



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2559 OF 2024

1. Tanveer Ahmed s/o Sadik Patel
Age: 30 years, Occu.: Private Service,
R/o.203, Shirin Apartment, Shivaji Nagar,
Jalgaon, District Jalgaon,
Presently residing at Main Road,
Shrinidhi.
2. Sadik Ahamad s/o Ibrahim Patel
Age: 59 years, Occu.: Retired
R/o.203, Shirin Apartment, Shivaji Nagar,
Jalgaon, District Jalgaon.
3. Zohra w/o Sadik Patel
Age: 51 years, Occu.: Service,
R/o. 203, Shirin Apartment,
Shivaji Nagar, Jalgaon,
District Jalgaon.

.. Applicants

Versus

1. The State of Maharashtra
Through its Police Inspector,
Bhusawal Bazar Peth Police Station,
District Jalgaon.
2. Bushra d/o Feroz Abdul Salam Deshpande
Age: 28 years, Occu.: Private Service,
R/o. Ekta Colony, Green Park Gate,
Galli No.1 Behind Dr. Izhar Hospital,
Khadke Road, Bhusawal, Dist. Jalgaon.

.. Respondents

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Mr. S. S. Kazi, Advocate for the applicants.
Mr. A. D. Wange, APP for respondent No.1/State.
Mr. Shaikh Mohammad Naseer A. and Mr. Shaikh Mudassir Abdul Hamid,
Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

**RESERVED ON : 13 MARCH 2025
PRONOUNCED ON : 23 APRIL 2025**

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed initially for quashing the FIR vide Crime No.124 of 2024 dated 15.04.2024 registered with Bhusawal Bazar Peth Police Station, District Jalgaon and later on, by way of amendment, for quashing the proceedings in Regular Criminal Case No.1156 of 2024 pending before the learned Judicial Magistrate First Class, Bhusawal for the offences punishable under Section 4 of Muslim Women (Protection of Rights on Marriage) Act, 2019 (hereinafter referred to as “the said Act”) and under Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. S S. Kazi for the applicants, learned APP Mr. A. D. Wange for respondent No.1/State and learned Advocate Mr. Shaikh Mohammad Naseer A. for respondent No.2.

3. Learned Advocate appearing for the applicants submits that applicant No.1 is the son of applicant Nos.2 and 3. Applicant No.1 got married to respondent No.2 as per Muslim rites and customs on 31.10.2021 at Bhusawal, Jalgaon. Respondent No.2 and applicant No.1 resided with applicant Nos.2 and 3 at Jalgaon for about two weeks thereafter and then they went to Belapur, Navi Mumbai, where applicant No.1 was serving. Since November 2021 to April 2022 they resided there. Thereafter, as respondent No.2 was pregnant, she went to her father’s house at Bhusawal and then applicant No.1 took her to hospital

at Khargar on 26.04.2022 for checkup. Respondent No.2 was advised to undergo Sonography. It was found that there was bleeding to respondent No.2 and taking into consideration her health condition, applicant Nos.2 and 3 as well as the father of respondent No.2 were called. Father of respondent No.2 took her on 28.04.2022 to Bhusawal. The gynecologist at Bhusawal advised 15 days bed rest to respondent No.2. Respondent No.2 without taking the opinion of the applicants, as per the advise of another doctor, terminated the pregnancy. On 17.06.2022, respondent No.2 and her brother met with an accident in which she suffered serious head injury. It culminated into brain hemorrhage. She was under treatment at various hospitals till 27.12.2022. In the meantime, the corona pandemic started and applicant No.2 was detected positive. They could not meet respondent No.2. All the medical expenses have been borne by applicant No.2 as he was in continuous touch with respondent No.2. Applicant No.1 was transferred to Bangalore in the month of February 2023. He had taken respondent No.2 along with him. During Diwali when applicant Nos.2 and 3 joined them at Bangalore, respondent No.2 misbehaved with them and therefore, they went back to Jalgaon. The father of respondent No.2 was called and he had given assurance that respondent No.2 would behave properly, but respondent No.2 had given threat that she would commit suicide if she is not permitted to go to his father's house. Thus,

the differences went grim and therefore, applicant No.1 was constrained to pronounce a single divorce i.e. Talaq-e-Ahsan on 23.12.2023 in presence of witnesses. Thereafter, he had sent a notice of Talaq by registered post on 28.12.2023. Thereafter, there was no cohabitation or joining of the husband and wife for 90 days and, therefore, as per Muslim customs and Shariyat Law, it became irrevocable and ultimately, there is a Talaq between them. This mode of Talaq is not punishable under Section 4 of the said Act and, therefore, the FIR in question and the proceedings is an abuse of process of law, which needs to be quashed and set aside.

4. Learned Advocate appearing for the applicants relies on the decision in ***Mst. Zohara Khatoon Vs. Mohd. Ibrahim, [(1981) 2 SCC 509]***. Though the said decision is in respect of Section 125 of the Code of Criminal Procedure, yet it considers the law of divorce, which says that the dissolution is by way of three modes i.e. the decree of dissolution of marriage obtained through Court, the divorce by unilateral act of husband and the *Khula* given by the Mohammedan wife. He further relies on the decision of the Division Bench of this Court in ***Shaikh Taslim Shaikh Hakim Vs. State of Maharashtra and another, [2022 SCC OnLine Bom 757]***, wherein after taking note of the decision in ***Zohara Khatoon's*** case (Supra), the said way of getting the marriage dissolved was accepted. Reliance was placed on paragraph No.22 of

Zohara Khatoon's case in this matter. He also relies on the Single Bench decision of Kerala High Court at Ernakulam in **Jahfer Sadiq E.A. Vs. Marwa and Ors, [MANU/KE/2191/2022]**, wherein it is held that Talaq-e-Ahsan and Talaq-e-Hasan are the two approved forms of divorce in muslim personal law of India. What has been declared unconstitutional by the Hon'ble Apex Court in **Shayara Bano Vs. Union of India, [MANU/1031/2017]** is Talaq-e-bidat i.e. pronouncement of the words of divorce thrice in single sitting. After taking note of the Muslim Personal Law, the Kerala High Court has opined that Talaq-e-Ahsan is not barred or made unconstitutional.

5. Learned APP and learned Advocate for respondent No.2 opposed the application and submit that the facts in the case, especially the statements of witnesses would show that the irrevocable Talaq has been given which is barred and held to be unconstitutional by the Hon'ble Apex Court in **Shayara Bano's** case (Supra) and therefore, let there be trial. The Trial Court would be the best forum where it can be considered as to which kind of Talaq has been pronounced.

6. Before we proceed further, important point to be noted is that the present FIR is not registered for the offence punishable under Section 498-A of Indian Penal Code or any other Sections. Even now after the notice was served to respondent No.2, no argument has been made on

her behalf that the police have failed to register the offence under Section 498-A of Indian Penal Code. The FIR is for the offence punishable under Section 4 of the said Act. In fact, if this FIR is to be construed to Section 4 of the said Act, then it is restricted against husband only. The father-in-law and mother-in-law cannot be included in such offence. There is no question of Section 34 of Indian Penal Code involved in such FIRs. There cannot be a common intention of pronouncement of Talaq. Therefore, even at this stage also, we can say that it would be an abuse of process of law if the matter is asked to be proceeded for the offence punishable under Section 4 of the said Act against the father-in-law and mother-in-law.

7. Section 4 of the said Act provides for pronouncement of Talaq. Any muslim husband, who pronounces Talaq referred to in Section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. For this purpose, we will have to consider the definition given in Section 2(c) of word 'Talaq'. The said Section 2(c) defines word 'Talaq' means 'Talaq-e-biddat' or any other similar form of Talaq having the effect of instantaneous or irrevocable divorce pronounced by the Muslim husband. Section 3 provides any pronouncement of Talaq by a Muslim husband upon his wife, by words, either spoken or in electric form or in any other manner whatsoever, shall be void and illegal. Therefore, for

Section 3 also the definition that has been given in Section 2(c) of the said Act will have to be considered. Once again, if we consider Section 2(c) of the said Act, then Talaq means Talaq-e-biddat or any other form of Talaq, which is having instantaneous effect or irrevocable effect of the pronouncement. All other forms of Talaq were not prohibited or barred and, therefore, the Single Bench of Kerala High Court has, therefore, considered Talaq-e-Ahsan and Talaq-e-Hasan as well as Talaq-e-biddat. Tala-e-biddat in short was the practice of pronouncement of triple Talaq i.e. thrice the words to be uttered, "I divorce you" at one go. Certainly, we are required to consider the three Judge Bench decision in **Zohara Khatoon (Supra)** which has been taken note of i.e. paragraph No.22 thereof in the Coordinate Bench decision in **Shaikh Taslim Shaikh Hakim (Supra)**, wherein three distinct modes of bringing a Muslim marriage to dissolution were considered. Here, we cannot consider only the irrevocable effect. What has been described in the definition of Talaq is instantaneous and irrevocable. Here, in the FIR itself, respondent No.2 has stated that the notice which applicant No.1 had given on 28.12.2023, had stated that what was given to her was Talaq-e-Ahsan i.e. one pronouncement of Talaq. Even the statements of witnesses are on the same line. In the charge-sheet itself, the copy of the said notice dated 23.12.2023 has been given wherein it is written that he was pronouncing one Talaq i.e. Talaq-e-Ahsan as per Shariyat. Thereafter, it appears that

the final Talaqnama has been given on 24.03.2024, wherein it was mentioned that after 23.12.2023 within 90 days, neither respondent No.2 had resumed cohabitation and there was no resumption of physical relations between them. The legal effect of Talaq-e-Ahsan has come into play. When the facts are admitted and taking into consideration the law, what was prohibited was the Talaq-e-bidat and not Talaq-e-Ahsan, it would be an abuse of process of law, if the applicants are asked to face the trial and therefore, case is made out for quashment of the FIR and the proceedings. Hence, the following order :-

ORDER

- I) Criminal Application stands allowed.
- II) The FIR vide Crime No.124 of 2024 dated 15.04.2024 registered with Bhusawal Bazar Peth Police Station, District Jalgaon as well as the proceedings in Regular Criminal Case No.1156 of 2024 pending before the learned Judicial Magistrate First Class, Bhusawal for the offences punishable under Section 4 of the said Act and under Section 34 of Indian Penal Code, stand quashed and set aside as against the present applicants.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm