



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) No.1273 OF 2023

Aadil Khan s/o. Badshah Khan,
Aged about 37 years,
Occupation : Business,
R/o. C/o. Mohd. Illyas S/o. Mohammad
Hanif Sheikh, R/o. 711, Babulpeth,
Kamal Talkies Road,
Kamal Chowk, Nagpur,
Tah. And Distt. Nagpur. : APPLICANT

...VERSUS...

1. The State of Maharashtra,
Through the Police Station Officer,
Police Station Warud, Tah. Warud,
Distt. Amravati Rural.
2. Nahid Fatima Aadil Khan,
maiden name Nahid Fatema
D/o. Ashique Khan Saheb,
Aged 30 years,
Occupation : Household,
C/o. Ashique Khan Saheb R/o.
Qureshipura, Pnadurna Chowk, Warud,
Tah. Warud, Distt. Amravati 444 906. : NON-APPLICANTS

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Mr. Sanket Bhalerao, Advocate for Applicant.
Mr. M.J. Khan, Additional Public Prosecutor for Non-applicant No.1.
Mrs. Fatima Pathan, Advocate for Non-applicant No.2.

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CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
RESERVED ON : 19th NOVEMBER, 2025.
PRONOUNCED ON : 26th NOVEMBER, 2025.

**JUDGMENT : (Per : Nandesh S. Deshpande, J.)**

1. Heard. Admit. Heard finally by consent of learned counsel appearing for the parties.

2. This is an application under Section 482 of the Code of Criminal Procedure for quashing and setting aside the First Information Report dated 9.8.2023, registered with the non-applicant No.1 for the offences punishable under Sections 3 and 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 and the consequent Charge-sheet bearing No.248/2023 culminating in Regular Criminal Case No.520/2023.

3. As per the said First Information Report lodged by the non-applicant No.2 it is alleged that non-applicant No.2 got married with applicant in the year 2018 as per the Muslim Customs at Nagpur and from the said wedlock they have two children. It is further stated that after her marriage she resided with the joint family consisting of brother-in-law, sister-in-law and the parents of the applicant. It is further stated that after 3 - 4 months due to domestic reasons the sister-in-law and mother-in-law of the non-applicant No.2 used to abuse her for no reason and also used to beat her. In this way she was harassed. It is further stated that in the year 2021 the in-laws drove her from the matrimonial house



and left her at Nagpur. It is further stated that she again made a complaint to the Women Cell and since the settlement did not took place there, she is constrained to lodge the First Information Report. It is also stated that on 21.5.2023 she has already lodged an First Information Report for the offences punishable under Sections 498A, 504, 506, read with Section 34 of the Indian Penal Code.

4. Thereafter, on 9.8.2023 the First Information Report bearing Crime No. 520/2023 came to be lodged by the non-applicant No 2 for offences punishable under Sections 3 and 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019. It is this First Information Report which is challenged in the present application.

5. We have heard Mr. Sanket Bhalerao, learned counsel for the applicant, Mr. M.J. Khan, learned Additional Public Prosecutor for the non-applicant No.1 and Mrs. Fatima Pathan, learned counsel for non-applicant No.2.

6. Learned counsel for the applicant submits that the offences as complained of under Sections 3 and 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 are not made out even after the meaningful reading of the First Information Report in question. He took us through the record of the matter



and states that what is prohibited by Section 3 of the Act is only *talaq-e-biddat*. He further states that he has not given the said *talaq-e-biddat* to the non-applicant No.2 and what has has given to the non-applicant No.2 is *talaq-ul-sunnat* and more particularly *Hasan* form thereof. He took us through the first notice send by him on 16.12.2022 wherein it is stated that he has given talaq to the non-applicant No.2 from 20th December 2023. The something was repeated in second notice dated 20th January, 2023, wherein talaq is given from 20th January, 2023. The third notice is given 20th February, 2023, wherein talaq is given with effect from 20th February 2023. He, therefore, submits that what is prohibited is only *talaq-e-biddat*. He relies on a judgment of the learned Single Judge of the Kerala High Court, in the case of **Jahfer Sadiq E.A., represented by Power of Attorney Holder Aboobacker E.M. Vs. Marwa and another**, reported in **2022 SCC OnLine Kerala 3643** in which learned single judge has recorded as under :

Classification of talaq

13. Various authorities including Faizee and Ameer Ali classify talaq into two forms (1) talaq-e-sunnat and (2) talaq-e-bidat. Talaq-e-sunnat is further classified into “ahsan” and “hasan” forms. Tahir Mahamood opines that these classifications are not “modes” or “forms” of talaq, those expressions only refer to the conduct of the man in pronouncing talaq i.e., whether he has or has not followed the prescribed rules for it which aim



at dissuading and keeping him away from actually breaking the marriage.

14. As noted already, the Muslim law prescribes a simple procedure for talaq keeping all chances of reconciliation and reconsideration open. A talaq strictly following this procedure is talaq-e-sunnat- a proper talaq. A talaq in violation of the prescribed procedure is talaq-e-bidat- an improper talaq. Talaq-e-sunnat is further classified into two based on degrees of virtue in respect of the man's conduct – talaq-e-ahsan and talaq-e- hasan.

15. In talaq-e-ahsan, the husband repudiates his wife by a single pronouncement in a period of tuhr during which he has not had intercourse with her and then leaves her to the observances of iddat. The divorce remains revocable during iddat. If the couple resumes cohabitation or intimacy within the period of iddat, the pronouncement of divorce is treated as having been revoked. Therefore, talaq-e-ahsan is revocable. Conversely, if there is no resumption of cohabitation or intimacy during the period of iddat, then the divorce becomes final and irrevocable, after the expiry of the iddat period. In case of marriage not yet consummated, ahsan talaq may be pronounced during menstruation also. Where the wife and husband are living separate from each other or where the wife is beyond the age of menstruation (old age), the condition of tuhr is not applicable. Talak-e-ahsan is based on the following verse of Quran:

"And the divorced woman should keep themselves in waiting for three courses."

16. Hedya brands talaq-e-ahsan as the most laudable divorce. According to Hedya, this method of divorce is the most approved because of the compassion of the Prophet and secondly, it remains within the power of the husband to revoke the divorce during iddat.



17. Talaq-e-hasan is also an approved form of divorce, which consists of three pronouncements made during three tuhrs with no intercourse taking place during any of these intervals. After the first talaq, if there is resumption of cohabitation within a period of one month, the pronouncement of divorce is treated as revoked. The same procedure is mandated to be followed, after the expiry of the first month (during which marital ties have not been resumed). After the second pronouncement of talaq, if there is resumption of cohabitation within a period of one month, the pronouncement of divorce is treated as revoked. Not more than two talaq can be pronounced within the period of iddat. Quran says:

“Divorce is only permissible twice, after that, the parties should either hold together on equitable terms, or separate with kindness”

18. If the parties are unable to unite during the period of iddat, the final irrevocable talaq can be pronounced, but only after the period of iddat. When the final talaq is pronounced, it becomes irrevocable and the marriage comes to an end. In this regard Quran says:

“So, if he (the husband) divorces her (third time) she shall not be lawful to him afterwards until she marries another person”

19. The hasan form is one in which the Prophet tried to put an end to a barbarous pre-Islamic practice. The practice was to divorce a wife and takes her back several times in order to ill-treat her. The prophet, by the rule of the irrevocability of the third pronouncement, indicated clearly that such a practice would not be continued indefinitely. Thus, if a husband really wished to take the wife back, he should do so; if not, the third pronouncement, after two reconciliations, would operate as a final bar. These rules of law follow the spirit of the Quranic injunction.



“Then when they have reached their term, take them back in kindness or part from them in kindness”

20. The distinction between talaq- e-ahsan and talaq-e-hasan is that, in the former, there is a single pronouncement of talaq followed by abstinence during the period of iddat, whereas, in the latter, there are three pronouncements of talaq, interspersed with abstinence. In both these forms, there is a chance for the party to be reconciled by the intervention of friends or otherwise. They are, therefore “approved” forms and are recognized by Muslim law. The Division Bench of this court recently in Sajani A v. Dr. Kalam Pasha held that talaq-e-ahsan and talaq-e-hasan are the valid forms of talaq recognised in Muslim Law.”

In the same Judgment the Kerala High Court stated as under :

Muslim Women (Protection of Rights on Marriage) Act, 2019

25. Following Shayara Bano, the Muslim Women (Protection of Rights on Marriage) Act was passed in July 2019. The Act makes all declarations of talaq, including in written or electronic form, to be void and illegal (Section 3). It defines talaq as talaq-e-bidat or any other similar form of talaq pronounced by a Muslim man resulting in instant and irrevocable divorce (Section 2C). Talaq-e-bidat refers to the practice under Muslim personal laws where the pronouncement of the word talaq thrice in one sitting by a Muslim man to his wife results in an instant and irrevocable divorce. The Act makes a declaration of talaq a cognizable offence, attracting up to three years’ imprisonment with a fine (Section 4).

26. What was declared illegal and void by the Apex Court in Shayara Bano and by Section 3 of



the Muslim Women (Protection of Rights on Marriage) Act, 2019 and made as an offence by Section 4 thereof, was the pronouncement of talaq-e-biddat or any other similar form of talaq resulting in instant and irrevocable divorce. The peculiar features of this form of talaq are its instantaneousness and irrevocability. On the other, both ahsan form and hasan form, contemplate a period, immediately after the pronouncement of talaq, whether such pronouncement is only once, or thrice over three successive lunar months, when the husband can revoke the talaq. The declaration of talaq-e-sunnat, either by ahsan form or by hasan form, was neither declared void or unconstitutional by the Apex Court in Shayara Bano nor made penal by Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019. Both these forms(talaq-e-ahsan and talaq-e-hasan) are still legal and valid under the Muslim Personal Law of India.”

7. He further relies on Division Bench Judgment of this Court at Aurangabad Bench in Criminal Application No.473/2024 in which co-ordinate Bench has recorded in para 5 as under :

5. We do not want to reproduce the reasons those have been given in *Tanveer Ahmed S/o. Sadik Patel (Supra)*, wherein every fact is also considered. The only fact here that is required to be considered as to whether the F.I.R., whatever the facts are stated in it, would amount to an offence punishable under Section 4 of the Muslim Women Act. For this purpose only, i.e. as regards the interpretation that has been made by this Court, in paragraph No.7, following are the observations.



"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 electronic 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."

8. Per Contra, learned Additional Public Prosecutor for non-applicant No.1 as also counsel for non-applicant No.2 while vehemently opposing the contentions advanced by the learned counsel for the applicant states that the averments made in the First Information Report are enough to make out a prima facie case against the applicant and, therefore, this would not be a fit case to exercise jurisdiction under Section 482 of The Criminal Procedure Code. It is further stated that the fact that the applicant has pronounced first talaq as per the procedure of *talaq-e-hasan* before two witnesses and other ancillary matter would be a matter of evidence and, therefore, at the initial stage First Information Report cannot be quashed.

9. We have given our thoughtful consideration to the contentions advanced by the learned counsel for the parties, as also the judgments cited by the counsels.

10. The Muslim Women (Protection of Rights on Marriage) Act, 2019 was brought on the statute book to protect the rights of married muslim woman and to prohibit divorce by pronouncing



talaq by their husband and to provide for matters connected thereto. Section 2(c) defines talaq as under :

Section 2(c) : "talaq" means talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband."

Thereafter, Sections 3 and 4 read as under :

Section 3. Talaq to be void and illegal.- Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

Section 4. Punishment for pronouncing 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.

11. Bare reading of the definition of talaq as mentioned in Section 2(c) would reveal that talaq as contemplated in the said Section means *talaq-e-biddat* having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband. Therefore, it follows that there are two requirements so that the talaq pronounced by the Muslim husband should fall within the mischief of Section 2(c) i.e. it should have an instant effect and should be irrevocable in nature. It is only such talaq which is void and illegal



and Section 4 provides for punishment therefore. It, therefore goes without saying that other forms of talaq as contemplated under the Muslim Personal Law are not expressly prohibited.

12. In view of this fact and in view of the pronouncement of the Kerala High court and the Co-ordinate Bench of this Court, if the facts in the present matter are appreciated, it can be seen that the applicant by addressing a notice to the non-applicant No.2 on 16.12.2022 stated that from the conduct of the non-applicant No.2 the applicant has no option but to infer that she is not interested in continuing the marital life. He, therefore, as per the Mohammedan Law pronounced the first Talaq. Such an endorsement can be found in the handwriting of the present applicant wherein it is stated that he has given Talaq to the non-applicant No.2 on 20th December 2023. The said endorsement is handwritten and is signed by two witnesses. The said exercise was repeated by a second notice on 20th January 2023 wherein the Talaq was given with effect from 20th January 2023. The exercise was also repeated on 20th February 2023 wherein also the talaq was pronounced for the third time on 20th February 2023. As can be seen from these three notices, the time gap between the notices is about one month. As per the text of Mohammedan Law, a talaq may be effected by two modes i.e. *talaq-ul-sunnat* and *talaq-ul-biddat*. Furthermore,



talaq-ul-sunnat is further sub-divided into *ahsan* and *hasan*. For a valid *hasan talaq*, the conditions are that the marriage must be consummated and pre-pronouncement of *talaq* are to be made during three successive *tuhrs*. Furthermore, there should not be any sexual intercourse during all the three successive *tuhrs* before making any pronouncement. It can thus be seen that there are three successive pronouncements in the present case communicated to the non-applicant No.2 by way of notice by the applicant. Even though, the learned counsel for the non-applicant No.2, the non-applicant No.2 stated that she has not received first notice dated 16.12.2022, it can be seen that the address in all the three notices is one and the same and, therefore, it cannot be said that even though she has received subsequent two notices, she has not received first notice. The contention is, therefore, rejected. In that view of the matter and in view of the law discussed above, we are of the considered view that no offence under Sections 3 and 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 is made out since the said Sections prohibit only *talaq-e-biddat* and not *talaq-e-hasan* which is the case of the present applicant. Therefore, the continuance of proceeding as against the applicant would be an abuse of process of Court and travesty of justice. The



situation would squarely fall within the laid down parameters of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, reported in AIR 1992 SC 604,

“1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13. In that view of the matter, following order is passed.

ORDER

(i) The application is allowed.

(ii) The First Information Report dated 9.8.2023, registered with the non-applicant No.1 for the offences punishable under Sections 3 and 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 and the consequent Charge-sheet bearing No.248/2023 culminating in Regular Criminal Case No.520/2023 is quashed and set aside.



(iii) The application is disposed of.

(Nandesh S. Deshpande, J.)

(Urmila Joshi-Phalke, J.)

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