

**Criminal Revision**  
Present: **The Hon'ble Justice Ashim Kumar Roy**

*C.R.R. No. 490 of 2010*

**Judgment On: 16-04-2010.**

*Abdul Manna Dalal*  
*versus*  
*The State of West Bengal & Ors*

**POINTS:**

MAINTENANCE -Petitioner failed to pay maintenance as per order of the Court-  
Whether Court can direct the Wakf Board to pay maintenance to a divorced Muslim woman unable to maintain her -Muslim Women (Protection of Rights on Divorce) Act, 1986 Ss.3 (1)(a),4(2)

**FACTS:**

In connection with a proceeding under Section 3 (1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986, the petitioners have been directed by the Court below to pay a sum of Rs. 36,000/- to the wife/opposite party as her maintenance. However, the petitioner having failed to pay the said amount of money to the opposite party/wife, she moved the Court below for enforcement of such order. After the petitioner served out the sentence of one month, on December 22, 2009 he was again produced before the Court below, when on his undertaking to liquidate the outstanding maintenance, if released, the petitioner was released from jail fixing 5<sup>th</sup> February, 2010 for payment.

**HELD:**

The question of directing the Wakf Board to pay maintenance to a divorced Muslim woman unable to maintain her under Section 4 (2) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 would arise only when after divorce she has no relative as mentioned in sub-section (1) of Section 4 of the said Act. The said provisions cannot be invoked to substitute the legal obligation of the former husband of a divorced Muslim woman to pay her a reasonable and fair provisions of maintenance within the Iddat period in terms of provisions of Section 3 (1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986. When a person against whom an order has been made for payment of maintenance to his former wife, since divorced, under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986 without any sufficient cause fails to comply with such order, the Court must issue a warrant for levying the amount of maintenance and after execution of warrant, sentenced such person to imprisonment for a term which may extend to one year or until payment if sooner made, but due to the reason best known to the Learned Court below the petitioner has been sentenced for a period of one month only and although no payment has been made still he has been released from jail. The approach of the Learned Court below on the face of it is absolutely erroneous and not in accordance with law.

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For Petitioner : Mr. Arnab Seth

**THE COURT:**

1. In connection with a proceeding under Section 3 (1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986, the petitioners have been directed by the Court below to pay a sum of Rs. 36,000/- to the wife/opposite party as her maintenance.

However, the petitioner having failed to pay the said amount of money to the opposite party/wife, she moved the Court below for enforcement of such order. When the petitioner was taken into custody and sentenced to suffer simple imprisonment for one month or till the payment is made, whichever is earlier. After the petitioner served out the sentence of one month, on December 22, 2009 he was again produced before the Court below, when on his undertaking to liquidate the outstanding maintenance, if released, the petitioner was released from jail fixing 5<sup>th</sup> February, 2010 for payment.

2. It is an admitted position that till date no payment has been made and this criminal revision has been moved for directing the State Wakaf Board to pay maintenance to the opposite party in terms of provision of Section 4 (2) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 as the petitioner/husband has no capacity to comply with the Court's order.

3. Heard the learned advocate of the petitioner. Perused the materials on record.

4. The question of directing the Warak Board to pay maintenance to a divorced Muslim woman unable to maintain her under Section 4 (2) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 would arise only when after divorce she has no relative as mentioned in sub-section (1) of Section 4 of the said Act. The said provisions cannot be invoked to substitute the legal obligation of the former husband of a divorced Muslim woman to pay her a reasonable and fair provisions of maintenance within the Iddat period in terms of provisions of Section 3 (1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986. When a person against whom an order has been made for payment of maintenance to his former wife, since divorced, under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986 without any sufficient cause fails to

comply with such order, the Court must issue a warrant for levying the amount of maintenance and after execution of warrant, sentenced such person to imprisonment for a term which may extend to one year or until payment if sooner made, but due to the reason best known to the Learned Court below the petitioner has been sentenced for a period of one month only and although no payment has been made still he has been released from jail. The approach of the Learned Court below on the face of it is absolutely erroneous and not in accordance with law.

5. I do not find any merit in this application and same stands dismissed. Interim order, if any, stands vacated.

6. However, the Learned Magistrate is directed to take immediate steps for recovery of the arrear dues in terms of sub-section (4) of Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

7. The Office is directed to communicate this order to the Learned Court below at once.

8. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

*( Ashim Kumar Roy, J. )*