

(1993) 10 P&H CK 0035

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Miscellaneous No. 387 of 1993 in L.P.A. No. 856 of 1993

Kiran Mandal

APPELLANT

Vs

Mohini Mandal

RESPONDENT

Date of Decision: Oct. 15, 1993**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 25(2)

Citation: (1995) 1 DMC 312**Hon'ble Judges:** S.K. Jain, J; G.R. Majithia, J**Bench:** Division Bench**Advocate:** A.S. Kalra, for the Appellant; R.C. Sethia and O.P. Sharma, for the Respondent**Final Decision:** Dismissed

Judgement

G.R. Majithia J.

Smt. Mohini Mandal divorced wife of Kiran Mandal has moved this application u/s 25(2) of the Hindu Marriage Act, 1955 (for short, the Act) for modification of the judgment dated March 10, 1989 passed in L.P.A. No. 865 of 1985.

2. The facts :

The marriage of Kiran Mandal with Smt. Mohini Mandal (hereinafter the applicant) was dissolved by a decree of divorce by the matrimonial Court. The judgment rendered by the matrimonial Court was reversed in appeal by a learned Single Judge of this Court. The judgment rendered by the learned Single Judge was challenged by the Husband in L.P.A. No. 856 of 1985 and the same was allowed. The judgment rendered by the learned Single Judge was set aside and that of the Matrimonial Court was affirmed. The Letters Patent Bench also allowed permanent alimony to Smt. Mohini Mandal observing thus :

"In the circumstances, we are left with no option but to grant the petition of the husband for divorce. The judgment of the learned single Judge is set aside and that

of the trial Judge is restored. However, before we part with the judgment, we want to make a provision for permanent alimony for the wife. In fact the husband agreed to provide alimony during her life time. Accordingly she will be entitled to alimony till her life time irrespective of the fact that remarries after their marriage has been dissolved by a decree of divorce. The husband is directed to deposit a sum of Rs. 1,20,000/- in the State Bank of Patiala, High Court Branch, Chandigarh, within two months from today in the name of the respondent. The deposit will be made in the fixed deposit initially for thirty years or till the life time of the wife, whichever is later. This amount will yield a monthly interest of Rs. 1000/- which will be paid to her. If the rate of interest is revised by the Reserve Bank of India and it exceeds Rs. 1000/- per month, the same will be paid to her. On the expiry of the above period if the wife is alive, the amount will remain for twenty years more on the same terms and conditions. The wife will not be entitled to withdraw the amount or any part thereof. On her death, the principal amount will devolve upon the two children or their heirs in equal shares. There will be no order as to costs.

3. The applicant unsuccessfully challenged the judgment of the Letters Patent Bench in Special Leave to Appeal (Civil) No. 9062 of 1983 in the Apex Court and the same was disposed of by order dated October 3, 1989, observing thus:

"The SLP is dismissed."

4. The applicant moved a petition before the Deputy Commissioner of Police/Crime (Women Cell), South Moti Bagh, New Delhi dated November 11, 1991 for the return of Istridhan, dowry etc. Sh. Kiran Mandal was summoned by the Deputy Commissioner of Police/Crime (Women Branch). He appeared before her on various dates and ultimately a compromise was arrived at through the intervention of the Deputy Commissioner of Police/Crime (Women Cell) and Shri Kiran Mandal paid a sum of Rs. 2,00,000/- in satisfaction of the applicant's claim whatsoever arising out of the marriage, which stood dissolved under the decree of this Court, viz. dowry articles, Istridhan, etc.

5. The applicant has now moved this application for enhancing the amount of permanent alimony.

6. In response to the notice of motion issued by this Court, a writ reply has been filed by Sh. Kiran Mandal inter alia, pleading that Smt. Mohini filed false complaint with the Deputy Commissioner of Police/Crime (Women Cell) South Moti Bagh, New Delhi on the ground of non-payment of maintenance, non-return of dowry articles and Istridhan, etc. Sh. Kiran Mandal in order to end the dispute agreed to pay a sum of Rs. 2,00,000/- in two instalments to Smt. Mohini in full and final settlement of her claim arising out of her dissolved marriage, including Istridhan, permanent alimony, dowry articles, etc. In the sworn affidavit dated March 18, 1992 filed by her before the Deputy Commissioner of Police/Crime, Women Cell, Smt. Mohini Mandal stated thus :

"That on receipt of total amount of Rs. 2,00,000/- (Rupees two lacs) may all claims whatsoever arising out of the marriage stand fully satisfied and now there is no claim arising of the marriage, i.e. regarding Dowry articles Istridhan, off-springs, etc. against Shri Kiran Mandal. Shri Kiran Mandal agreed to pay Rs. 2,00,000/- to the applicant to buy peace by raising loan from the provident fund account. He further stated that he has to maintain his daughter and son also aged parents."

7. The applicant has not disclosed in this application the factum of filing a complaint before the Deputy Commissioner of Police/Crime (Women Cell), New Delhi and payment of Rs. 2,00,000/- by Shri Kiran Mandal to her. This is one of the rarest of the rare cases which has come to our notice where the wife has caused untold miseries to the husband and even did not stop harassing him after dissolution of their marriage by a decree of divorce, awarding of a permanent alimony under the judgment of this Court, which has been upheld by the Apex Court in Special Leave to Appeal (Civil). It is unfortunate that the Deputy Commissioner of Police/Crime (Women Cell), South Moti Bagh, New Delhi had usurped the powers of the Matrimonial Court and thought it convenient to adjudicate upon matters which were beyond his jurisdiction and compelled Sh. Kiran Mandal to pay a sum of Rs. 2,00,000/- towards articles of dowry, Istridhan, etc. He was not aware of the facts that all disputes relating to permanent alimony, Istridhan and with respect to any property presented at or about the time of marriage which belonged jointly to husband and wife has to be adjudicated upon the Matrimonial Court. If the applicant had any grouse that the articles of dowry, Istridhan, etc. had not been returned to her by her former husband the remedy lay before the Matrimonial Court and not before the Deputy Commissioner of Police/Crime (Women Cell). We are at pains to observe the manner in which the Deputy Commissioner of Police/Crime (Women Cell) has assumed jurisdiction over the matter which was within the domain of the Matrimonial Court under the Act.

8. We do not want to express any opinion in this matter. To say the least, we express a wish that the Deputy Commissioner of Police/Crime (Women Cell) will refrain from acting in the manner in which he has acted in the instant case, in future. We direct the Additional Registrar (Judicial) of this Court to send a copy of this order to the Commissioner of Police, Delhi, along with a copy each of the affidavit appended Annexures A-2 and A-3 to the reply filed by Shri Kiran Mandal to this application for remedial and preventive action in future.

9. The applicant has not been able to establish any change in the circumstances calling for modification of the judgment dated March 19, 1989 rendered by the Letter Patent Bench of this Court in L.P.A. No. 856 of 1985. To the contrary, we find that after the disposal of the letters patent appeal, she has extracted a sum of Rs. 2,00,000/- from Sh. Kiran Mandal, her former husband, by resorting to methods which are impermissible at law. The Deputy Commissioner of Police/Crime (Women Cell), New Delhi, fell an easy prey to the mechanization of Smt. Mohini Mandal and

the order fixing the permanent alimony for the divorced wife, the Bench to which I was a member was fully conscious of the circumstances of this case and it was for this reason that the order referred to was passed.

For the reasons stated above, this application fails and is dismissed.