2025 INSC 528

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2112 OF 2025

[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.10430 OF 2018]

SHAHJAHAN …APPELLANT

VERSUS

THE STATE OF UTTAR PRADESH & ANR. …RESPONDENTS

R1: THE STATE OF UTTAR PRADESH

R2: SRI GAFFAR KHAN

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Leave granted.

2. The present appeal is directed against the Final Judgment and Order dated 03.08.2018 in Criminal Revision No.2829/2010 (hereinafter referred to as the 'Impugned Order')[1] passed by the High Court of Judicature at Allahabad (hereinafter referred to as the 'High Court'), whereby the revision petition filed by the appellant-wife was dismissed and the Order dated 23.04.2010 in Petition No.335 of 2008 passed by

[1] **2018 SCC OnLine All 7101** | **(2018) 6 All LJ 55**.

the Principal Judge, Family Court, Jhansi (hereinafter referred to as the 'Family Court') not awarding any maintenance to the appellant-wife, was upheld.

FACTUAL BACKGROUND:

3. The marriage of the appellant-wife was solemnized with the respondent no. 2-husband on 24.09.2002 according to Islamic customs. This was the second marriage of both. From their wedlock, the appellant gave birth to two children, namely daughter Aatika (aged about 21 years presently) and son Muzammil (aged about 16 years presently). In 2005, respondent no.2 filed 'Divorce Suit No.325 of 2005'[2] against the appellant in the 'Court of Kazi'[3], Bhopal, Madhya Pradesh, which came to be dismissed in terms of the compromise dated 22.11.2005 entered into between the two parties.

4. The appellant alleged that respondent no.2 used to beat her demanding dowry and turned her out of the matrimonial home along with her children in May, 2008. On 16.09.2008, respondent no.2 filed 'Suit No.221 of 2008'[4] in the 'Court of (Darul Kaja) Kajiyat'[5], Bhopal seeking divorce. Soon thereafter, on 13.10.2008, the appellant filed Suit

[2] The usage of the apostrophe is deliberate; we will advert to this in the latter part of the Judgment.
[3] *Ibid*.
[4] *Ibid*.
[5] *Ibid*.

No.335/2008 under Section 125[6] of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') seeking maintenance of Rs.5,000/- (Rupees Five Thousand) per month for herself and Rs.1,000/- (Rupees One Thousand) per month for each of the children. The 'suit' of

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[6] '***125. Order for maintenance of wives, children and parents***.—*(1) If any person having sufficient means neglects or refuses to maintain—*

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.—For the purposes of this Chapter,—

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.'

respondent no.2 for divorce was allowed, and, accordingly *Talaqnama* dated 22.01.2009 was prepared.

5. The Family Court *vide* Order dated 23.04.2010 partly allowed the petition for maintenance and granted Rs.1,500/- (Rupees One Thousand Five Hundred) per month to the daughter Aatika and Rs.1,000/- (Rupees One Thousand) per month to the son Muzammil. The Family Court dismissed the appellant's claim for maintenance on the finding that the respondent no.2-husband did not leave the appellant and rather, she herself, due to her nature and conduct, was the main reason for the dispute and her consequent departure from the matrimonial home.

6. Aggrieved by the Order *supra* of the Family Court, the appellant-wife approached the High Court by filing Criminal Revision No.2829/2010. The High Court *vide* the Impugned Order dismissed the revision petition noting that since the appellant is living separately from her husband-respondent no.2 without sufficient reason, therefore, the findings recorded by the Court below cannot be termed illegal or perverse.

SUBMISSIONS BY THE APPELLANT:

7. Learned counsel for the appellant submitted that the Courts below erred in not granting maintenance ignoring the fact that the appellant is

an illiterate lady having no source of income of her own and totally dependent upon her father and other family members. It was contended that there is nothing on the record to show that respondent no.2 was willing and ready to keep the appellant with him and the truth is that respondent no.2 had filed 'divorce suits' thrice before the '*Sharia* Court'.

8. It was further submitted that the Courts below erred in holding that the appellant was living separately without any reason ignoring the fact and evidence that she was turned out of the matrimonial house by the respondent no.2. It was argued that the appellant tried her best to live peacefully with the respondent no.2 and this fact is established by the compromise dated 22.11.2005. Learned counsel pointed out that the Courts below recorded a perverse finding that the appellant had admitted her wrongdoing/misbehaviour in the compromise dated 22.11.2005.

9. It was canvassed that the appellant categorically stated that she was turned out from the house by the respondent no.2 after being subjected to abuse, beating and cruelty to her, and the Courts below erroneously held that she is living separately without reasonable cause. The Courts below, submitted learned counsel, also fell in error in finding that as it was the second marriage of both parties, there was no possibility of dowry demand by respondent no.2, ignoring the evidence on record.

10. It was argued that both children have grown up now and the meagre amount of maintenance granted to them is insufficient today, while the salary and other income(s) of respondent no.2 have increased. On these grounds, learned counsel prayed for (a) allowing the appeal; (b) enhancing the maintenance to the children, and; (c) awarding maintenance to the appellant-wife.

SUBMISSIONS BY THE RESPONDENT NO.1-STATE:

11. Learned counsel for the State argued that *vide* the Impugned Order, maintenance was rightly allowed only to the children. Since the appellant is living separately from her husband without having any sufficient reason, therefore, findings recorded by the courts below cannot be termed to be without any basis. It was submitted that the appeal be dismissed.

RESPONDENT NO.2 *IN ABSENTIA*:

12. Despite finally being duly served[7], none appeared for the respondent no.2-husband.

[7] Per the learned Registrar's Order dated 15.05.2024.

ANALYSIS, REASONING AND CONCLUSION:

13. We have heard learned counsel for the appellant and respondent no.1 and carefully perused the material on record. The Family Court as well as the High Court denied the appellant's claim for maintenance altogether and awarded a meagre sum totalling Rs.2,500/- (Rupees Two Thousand Five Hundred) as maintenance for the two children. Let us first examine the reason(s) assigned by the Courts below for non-suiting the appellant.

14. In her application for maintenance filed under Section 125 of the Code, the appellant contended that respondent no.2 had caused cruelty to her as she was not able to fulfil his demand for a motorcycle and Rs.50,000/- (Rupees Fifty Thousand). On this aspect, the Family Court noted that since it was their second marriage, there is no possibility of demand of dowry by respondent no.2, as he would be trying to rehabilitate his house. Such reasoning/observation by the Family Court is unknown to the canons of law and is based on mere conjecture and surmise. The Family Court will do well, henceforth, to bear in mind the observation in ***Nagarathinam v State, through the Inspector of Police*****, 2023 SCC OnLine SC 559** that the *'…Court is not an institution to sermonise society on morality and ethics ...*'. The Family Court could not

have presumed that a second marriage for both parties would necessarily entail no dowry demand.

15. Further, the Family Court, taking note of the compromise deed dated 22.11.2005, opined that it was the appellant's character and conduct which led to the rift in the conjugal life of the parties. This reasoning is based on the purported fact that the appellant in the compromise deed had admitted to her mistake. However, from a bare perusal of the compromise deed, it would become apparent that it records no such admission. The first 'divorce suit' instituted by the husband in 2005 was dismissed on the basis of this compromise, wherein both parties decided to live together and agreed that they would not give the other party any occasion to complain. Hence, the very basis/reasoning for rejecting the appellant's claim for maintenance appears to be *ex-facie* unsustainable. The Impugned Order has merely noted the findings returned by the Family Court with approval.

16. The appellant, in her application before the Family Court, had claimed that the respondent no. 2 was serving on the post of *Aarakshak* in the Border Security Force and receiving around Rs.20,000/- (Rupees Twenty Thousand) per month as salary. The respondent no.2 on the other hand admitted in his evidence to receiving Rs.15,000/- (Rupees Fifteen Thousand) per month. It is to be borne in mind that this was the

situation in 2008-2009 (nearly 16 years ago) and much water would have flown under the bridge since then. We are of the view that maintenance could not have been denied to the appellant-wife under the prevailing circumstances.

17. This brings us to the next question, i.e., from which date will the maintenance be payable – the date of the application or the date of the Order? The appellant has contested the direction of the Family Court wherein it has made the maintenance payable from the date of the order instead of the date of application. Of course, Section 125(2) of the Code empowers the Court to award maintenance from the date of the order but the same has to be justified in the background of the attendant facts and circumstances and should not cause unnecessary hardship to the applicant. In our view, Section 125 of the Code is a beneficial piece of legislation which has been enacted to protect the wife and children from destitution and vagrancy and, in the usual course, it would not be appropriate to disadvantage the applicant for the delay in the disposal of the application by the judicial system. It would be beneficial to reproduce the relevant discussion in ***Rajnesh v Neha*****, (2021) 2 SCC 324**, which is extracted hereunder:

> '***109.*** *The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded.* ***Even though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in Section 125(2) CrPC, it would be appropriate to grant maintenance***

from the date of application in all cases, including Section 125 CrPC. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

110. In Shail Kumari Devi v. Krishan Bhagwan Pathak *[Shail Kumari Devi v. Krishan Bhagwan Pathak, (2008) 9 SCC 632: (2008) 3 SCC (Cri) 839],* ***this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case.*** *The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application.* ***In Bhuwan Mohan Singh v. Meena*** *[Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353: (2015) 3 SCC (Civ) 321: (2015) 4 SCC (Cri) 200], this Court held that repetitive adjournments sought by the husband in that case resulted in delay of 9 years in the adjudication of the case. The* ***delay in adjudication was*** *not only against human rights, but also* ***against the basic embodiment of dignity*** *of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.*

111. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hamper their capacity to be effectively represented before the court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the court concerned.

112. In Badshah v. Urmila Badshah Godse *[Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188: (2014) 1 SCC (Civ) 51], the* ***Supreme Court was considering the interpretation of Section 125 CrPC****. The Court held: (SCC p. 196, para 13)*

> *"13.3. … purposive interpretation needs to be given to the provisions of Section 125 CrPC.* ***While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of***

> ***India.*** *The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice.* ***Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.****"*
>
> *(emphasis supplied)*
>
> ***113.*** *It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that* ***maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.***'
>
> (emphasis supplied by bolding; underlining reflects emphasis supplied in original)

18. No doubt, ***Rajnesh*** (*supra*) was pronounced after the Family Court's Order and Impugned Order were passed, but its enunciation of the law would entail that maintenance should be reckoned as awarded from the date of filing of the application in this behalf. Having regard to the totality of the facts and circumstances, we direct the respondent no.2 to pay Rs.4,000/- (Rupees Four Thousand) per month as maintenance to the appellant, from the date of filing of the maintenance petition before the Family Court. The maintenance awarded to the children will also be payable from the date of filing of the maintenance petition before the Family Court. We take judicial notice that during the pendency of the appeal before this Court, the daughter Aatika has attained majority. Having due regard to the scheme of Section 125 of the Code, it is

clarified that the maintenance awarded in her favour will only be payable up to the date of her attaining majority. The entire amount of arrears shall be deposited by the respondent no.2 in the Family Court within four months from today, after adjustment of amount(s), if any, already paid/deposited by him.

19. Accordingly, the Order of the Family Court as well as the Impugned Order are set aside. The appeal is disposed of in the above terms[8].

20. No order as to costs.

21. I.A. No.164654/2018 is allowed; exemption sought for is granted.

POST-SCRIPT:

22. In the opening portions of this Judgment, we have noted 'Court of Kazi', 'Court of (Darul Kaja) Kajiyat', '*Sharia* Court' *etcetera*. In ***Vishwa Lochan Madan v Union of India*, (2014) 7 SCC 707**, it was observed:

> '***12.*** *From the pleadings of the parties there does not seem to be any dispute that several Dar-ul-Qazas presided over by the Qazis exist and they do issue fatwas. In the present case, what we have been called upon to examine is as to whether Dar-ul-Qaza is a parallel court and "fatwa" has any legal status.*
> ***13.*** *As it is well settled, the adjudication by a legal authority sanctioned by law is enforceable and binding and meant to be obeyed unless upset by an authority provided by law itself. The power to adjudicate must flow from a validly made law. A*

[8] Disposed of *vide* Order dated 04.02.2025. The present Judgment provides reasons for the same.

person deriving benefit from the adjudication must have the right to enforce it and the person required to make provision in terms of adjudication has to comply that and on its failure consequences as provided in law are to ensue. These are the fundamentals of any legal judicial system. In our opinion, the decisions of Dar-ul-Qaza or the fatwa do not satisfy any of these requirements. Dar-ul-Qaza is neither created nor sanctioned by any law made by the competent legislature. Therefore, the opinion or the fatwa issued by Dar-ul-Qaza or for that matter anybody is not adjudication of dispute by an authority under a judicial system sanctioned by law. A Qazi or Mufti has no authority or powers to impose his opinion and enforce his fatwa on anyone by any coercive method. In fact, whatever may be the status of fatwa during Mogul or British Rule, it has no place in independent India under our constitutional scheme. It has no legal sanction and cannot be enforced by any legal process either by the Dar-ul-Qaza issuing that or the person concerned or for that matter anybody. The person or the body concerned may ignore it and it will not be necessary for anybody to challenge it before any court of law. It can simply be ignored. In case any person or body tries to impose it, their act would be illegal. Therefore, the grievance of the petitioner that Dar-ul-Qazas and Nizam-e-Qaza are running a parallel judicial system is misconceived.

14. *As observed earlier, the fatwa has no legal status in our constitutional scheme. Notwithstanding that it is an admitted position that fatwas have been issued and are being issued. The All India Muslim Personal Law Board feels the "necessity of establishment of a network of judicial system throughout the country and Muslims should be made aware that they should get their disputes decided by the Qazis". According to the All India Muslim Personal Law Board "this establishment may not have the police powers but shall have the book of Allah in hand and sunnat of the Rasool and all decisions should be according to the book and the sunnat. This will bring the Muslims to the Muslim courts. They will get justice".*

15. *The object of establishment of such a court may be laudable but we have no doubt in our mind that it has no legal status. It is bereft of any legal pedigree and has no sanction in laws of the land. They are not part of the corpus juris of the State. A fatwa is an opinion, only an expert is expected to give. It is not a decree, nor binding on the court or the State or the individual. It is not sanctioned under our constitutional scheme. But this does not mean that existence of Dar-ul-Qaza or for that matter practice of issuing fatwas are themselves illegal. It is informal justice delivery system with an objective of bringing*

about amicable settlement between the parties. It is within the discretion of the persons concerned either to accept, ignore or reject it. However, as the fatwa gets strength from the religion; it causes serious psychological impact on the person intending not to abide by that. As projected by Respondent 10 "Godfearing Muslims obey the fatwas". In the words of Respondent 10 "it is for the persons/parties who obtain fatwa to abide by it or not". He, however, emphasises that "the persons who are Godfearing and believe that they are answerable to the Almighty and have to face the consequences of their doings/deeds, such are the persons, who submit to the fatwa". Imrana's case is an eye-opener in this context. Though she became the victim of lust of her father-in-law, her marriage was declared unlawful and the innocent husband was restrained from keeping physical relationship with her. In this way a declaratory decree for dissolution of marriage and decree for perpetual injunction were passed. Though neither the wife nor the husband had approached for any opinion, an opinion was sought for and given at the instance of a journalist, a total stranger. In this way, the victim has been punished. A country governed by rule of law cannot fathom it.

16. *In our opinion, one may not object to issuance of fatwa on a religious issue or any other issue so long it does not infringe upon the rights of individuals guaranteed under the law. Fatwa may be issued in respect of issues concerning the community at large at the instance of a stranger but if a fatwa is sought by a complete stranger on an issue not concerning the community at large but individual, then the Dar-ul-Qaza or for that matter anybody may consider the desirability of giving any response and while considering it should not be completely unmindful of the motivation behind the fatwa. Having regard to the fact that a fatwa has the potential of causing immense devastation, we feel impelled to add a word of caution. We would like to advise the Dar-ul-Qaza or for that matter anybody not to give any response or issue fatwa concerning an individual, unless asked for by the person involved or the person having direct interest in the matter. However, in a case the person involved or the person directly interested or likely to be affected being incapacitated, by any person having some interest in the matter. Issuance of fatwa on rights, status and obligation of individual Muslims, in our opinion, would not be permissible, unless asked for by the person concerned or in case of incapacity, by the person interested. Fatwas touching upon the rights of an individual at the instance of rank strangers may cause irreparable damage and therefore, would be absolutely uncalled for. It shall be in violation of basic human rights. It*

cannot be used to punish the innocent. No religion including Islam punishes the innocent. Religion cannot be allowed to be merciless to the victim. Faith cannot be used as the dehumanising force.

17. *In the light of what we have observed above, the prayer made by the petitioner in the terms sought for cannot be granted. However, we observe that no Dar-ul-Qazas or for that matter, anybody or institution by any name, shall give verdict or issue fatwa touching upon the rights, status and obligation, of an individual unless such an individual has asked for it. In the case of incapacity of such an individual, any person interested in the welfare of such person may be permitted to represent the cause of individual concerned. In any event, the decision or the fatwa issued by whatever body being not emanating from any judicial system recognised by law, it is not binding on anyone including the person, who had asked for it. Further, such an adjudication or fatwa does not have a force of law and, therefore, cannot be enforced by any process using coercive method. Any person trying to enforce that by any method shall be illegal and has to be dealt with in accordance with law.*'

(emphasis supplied)

23. 'Court of Kazi', 'Court of (Darul Kaja) Kajiyat', '*Sharia* Court' *etcetera* by whatever name styled have no recognition in law. As noted in ***Vishwa Lochan Madan*** (*supra*), any declaration/decision by such bodies, by whatever name labelled, is not binding on anyone and is unenforceable by resort to any coercive measure. The only way such declaration/decision can withstand scrutiny in the eye of law could be when the affected parties accept such declaration/decision by acting thereon or accepting it and when such action does not conflict with any other law. Even then, such declaration/decision, at best, would only be valid *inter-se* the parties that choose to act upon/accept the same, and not a third-party.

24. The position in law stands clarified as above.

***A SETTLEMENT THAT WASN'T*:**

25. It appears that the appellant and respondent no.2 had agreed to a settlement before the District Legal Services Authority, Jhansi as per its Secretary's letter dated 11.07.2024. Although the letter suggests that the prescribed settlement format was also signed by both parties, the Special Lok Adalat held in this Court on 31.07.2024 referred the matter back to Court recording '*settlement seems not possible*'.

26. As such, we have disposed of the appeal on the basis of the pleadings and arguments.

…….....J.
[SUDHANSHU DHULIA]

…….....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
04 FEBRUARY, 2025