

Tarun Kumar Ram Vs Pooja Kumari

Court: Jharkhand High Court

Date of Decision: Jan. 28, 2025

Acts Referred: Hindu Marriage Act, 1955 " Section 13(1)(ia), 24

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Pandey Niraj Roy, Prabhash Kumar, Manish Sharma, Ganesh Ram

Final Decision: Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard the learned counsel appearing on behalf of the petitioner as well as the learned counsel appearing on behalf of the sole opposite party.

2. This petition has been filed under Article 227 of the Constitution of India for quashing of the order dated 01.12.2022 passed in Original Suit No.602

of 2021 passed by learned Principal Judge, Family Court, Ranchi whereby he has been pleased to allow the application dated 15.7.2022 filed under

section 24 of the Hindu Marriage Act holding that the wife is entitled to get maintenance pendente-lite and the husband has been directed to pay

Rs.8,000/- per month to wife and Rs.2000/- per month to the son from the date of filing of the case i.e. 22.9.2021 along with the arrears of

maintenance pendente-lite within six month in equal installments from the date of passing of the order and the litigation cost of Rs.5,000/-. 2. Mr.

Pandey Niraj Roy, the learned counsel appearing on behalf of the petitioner submits that the petitioner and the opposite party got their marriage

solemnized on 24.11.2013 and out of said wed-lock a child was born on 21.8.2014. The opposite party wife has filed a suit on 22.9.2021 seeking

dissolution of the marriage by a decree of divorce under section 13(1)(ia) of the Hindu Marriage Act vide Original Suit No.602 of 2021. The petitioner

has filed his written statement on 11.4.2022 to the plaint in Original Suit No.602 of 2021. Thereafter the opposite party wife has filed the application on

15.7.2022 under section 24 of the Hindu Marriage Act seeking maintenance and pendente lite and the expense of proceeding. She claimed that at the

time of marriage the husband was a B.E and had a good income and she used to incur Rs.1,300/- per month as school fees, Rs.9,101/- as annual fees

of the child, Rs.5,000/- towards clothes and medicines and Rs.10,000/- per month towards her expenses. She claimed Rs.35,000/- per month as total

maintenance pendente lite. He submits that a rejoinder to the petition was filed by the husband who is the petitioner denying the claims. He submits

that the plea was taken that at the time of marriage the petitioner's earning was good but now he is unemployed and dependent upon his

mother's pension for his own survival. He submits that it was also pointed out that the wife without any rhyme and reason started living separately

and absurd demand of Rs.35,000/- by way of maintenance pendente lite has been sought. The wife is working as LIC agent whereby she has been

earning well. In this background, he submits that the learned court has not considered the present status of the petitioner who is an unemployed person

and pulling his livelihood by way of running a mobile repair shop and to buttress his such arguments he draws the attention of the Court to the Income

Certificate issued by the Government of Orissa, Office of Tehsildar and submits that his annual income is Rs.One lac only. In this background, he

submits that the learned court has erroneously passed the order and the maintenance amount is at higher side and the learned court has not considered

the living standard of both the sides and has passed the order which is not in accordance with law. He submits that the said order may kindly be

quashed. He further submits that in the order, the learned court has taken note of the fact that his annual income is Rs.one lac and in spite of that the

said order has been passed.

3. Mr. Prabhash Kumar, the learned counsel appearing on behalf of the sole Opposite party vehemently opposed the prayer and submits that the

learned court has allowed a very meagre amount for maintenance of Rs.8,000/- for wife and Rs.2,000/- for the child. He submits that till date, the

petitioner has not paid any single penny to the opposite party/wife and she has been put to harassment. The child is now 10 years old and studying in

Class -IV in a school at Ranchi. He submits that the child is also being maintained by the wife and she has also to incur expenses on his studies and

the husband and wife are living separately since 19.01.2019 when the wife /opposite party was driven out from her matrimonial home after taking over

all her jewellerys and she was also assaulted and forced to leave her matrimonial home. The petitioner /husband is having B.E degree and has good

income and at the time of marriage, the petitioner /husband had disclosed his monthly income as Rupees One Lakh and he has denied the statement

that now he is earning Rs.One lac. He relied in the case of Rajnesh v. Neha and Another, reported in (2021) 2 SCC 324 wherein at paragraph nos.78

and 81 it has been held as under:

78. The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the

applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to

maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she

was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child

rearing, and looking after adult members of the family; reasonable costs of litigation for a nonworking wife

81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the

financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. The maintenance amount awarded

must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes

oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so

that the wife is able to maintain herself with reasonable comfort.

4. Relying on the above judgment he submits that there is no illegality in the impugned order and the learned court has rightly passed the order.

5. It is admitted position that the marriage was solemnized between the parties on 24.11.2013 and out of said wed-lock a child was born on 21.8.2014

and the wife has instituted the Original Suit No.602 of 2021 for divorce under Section 13(1)(ia) of the Hindu Marriage Act. The petitioner herein has

filed the written statement and thereafter a petition under section 24 of the Hindu Marriage Act was filed by the wife by which demand was made for

a sum of Rs.35,000/- for the reasons disclosed in the said petition which was replied by way of rejoinder by the petitioner and thereafter the learned

court has passed the impugned order directing the petitioner to pay Rs.8,000/- to the wife and Rs.2,000/- to the child.

6. It is well settled that there is no set formula for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and

circumstances of each case. Some scope for leverage can, however, be always there. The Court has to consider the status of the parties, their

respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged

under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in

reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel

handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.

7. If the wife has no source of income, it is the obligation of the husband to maintain her and also the child out of the marriage on the basis of the

provisions contained in the Hindu Adoptions and Maintenance Act, 1956. Her right to claim maintenance fructifies on the date of the filing of the

petition for divorce under the Act. Having thus fixed the date as the filing of the petition for divorce it is not always that the court has to grant the

maintenance from that date. The court has discretion in the matter as to from which date maintenance under Section 24 of the Act should be granted.

The discretion of the court would depend upon multiple circumstances which are to be kept in view while passing such order.

8. The Certificate issued by the Office of the Tehsildar, Jassipur was relied to prove the income of the petitioner who is husband to the tune of

Rs.One lac. No income tax return has been filed before the learned court and merely noting that fact of income in the order it is not proved beyond

the reasonable doubt that the earning of the petitioner was only Rs.One lac. Where the diverse claims made by the parties some conjectures and

guess-work by the court is permissible. Attempt by the husband to conceal his true income would justify adverse inference by the court. At the time of

marriage itself he was earning Rs.One lac and now he has tried to make out the case that he is earning Rs.one lac present also whereas he is having

B.E degree which has been disclosed in the content of Annexure-5 which is on affidavit by the petitioner and only a sum of Rs.8,000/- and Rs.2,000/-

respectively has been allowed.

9. In view of the above discussion and considering the amount, the Court finds that for maintenance at least that amount is required including the study

of the child. No case of interference is made out.

10. Accordingly, C.M.P. No.953 of 2023 is dismissed.

11. Pending petition if any also stands disposed of accordingly.