begam*, (1985) 2 SCC 556 : (AIR 1985 SC 945) because the said decision was strongly opposed to by a sizeable section of the Muslim Community. The Act, as the Preamble suggests, came to protect the rights of Muslim women who have been divorced by, or obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto. The brief text of the Act embodies the all important Section 4 whereunder orders can be made for payment of maintenance. The said provision is reproduced hereunder :-

"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 her 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 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". [Emphasis supplied]

6. A bare reading of the provision shows that a divorced woman is entitled to claim a reasonable and fair maintenance from such of her relatives as would be entitled to inherit her property on her death according to Muslim Law, provided she has not re-married and is not able to maintain herself. Such

maintenance, however, shall be payable by such relatives in proportion to the share which they would inherit in her property and at such periods as the Magistrate may specify in his order. If the divorced woman has children, the first proviso to sub-section (1) of Section 4 mandates that the liability to maintain her firstly lies on them. In the event of her children being unable to maintain her, the liability shifts to her parents under the same proviso. The liability of the relatives other than the children and the parents, follows sequentially, subject to the conditions as embodied in the proviso. The liability of the relatives does not depend on the contingency that the divorced woman has property which they would inherit. It looks incongruous though that a divorced woman having property would yet be unable to maintain herself. Seemingly, the phraseology has been employed to ascertain firstly such of those relatives who could have inherited her property, fictionally on the basis that she could be having property, and secondly as if she had died on the date when the need for identification arose. The speculative plea of any relative that he or she may not be available to be an heir on the date when the divorced woman would actually die, would neither be here nor there. Climbing down, if the divorced woman has no relatives as mentioned in sub-section (1) or relatives who have not enough means to pay her maintenance, the State Wakf Board functioning in the area, in which the divorced woman is resident, has been foisted with the liability to pay suitable maintenance to her, on the Magistrate's order and/or direction.

7. We have taken care to underline and emphasise certain words in the text of Section 4 (supra). As is evident, there are more than one orders which are contemplated or conceived of, to be passed by the Magistrate in the morass of fluctuations, depending upon the existence of children, parents and the heirs and their capability or inability of making payment of maintenance and as to its proportions. The State Wakf Board comes at the bottom of the list to shoulder the onus of payment of maintenance. The scheme of the provision is, in a manner, unique in character, in grading down the responsibility of payment of maintenance from one to the other and finally coming to rest on the State Wakf Board, which is the last in line to bear the burden.

8. The appellants would have us hold that sub-sections (1) and (2) of Section 4 are mutually exclusive and the separate language employed therein to cover different situations, breeds further exclusivity, as it is contemplated, that orders after orders might have to be passed by the Magistrate in the pursuit to grant the divorced wife maintenance. It has been vehemently argued on behalf of the appellants that unless sub-section (1) of Section 4 gets exhausted by proper orders, sub-section (2) of Section 4 (in which the liability of the State Wakf Board is to be found) cannot be invoked. In other words, it is contended that in the present set of proceedings, the appellants cannot be made to face or litigate about before the Magistrate trying the matter. We regretfully do not agree to such line of thinking. The appellants would have us hold that the provision concedes multiplicity of proceedings, broadly in the following manner : (1) the proceedings shall in the first instance be initiated against the children of the divorced woman; (2) if the children are unable to pay maintenance then the second proceedings shall be initiated against the parents of the divorced woman; (3) if the parents or any one of them is unable to pay the respective share of maintenance then fresh proceedings be started against the relatives; (4) in case the relatives are unable to meet the claim of maintenance, fresh proceedings be initiated against "other relatives"; and (5) finally, when no relative exists as mentioned in sub-section (1) or such relatives or any one of them unable to pay maintenance then another set of proceedings be initiated against the State Wakf Board; all backed by the orders of the Magistrate. And since the State Wakf Board comes last, it is maintained that its turn instantly has not yet arrived because no proceedings have been initiated against the relatives.

9. Going by the arguments and the reasoning adopted by the appellants, it would, in our way of thinking, have a devastating effect on the purpose for which the provision was enacted. The

Drafter's pattern in sub-dividing the provision into sub-sections (1) and (2) evidently was not to cause any split in the legislative theme because the provision, as it appears to us, is an integrated whole. One step is dependent on another. It is futile for a divorced woman seeking succour to run after relatives, be it her children, parents, relatives or other relatives, who are not possessed of means to offer her maintenance and in fighting litigations in succession against them, dragging them to courts of law in order to obtain negative orders justificatory to the last resort of moving against the State Wakf Board. In our considered view, she would instead be entitled to plead and prove such relevant facts in one proceeding as to the inability of her relations aforementioned, maintaining her and directing her claim against the State Wakf Board in the first instance. It is, however, open for the State Wakf Board to controvert that the relations mentioned in the provisions, or some of them, have the means to pay maintenance to her. In that event the Magistrate would perfectly be justified in adding those relatives as parties to the litigation in order to determine as towards whom shall he direct his orders for payment of maintenance. In one and the same proceeding, one or more orders conceivably can be passed in favour of the divorced woman, subject of course to her not remarrying and remaining unable to maintain herself. We hold accordingly.

10. We are thus satisfied that the High Court committed no wrong in declining to interfere at the initial stage of the proceedings at the behest of the appellants. They are at liberty to take before the Magistrate hearing the matter, such offences as are open to them on the merit of the matter and within the framework of the legislative scheme embodied in Section 4 of the Act.

11. Before parting with the judgment, it need be taken into account that notice to the respondent was issued, subject to the appellant depositing a sum of Rs.10,000/- in this Court, irrespective of the result of this case, for the benefit of the respondent, to obtain it and defray the litigation expenses. The respondent, in turn, did not engage a counsel but despatched a letter to this Court, praying that some counsel be arranged by the Court to represent her and that she be remitted the said sum of Rs.10,000/-. In such a situation, we had appointed Mr. Uday Umesh Lalit, learned counsel as an amicus curiae to assist us in the matter on her behalf. We had the advantage of his able assistance in appreciating this matter. In our view, he deserves a remuneration of Rs.3,000/-. The Registry is directed accordingly, to make payment to Mr. Lalit out of the sum deposited. The balance sum of Rs.7,000/- be remitted to the respondent as succour, to tide over her financial difficulties, which is ordered not to be taken into account or reckoned in determining any claim for maintenance.

12. For the afore reasons, this appeal is dismissed. Appeal dismissed.