

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 20th OF MARCH, 2024

MISC. CRIMINAL CASE No. 8056 of 2024

BETWEEN:-

**JAVED NASEEM S/O NASEEM UDDIN,
AGED ABOUT 36 YEARS,
OCCUPATION: BANK EMPLOYEE R/O
FLAT NO 202 SK TOWER KOH E FIZA
BHOPAL (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SANKALP KOCHAR - ADVOCATE)

AND

**1. THE STATE OF MADHYA
PRADESH THOROUGH POLICE
STATION GANDHI NAGAR
DISTRICT BHOPAL (MADHYA
PRADESH)**

**2. AFREEN SHAHID D/O S. U.
SHAHID, AGED ABOUT 36
YEARS, SP 175 LAKE PEARL
SPRING COLONY ABBAS NAGAR
GANDHI NAGAR BHOPAL
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI K.S.BAGHEL – GOVT. ADVOCATE)

“Reserved on : 12.03.2024”

“Pronounced on : 20.03.2024”.

This application having been heard and reserved for order, coming on for pronouncement this day, the court passed the following:

ORDER

1. This application under section 482 Cr.P.C. has been filed seeking the following reliefs :-

It is therefore most humbly prayed that this Hon'ble Court may kindly be pleased to exercise inherent powers under Section 482 Cr.P.C. and quash the FIR dated 23.12.2023 and other consequential proceedings arising out of Crime No.338/2023 registered at P.S. Gandhi Nagar, district Bhopal and discharge the applicant, in the interest of justice.

2. It is submitted by counsel for the applicant that respondent no.2 lodged an FIR on the ground that she got married to Javed Naseem on 21.4.2017. On 9.10.2022 and 29.01.2023 her husband Javed Naseem has sent his self-signed *Talaknama* duly witnessed by Rahim Mirza and Mirza Karim Baig, copy of the said *Talaknama* was produced along with FIR. It was alleged that divorce has been given on account of non fulfillment of demand of dowry and on account of the fact that she has given birth to a girl child. Even otherwise, on 25.2.2023 her husband and her mother-in-law had come to her parental home along with Raheem Mirza and others and also gave triple *Talaq* and declared that now they do not have any relationship with the complainant. At that time, her neighbor Mehfooz Rehman was also present in the house. Her husband has also given a copy of *Fatwa* dated 19.7.2023 by which Mufti Rahees Ahmed Khan has also treated the said divorce as correct whereas Mufti Rahees Ahmed Khan was aware of the fact that *Talaq* given by her husband is illegal in the light of the provision of Muslim (Women of Rights on Marriage) Act, 2019, (hereinafter referred to as 'the 2019 Act) according to which any pronouncement of *Talaq* by a Muslim husband

upon his wife, by words, either spoken or written or in electronic form or in any manner whatsoever shall be void and illegal and as per section 4 of the 2019 Act such act of her husband and others shall be punishable with imprisonment for a term which may extend to three years and shall be liable to fine. Thus, it was alleged that her husband Javed Naseem, her mother-in-law Rukhsana Begum, her sister-in-law Ranu Begum, Rahim Mirza and Mirza Karim Baig, who have signed the *Talaqnama* as witnesses have prima facie committed an offence. On this complaint the FIR has been registered.

3. Challenging the FIR lodged by the complainant it is submitted by counsel for the applicants that the applicant had sent the *Talaq-e-ahsan* by registered post on 30.1.2023. It is submitted that the said *Talaq-e-ahsan* is recognized mode of divorce and the Kerala High Court by judgment passed in the case of **Saheer Vs. State of Kerala** by judgment dated **13.11.2023 passed in Crl.MC.No.3632/2023** has held that since *Talaq* is recognized form of divorce under the Muslim law, therefore, the FIR and consequential proceedings against the petitioner therein is liable to be quashed.
4. Considered the submissions made by counsel for the applicant.
5. Section 2(c) of the 2019 Act defines '*Talaq*' which means *talaq-e-biddat* or any other similar form of *talaq* having the effect of instantaneous or irrevocable divorce pronounced by a Muslim husband. Section 3 provides that "any pronouncement of *Talaq* by a Muslim husband to his wife, by words, either spoken or written or in electronic form or in any other manner would be void and illegal". It is submitted by counsel for

the applicant that says the *Talaq-e-ahsan* does not have instantaneous effect and becomes operative only after three Menstrual cycle of the wife, therefore, it is not covered under the definition of section 2(c) of the 2019 Act. It is submitted that even after giving *Talaq-e-ahsan* the husband can always withdraw the same prior to coming into force of the said *Talaq*.

6. Considered the submissions for the parties.
7. *Talaq-e-biddat* is also commonly known as Triple *Talaq* whereas *Talaq-e-ahsan* can be revoked before it becomes operative. Thus, the only difference between *Talaq-e-biddat* and *Talaq-e-ahsan* is that *Talaq-e-biddat* will come in operation instantaneously whereas *Talaq-e-ahsan* will become operative after three menstrual cycle. Since the reasons and object of 2019 Act is to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands and to provide for matters connected therewith or incidental thereto. Therefore, it is necessary to consider contents of *Talaq-e-ahsan* sent by the applicant by registered post. Para 18 of the *Talaq-e-ahsan* sent by the applicant reads as under :-

18. This pronouncement of Talaq Hasan is revocable during the period of Eidha, which follows hereafter, and shall continue till three menstrual cycles are completed by u., after which the pronouncement shall become absolute and divorce final and irrevocable. If you return within this idha. I shall take you in kindness and in good wishes if you, if not the marriage between us, shall dissolve and thereafter each of us would be rendered haram for the other”.

8. From the above pronouncement of *Talaq-e-ahsan*, it is clear that it was made is revocable during the period of *iddah* and shall continue till three menstrual cycles are completed by wife after which the pronouncement would become absolute and divorce would be final and irrevocable. If the wife returns within the *iddah* period the applicant shall take her in kindness and in good wishes if not the marriage between them shall dissolve and thereafter, each of them would be rendered haram for the other.
9. Thus, the applicant has already expressed his irrevocable divorce to the respondent No.2 and has made it conditional that only if respondent No.2 comes back to her matrimonial house then he would take her in kindness otherwise each of them would render Haram for other.
10. Thus, so far as *Talaq-e-ahsan* sent by the applicant is concerned, it is clear that in fact it is in the nature of instantaneous talaq by putting a pressure on the complainant to come back otherwise talaq would take its effect. Merely because the applicant has sent *Talaq-e-ahsan* with aforesaid condition would not take his case out of the purview of section 2(c) of the 2019 Act, because the applicant has already expressed his intention to grant irrevocable *talaq* to respondent No.2. Such a *Talaq-e-ahsan* sent by the applicant is contrary to the reasons and objects of the 2019 Act.
11. Furthermore, this *Talaq-e-ahsan* was sent by registered post on 30.1.2023. It was to become operative after three menstrual cycles but prior thereto the applicant along with his mother went to the parental

home of respondent no.2 and gave *Talaq-e-biddat* by pronouncing Talaq thrice.

12. Under these circumstances, when *Talaq-e-ahsan* had not become operative then giving *Talaq-e-biddat* to respondent No.2 clearly makes out an offence against the applicant.
13. Accordingly, no case is made out warranting interference.
14. The application fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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