

IN THE FAMILY COURT MUMBAI AT BANDRA

PETITION NO. E 119 OF 2013

Firdos Mohd. Shoeb Khan .. Petitioner

Vs.

Mohd.Shoeb Mohd.Salim Khan .. Respondent

ORDER BELOW EXH.27

1. This is an application moved by petitioner Firdoz Mohd. For grant of maintenance from her husband Mohd.Shoeb, during the pendency of petition for grant of maintenance u/s 125 of Cr.P.C. It is submitted by the petitioner that at the time of Nikah Meher amount of Rs.14 lakhs was fixed, yet said amount was not paid by the respondent. Throughout their cohabitation at the matrimonial house the respondent and his family members had illtreated her, harassed her physically and mentally for bringing less dowry. The respondent and his family members had demanded more Rs.50 lakh as dowry and gold ornaments, Mercedes Benz Car etc. from her parents. Due to demand of dowry the petitioner was forced to live separately from April 2011, since then she is residing with her parents. She has no source of income and she is totally depend upon the mercy of her parents. The respondent is capable to pay maintenance to her but he has neglected and refused to pay maintenance.

2. The respondent is a successful businessman, his family is business family. The respondent alongwith his family members was doing business not only in India but also in Dubai and other countries. They are running their business jointly and earning the income more than Rs.15 lakh per month. The respondent and family members were having property at Mumbai, Bangalore, Dubai and other places. The respondent is having six companies, 20 bank

accounts at Mumbai, Dubai and Bangalore. His younger brother is working at London, his two siblings are in family business. The respondent is travelling abroad for garment business work. Considering the status of her husband she prayed for grant of maintenance @ Rs.2 lakhs per month.

3. The respondent has filed his reply below Exh.29. According to him, the petitionerwife is not entitled to get maintenance as she is not legally wedded wife. The marriage between petitioner and respondent was dissolved by way of Talaq on 7.09.2014. Secondly, the petitioner is well qualified having good experience and good income therefore, she is not entitled for grant of maintenance. The petitioner has given false address before this Court, actually all earlier communication was made on the address of ancil Tower, New Mill Road, Kurla.

4. The petitioner is living luxurious life, she has huge investment including over rs.1 crores worth of gold and diamond jewellery hidden in separate locker. She is flying international destination at least thrice every year for 15 to 30 days. The petitioner is graduate and working independently in a prime institute likely Nair hospital, Larsen & Tubro etc. Presently she is practicing as a dietitian. Her income is not less than Rs.50,000/per month. She is having sufficient means from her own source, on that count also she is not entitled for grant of maintenance hence, respondent prayed for rejection of application.

5. Heard learned counsel for petitioner and respondent. It is argued by the learned counsel for respondent that on 7.9.2014 their marital tie was dissolved as he had given talaq to her therefore, petitioner has lost the status of wife and being divorcee Muslim wife she is not entitled to get maintenance from the respondent. The Mohd. Law is drastically changed in a recent era. Now a days a Muslim woman who is divorcee or who obtained divorce from her husband is entitled to get maintenance from her husband till she gets

remarried. Apart from this, Section 125 of Cr.P.C., itself has given definition of 'wife' which includes divorcee wife. Section 125 explanation (b) read as under :*(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.*"

6. The above clause clearly shows that the wife though divorcee is entitled to get maintenance from her husband and divorcee wife is included by Legislature in the definition of wife for the purpose of maintenance. The Law in respect of maintenance of Muslim wife is day by day changing. First time in the case of Shabana Banoo Vs. Inbram Khan, reported in I (2010) D.M.C. 37, (SC), the Hon'ble Supreme Court has held that the Muslim Divorcee wife is entitled to get maintenance from her husband.

7. While dealing with the case of Parveen Rao Vs. State of Utterakhand and another, reported in I (2013) D.M.C., 743, the Hon'ble Utterakhand High Court in para No.12 held that,

"In view of proposition of law laid down in aforesaid precedent, it is abundantly clear that the Muslim woman cannot be forced to claim maintenance under the Act only. She is well entitled to claim maintenance u/s 125 of Cr.P.C. irrespective of fact whether she has been divorced or not provided she has not remarried herself."

8. In the anvil of above legal position it is clear that the Muslim woman who is either divorcee or who obtained divorce entitled to get maintenance till her remarriage. In such circumstances the story brought by respondent that on 7.09.2014 talaq took place between them does not affect the right of petitioner to claim maintenance. The story brought by the respondent that on 7.9.2014 he had given talaq to her is the subject matter of evidence and it can be proved during the course of proceeding but at this stage, the status of respondent cannot be denied. She is having status of wife

which is required u/s 125 of Cr.P.C., may be or may not be she is divorcee or non divorcee wife but she is entitled to get maintenance from her husband. Secondly, making story that the husband has given divorce to wife itself entitles the wife for seeking relief of maintenance. When the husband is coming with the case that he has already given divorce and wife is denying the same, then certainly this act comes under the purview of cruelty which entitle the petitioner for seeking relief.

9. It is argued by learned counsel for petitioner that respondent is owner of (i)Khwaja Exports Pvt.Ltd.,(ii) Khan Holdings Pvt.Ltd.(iii)Keygien Textile Industries Pvt.Ltd.(iv) Keygien Global Ltd.(v)Radium Garments Pvt.Ltd. And (vi) MSK Technology Solutions Pvt.Ltd. The petitioner has placed on record the internet output documents respondent is managing director/directors of above stated company. The respondent is joined Keygien Global Ltd. on 26.3.2001, he had joined Keygien Textile Industries Pvt.Ltd. On the same day. He was joined the Khan Holdings Pvt.Ltd. On 25.3.2001. The companies joined him at similar period. A single document is not placed on record to show the net income getting by respondent from above company. The petitioner has given list of the bank accounts hold by respondent and his family. The respondent is holding bank account before HSBC, DIB, ADID (two accounts), S.B.I., Oriental bank of commerce (three accounts) and she has given account nos. She had also given the details of bank account hold by respondent's family, in all total she had provided list of 20 bank accounts. Either of the parties has not placed on record a single bank account statement or passbook issued by Bank.

10. It is admitted position that the respondent and his family members are connected with five companies namely (i)Khwaja Exports Pvt.Ltd.(ii) Keygien Global Ltd.(iii)Radium Garments Pvt.Ltd.(iv) Khan Holdings Pvt.Ltd. The letter issued by P.L. Babaria & Associates Chartered Accountant dated

19.12.2014 shows that the respondent is having 500 share in Khawaja export Pvt.Ltd. Having paid value of rs.5,000/. In other companies he have no share. The above stated Chartered account also certified that in the year 201112 the income of respondent was rs.1,50,670/, in the year 201213 it was Rs.1,81,844/, in 201314 rs.2,00015,/, and in the year 201415 his income was rs.2,10,013/. The income tax returns filed alongwith record shows same story.

11. The statement made by the parties in their earlier proceeding is admissible statement. It appears from the record that the respondent has filed reply to the application of petitioner before 29th Court M.M.Dadar, Mumbai in case No.25/RA/2012 N 372/2012 relating to Cr.No.367/2011. In her reply she had stated as follows :

I would further like to bring it to your notice that my husband Mohammed Shoeb Khan has not travel out of India. Since August 2010 for any purpose (i.e. not even for business nor for Umrah).

12. The statement made by the petitionerwife clearly shows that the respondent never went to abroad since 2010. Similarly in the same application she had stated that, "I would further like to inform you that my husband has been residing in Dubai since 1992 (for 16 years) he holds property in Dubai and reissued Passport of Dubai and he has no property in Mumbai and elsewhere in India and he merely holds 500 shares of value Rs.10 (5000 Rs.) in his Garment business". The above statement made by petitioner support the version of respondent as well as C.A.,of respondent that respondent is holding only property worth Rs.5,000/ in Khawaja Export Pvt.Ltd.

13. In respect of the allegations made by the petitioner in her application filed before M.M., that he is having property at Dubai. Said version if taken into consideration then also she had not filed single

documentary evidence to establish above fact. The petitioner has not taken pain to file the memorandum and article of association of company which shows real pictures. The petitioner has not asked the respondent to file the memorandum of his company or memorandum of companies hold by his family. The copies of article of association and memorandum is easily available before the Competent authority.

14. The respondent is submitting that he is earning meagre amount and he is residing on leave and license basis. The respondent has filed on record leave and license deed dated 20.10.2014. Said leave and license agreement is not challenged by the petitioner. It is further argued by the learned counsel for petitioner that the respondent and his family members are doing business and they are earning an amount of Rs.15 lakh per month. The respondent has moved an application for travelling abroad before M.M. Dadar, in criminal case No.1067/PW/2012. In the said application para No.3 the respondent has submitted that he is businessman and he had registered office at Shivri and factory at Bangalore. He is doing business of export of readymade garment to the Gulf countries. In connection with business he is required to travel abroad. In para 6 of that application he further stated that he has come from business family and he has deep root in the society, his family is respectable family. The application for return of passport filed before M.M. Dadar, at the hands of respondent shows that the respondent himself has stated that he was going to London from Bangalore for business deal as his factory is situated at Bangalore. He is engaged in garment factories and required to go abroad in connection with his business. The above statements made by petitioner and respondent are the admissions given by them.

15. The petitioner has admitted that respondent have no property except worth Rs.5,000/in India but at the same time she tried to affirm that respondent is having property at Dubai. The statements made by petitioner as

well as the statement made by respondent that he is having office at Mumbai and factory at Bangalore, he used to travel abroad for garment business purpose shows that the parties have affirmed some facts by way of this admission. Admittedly the respondent and his family are connected in garment business. To show details of share no factory details, account statement of factory or memorandum and article of factories are not placed on record. The above admissions given by both the parties come under the purview of Section 17 of Indian Evidence Act which suggests the existence and non existence of economic affairs of both the parties. Once the fact is affirmed by the parties to the proceeding subsequently the parties are not entitled to change their view as per the evidence act admission operates estoppel.

16. The learned counsel for respondent has argued that the petitioner is well qualified and she is earning an amount of Rs.50,000/per month, she is having sufficient income for her maintenance. It is argued by the learned counsel for respondent that before the police station Worli on 12.11.2011 the petitioner has given statement u/s 161 of Cr.P.C. The petitioner has admitted that she has completed degree in Food and Science Nutrician, she had worked as a dietician, she is Post Graduate in Dietician field, she had also worked with Larcen and Tubro etc. but at present she is not working. The above statement made by the petitioner clearly shows that she is well qualified and able to do job. The respondent though submitted that she is having huge investment in crores of rupees but nothing is placed on record. It is clear from the statement of petitioner that petitioner is well qualified having capacity to earn. The Hon'ble Madhya Pradesh High Court in the case of "Mamta Jaiswal Vs. Rajesh Jaiswal held that well qualified wife is not entitled to remain as an idle and claim maintenance from her husband. In short, the wife is not entitled to advantage of her own wrong, she cannot harass the husband on the count of maintenance though she is capable to earn. In the present case in hand, the

petitionerwife is very qualified, she has worked with various companies. This admitted by herself, now she is claiming that she is a housewife, having no source of income. The wife who is well qualified and claiming maintenance by sitting idle is not entitled to get maintenance, secondly she herself has admitted that though her husband is connected with garment business but he has share worth rs.5,000/only. Considering the above circumstances, it is clear that the wife is having good capacity to earn. According to respondent, she is earning but no any documentary evidence is on record that she is earning. Nothing is on record to prove the income of respondent at this primary stage. In such circumstances, in my view, at this juncture petitioner is not entitled to get maintenance. Hence I pass the following order :

ORDER

1. The application is rejected.

Sd/20.2.2015
(S.A. Morey)

Dt: 20th February, 2015.

Judge,
Family Court No.7, Mumbai.