Gurvinder Singh Vs Harjit Kaur and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 26, 1998

Acts Referred: Hindu Marriage Act, 1955 â€" Section 24

Citation: (1998) 119 PLR 422 : (1998) 3 RCR(Civil) 71

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Advocate: K.S. Brar, for the Appellant; Hemant Kumar and Sandeep Moudgil, for the Respondent

Final Decision: Dismissed

Judgement

Swatanter Kumar, J.
Mr. Gurvinder Singh husband of Harjit Kaur and father of Jaspreet Singh minor has impugned the order of the

learned trial Court dated 9.9.1997 contending that the said order suffers from juris dictional error. Learned Additional District Judge, Barnala, vide

order dated 9.9.1997 allowed the application of the wife and minor child u/s 24 of the Hindu Marriage Act and directed the husband-petitioner

herein to pay a sum of Rs. 1500/- as litigation expenses and Rs. 500/- per month as maintenance pendente lite to the applicant-wife.

2. Undisputed facts are that the parties were married on 3.2.1995 at Village Sul tanpur in accordance with Sikh rites. From this wed lock a minor

son was born on 2.1.1997. According to the wife she was ill-treated and demands of dowry were raised and ultimately she was forced to leave

the house of her husband on 2.5.1996 when she was in family way. It is further averred in the application u/s 24 of the Hindu Marriage Act that

she has no source of income and she is totally dependent upon her family for making her ends meet and to bring up her minor child. She averred

that husband has an income of nearly Rs. 2 lacs, per year as he has got grapes garden, landed property etc. On this premise she raised the claim

for grant of maintenance pendente lite at the rate of Rs. 2,000/- per month for herself and Rs. 1000/- per month for minor child. The application

was contested by the husband who denied that she was ever ill-treated. The husband contested this application stating that the wife has ill-treated

him and used to say that husband is impotent. The averments relating to income and property were denied and it was stated that the wife has

independent income and she was received Rs. 6 lacs, from the estate of her previous husband. It needs to be noticed that the husband has denied

the allegations with regard to the averments made in paras 5 and 6 of the application, but they arc vague; The husband has also not stated in his

reply as to how he makes his both ends meet. It is expected from every litigant irrespective of the fact whether he is seeking relief from the court or

not that he would state true and correct facts. There is not only implied but specific obligation upon every party who approaches the court to verify

the facts true to the knowledge and belief of the party specially in the cases of present kind where the court has to take prima facie view keeping in

mind the urgency of the matter regarding grant or refusal of maintenance. Primarily, the onus has to be discharged by respective parties in support

of the averments made in the application or reply as the case may. Concept of heavy burden of proof would be applicable during the trial where

the parties have the liberty to lead oral and documentary evidence in support of their case. The court would be well within its jurisdiction to draw

adverse inference against a party who actually or attempt to withhold the best evidence and true facts from the Court with intention to frustrate the

claim of others at this preliminary stage of proceedings. Mere fact that wife has some limited sources of income, by itself cannot constitute a valid

ground for rejection of the claim of maintenance by other. In the present case as the trial Court has already noticed that jamabandi placed on

record showed that Gurmail Singh had mutated in the name of the wife the land to the extent of 15 Kanals 10 marlas but no other particular or

details were placed on record to show as to how a sum of Rs. 6 lacs have been received by the wife from the estate of her previous husband. It is

further to be noticed that no document whatsoever in this regard was placed on record. On the other hand, the wife has also filed copy of

jamabandi and khasra gir dawari on record to show that Gurvinder Singh husband had purchased land measuring 8 Kanals from Surjit Singh and

other 8 Kanals of land has been purchased by his father. In the face of above stated facts it may be difficult to exactly weigh the extent of income

of each party to these proceedings, but the facts remains that the wife and husband both have some land and are carrying on some activities to

make their ends meet. The fact also remains that the minor child who is stated to be born on 2.1.1997 has no source of income and would

obviously be dependent upon his parents for all his needs. In the application definite claim has been raised on behalf of the minor. According to the

wife she left the matrimonial house on 3.2.1995 and child was born on 2.1.1997. The kind of denial of these averments in the reply is certainly not

worthy of any appreciation as they lack definiteness and appear to be vague.

3. Whether the child has been born from the wedlock of the parties or not is a matter which is still to be adjudicated by the learned trial Court

during the course of trial. There are no circumstances stated in the reply or documents placed on record which could be suggestive of the fact that

at least prima facie the child was not born from the wed lock between the parties. The minor child cannot be placed at disadvantage at the

beginning of the trial when the wife has specifically averred that the child was born from the wed lock between the parties. There is no dispute to

the fact that she was thrown out and she left her matrimonial home in May, 1996. The mere fact that the wife has source of income or is able to

exist, would not be a criteria for denying her right to live in a proper and reasonable manner. It is the settled principle of law that the wife and child

both would be entitled to the same status of living which they would have got in the event they were living with the husband. The benefit available to

them from the husband while living with the family together, would be a relevant consideration while determining the amount of maintenance. It will

be appropriate to refer to the case of Dr. R.K. Sood Vs. Usha Rani Sood, , where this court held as under:-

Hindu Marriage is not yet looked at or recognised in our society and law, as a pure and simple contract like other contracts. This bond is

considered more as a religious, moral and social bond of mutual duties and obligations giving marriage a religious and meaningful basis keeping in

view the rituals performed at the marriage and consequent solemnisation of marriage between the parties.

In a very recent judgment, the principle enunciated by the Hon''ble Supreme Court in the case of Smt. Jasbir Kaur Sehgal Vs. District Judge,

Dehradun and others, , would be relevant to reproduce at this stage :-

No set formula can be laid for fixing the amount of maintenance. It has, in very nature of things, to depend on the facts and circumstances of each

case. Some scope for liverage can, however, be always there. Court has to consider the status of the parties, their respective needs, capacity of

the husband to pay having regard to his reasonable expenses for his own maintenance and those he is obliged under the law and statutory but

involuntary payments or deductions. 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 fee) handicapped in the prosecution of her

case. 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 u/s 24 of the Act should be granted. The discretion of the Court would depend upon multiple circumstances which

arc to be kept in view. These could be the time taken to serve the respondent in the petition, the date of filing of the application u/s 24 of the act;

conduct of the parties in the proceedings averments made in the application and the reply thereto; the tendency of the wife to inflate the income out

of all proportion and that of the husband to supress the same; and the like. There has to be honesty of purpose for both the parties which

unfortunately we find lacking in this case.

4. The husband would be deemed to be capable of earning some amount as a man of his age and health should be able to earn. This is, however,

in addition to the fact that he owns agricultural land, may be not garden of grapes as alleged. The minor, in any event, would have the right to

receive maintenance as he is minor and is living with his mother. Learned counsel for the petitioner averred that there was no claim raised by the

wife on behalf of the minor child, as such, it could not have been taken into consideration while allowing the application. This argument needs to be

rejected at the outset because the wife has actually claimed maintenance on be half of the minor child which she is entitled to claim in law.

5. In fact the amount of maintenance awarded by the learned trial Court may be said to be insufficient but by no stretch of imagination can be said

to be on the higher side. Consequently, I find no merit in this revision and the same is dismissed with costs which are assessed at Rs. 2,000/-.