"The talaq to be effective has to be pronounced."

[Case Brief] Shamim Ara Vs. State of U.P. & Anr.

Case Name: Shamim Ara Vs. State of U.P. & Anr.

Case Number: Criminal Appeal No.- 465/1996

Bench: R.C. LAHOTI & P.VENKATARAMA REDDI.

Decided on: 01/10/2002

Relevant Act/Sections: Section 125 Cr.P.C., Muslim Women (Protection of Rights on Divorce) Act, 1986

BRIEF FACTS AND PROCEDURAL HISTORY:

1. Shamim Ara, the appellant and Abrar Ahmad, the respondent no.2 were married some time in **1968** according to Muslim Shariyat Law. Four sons were born out of the wedlock. On **12.4.1979**, the appellant, on behalf of herself and for her two minor children, filed an application under Section 125 Cr.P.C. complaining of desertion and cruelty on the part of respondent no.2 with her.
2. By order dated **3.4.1993** the learned Presiding Judge of the Family Court at Allahabad refused to grant any maintenance to the appellant on the ground that she was already divorced by the respondent and hence not entitled to any maintenance. However, maintenance at the rate of Rs.150/- per month was allowed for one son of the appellant for the period during which he remained a minor; the other one having become major during the pendency of the proceedings.
3. The respondent no.2 in his reply (written statement) dated **5.12.1990**, to the application under Section 125 Cr.P.C., denied all the averments made in the application. One of the pleas taken by way of additional pleas is that he had divorced the appellant on **11.7.1987** and since then the parties had ceased to be spouses. He also claimed protection behind the Muslim Women (Protection of Rights on Divorce) Act, 1986 and submitted that the respondent no.2 had purchased a house and delivered the same to the appellant in lieu of Mehar (Dower), and therefore, the appellant was not entitled to any maintenance.

4. The appellant emphatically denied having been divorced at any time. The respondent no.2 stated having divorced the appellant on **11.7.1987 at 11 a.m.** in the presence of Mehboob and other 4-5 persons of the neighbourhood. He further stated that **since 1988** he had not paid anything either to the appellant or to any of the four sons for their maintenance. The divorce said to have been given by him to the appellant was a triple talaq though such a fact was not stated in the written statement.
5. The Family Court in its order dated **3.4.1993** held that from the affidavit the plea of the respondent no.2 found corroboration of his having divorced the appellant. The learned Judge concluded that the appellant was not entitled to any maintenance in view of her having been divorced.
6. The appellant preferred a revision before the High Court. The High Court held that the divorce which is alleged to have been given by the respondent no.2 to the appellant was not given in the presence of the appellant and it is not the case of the respondent that the same was communicated to her. But the communication would stand completed on **5.12.1990** with the filing of the written statement by the respondent no.2 in the present case
7. Therefore, the High Court concluded that the appellant was entitled to claim maintenance from 1.1.1988 to 5.12.1990 whereafter her entitlement to have maintenance from respondent no.2 shall cease. The figure of maintenance was appointed by the High Court at Rs.200/-.

ISSUES BEFORE THE COURT:

1. Whether the appellant can be said to have been divorced and the said divorce communicated to the appellant so as to become effective from 5.12.1990, the date of filing of the written statement by the respondent no.2 in these proceedings.

RATIO OF THE COURT:

1. The court observed that no such text has been brought to their notice which provides that a recital in any document, whether a pleading or an affidavit, incorporating a statement by the husband that he has already divorced his wife on an unspecified or specified date even if not communicated to the wife would become an effective divorce on the date on which the wife happens to learn of such statement contained in the copy of the affidavit or pleading served on her.

2. The court also cited Mulla and refered the case of A.P. High Court in (1975) 1 APLJ 20 where the court is in support of the proposition that the statement by husband in pleadings filed in answer to petition for maintenance by wife that he had already divorced the petitioner (wife) long ago operates as divorce.
3. It later disagreed with the view propounded in the decided cases referred to by Mulla and Dr. Tahir Mahmood in their respective commentaries, wherein a mere plea of previous talaq taken in the written statement, though unsubstantiated, has been accepted as proof of talaq bringing to an end the marital relationship with effect from the date of filing of the written statement.
4. The court stated that the term 'pronounce' means to proclaim, to utter formally, to utter rhetorically, to declare to, utter, to articulate.
5. The court held that a mere plea taken in the written statement of a divorce having been pronounced sometime in the past cannot by itself be treated as effectuating talaq on the date of delivery of the copy of the written statement to the wife.

DECISION HELD BY COURT:

1. It also added that a plea of previous divorce taken in the written statement cannot at all be treated as pronouncement of talaq by the husband on wife on the date of filing of the written statement in the Court followed by delivery of a copy thereof to the wife.
2. The court allowed the appeal and held that neither the marriage between the parties stands dissolved on 5.12.1990 nor does the liability of the respondent No.2 to pay maintenance comes to an end on that day.