

(2008) 09 AP CK 0030

Andhra Pradesh High Court

Case No: C.R.P. No. 937 of 2006

Lanka Venkatapathi Rao

APPELLANT

Vs

Smt. Lanka Vijayasree

RESPONDENT

Date of Decision: Sept. 8, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Hindu Marriage Act, 1955 - Section 24, 26

Citation: (2009) 1 ALD 737 : (2008) 6 ALT 218 : (2009) 2 DMC 429

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: A. Satyanarayana, for the Appellant; Ravi Kiran, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.

The Civil Revision Petition was admitted on 27-2-2006 and interim suspension was granted on 4-12-2006.

2. The present Civil Revision Petition is filed by the Revision Petitioner being aggrieved of an order made by the learned I Additional Senior Civil Judge, L.B. Nagar, Ranga Reddy District in I.A. No. 1576/2004 in O.P. No. 205/2003 dated 21-11-2005. The respondent herein filed the said application I. A. No. 1576/2004 in O.P. No. 205/03 claiming maintenance for the minor children under Sections 24 and 26 of Hindu Marriage Act 1955, hereinafter in short referred to as ""Act" for the purpose of convenience. The learned I Additional Senior Civil Judge, Ranga Reddy District after recording reasons allowed the application granting maintenance of Rs.1500/- p.m. to L.Sravya and Rs.1000/-p.m. to L.Harish towards maintenance and educational expenditure. The respondent in the said application being aggrieved of

the same preferred the present C.R.P.

3. It is stated that the children had attained majority. It is also stated that the said divorce O.P. is not pending and the same was disposed of granting divorce to the parties.

4. Sri A.Satyanarayana, the learned Counsel representing the Revision Petitioner would maintain that inasmuch as an application was filed claiming interim maintenance and educational expenses for the minor children, Section 24 of the Act is not applicable and even if Section 26 of the Act to be made applicable, the wishes of the children to be ascertained first and without ascertaining the wishes of such minor children granting interim maintenance or educational expenses may not be just and proper. The Counsel also would maintain that at present the minor children had attained majority and they are prosecuting their studies. The Counsel also would submit that the conduct of the parties also to be taken into consideration. The husband always has been ready and willing to live with his family members and it is the conduct of the wife alone which landed the family members into these problems. The Counsel also pointed out to several grounds which had been raised in the grounds of Revision and ultimately would conclude that in the facts and circumstances of the case, the Civil Revision Petition to be allowed.

5. Per contra Sri Ravi Kiran, the learned Counsel representing the respondent/wife would maintain that this Court granted interim suspension in the light of the view expressed in [Akella Rama Murthy Vs. Akella Sitalaxmi](#), , but however this view cannot be taken as the binding precedent in the light of the decision of the Apex Court in [Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others](#), and hence inasmuch as the children also would fall within the ambit of Section 24 of the Act the maintenance and educational expenses granted by the learned Judge do not suffer from any legal infirmity. The Counsel also would maintain that the stand taken by the other side that Section 26 of the Act alone to be made applicable in case of children and the necessary ingredients u/s 26 to be followed as a condition precedent for awarding maintenance, cannot be a sustainable contention. The learned Counsel also had drawn the attention of this Court to the language employed in Sections 24 and 26 of the Act and also relied upon certain decisions.

6. Heard the Counsel on record.

7. The Revision Petitioner/husband at present divorced husband, filed the present Civil Revision Petition as against an order in I.A. No. 1576/2004 in O.P. No. 205/2003 on the file of Senior Civil Judge, L.B. Nagar, Ranga Reddy District. The said application was filed by the respondent/wife at present divorced wife, under Sections 24 and 26 of the Act for maintenance of her minor children. The application was allowed granting maintenance of Rs. 1,500/- to L.Sravya and L.Harish for their maintenance and also educational expenses from the date of petition. For the purpose of convenience, the parties hereinafter would be referred to as "petitioner"

and "respondent" as shown in I.A. No. 1576/2004 in O.P. No. 205/2003 aforesaid. The case of the petitioner is that she is the legally wedded wife of the respondent and she filed O.P. No. 205/2003 praying for the relief of dissolution of her marriage with the respondent on the ground of cruelty. It is no doubt stated that at present the divorce O.P. itself was disposed of and divorce was granted to the parties. This is a subsequent event. It is also her case that out of the wed-lock she begot two children and they are in her custody and her first child Shranya at the relevant point of time was studying Intermediate 1st Year and her second child Harish was studying IX Class. It is also her case that though she is employed, in view of the heavy expenditure for the education of the children she was unable to bear the burden and in such circumstances she prayed for grant of maintenance of Rs. 2,000/- p.m. towards maintenance and educational expenses of the first child and Rs. 1,500/- p.m. towards maintenance and educational expenses of the second child. The said application was resisted stating that the petitioner had taken away the money of the respondent deposited in Trinetra Super Market, Anupama Finance and Lakshmi Devi Chit Funds and from Khapra Chit Funds. She had taken away Rs. 6,25,000/- and it is also his case that he was not allowed even to speak to the children and it was never his intention to live separately from the children and he is ready and willing to take care of the children and this application was filed only with a view to extract money and not any interest of the children. The learned Judge recorded certain reasons at paras 5, 6, 7 and 8 and ultimately partly allowed the application.

8. Section 24 of the Act dealing with Maintenance pendente lite and expenses of proceedings reads as hereunder:

When in any proceedings under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of the notice on the wife or the husband, as the case may be.

9. Section 26 of the Act deals with Custody of children and the said provision reads as hereunder:

In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children,

consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made.

Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

Section 26 of the Act provides for the Court passing orders with regard to the custody, maintenance and education of minor children in proceedings under this Act. Such orders may be passed as interim Orders in the proceedings and also at the time of passing of the decree and even subsequent thereto. The Court is also empowered to revoke, suspend or vary order from time to time. It is no doubt true that Section 26 of the Act specifies that in the matter of custody of children, the same to be decided consistently with the wishes of the minors and the same is a relevant factor to be taken into consideration. But however, such wish of the minor can only be a relevant factor only if such minor is capable of forming an independent opinion. Apart from this aspect of the matter, the words "consistently with their wishes, wherever possible" also would assume some importance. On the strength of the language of Section 24 of the Act Sri Satyanaraya would maintain that inasmuch as this application to be taken as one made u/s 26 of the Act, unless the ingredients of Section 26 of the Act are satisfied, the impugned Order cannot be sustained. The Counsel also would maintain that Section 24 of the Act is not applicable since the application is made claiming maintenance and educational expenses of minor children. It is needless to say that at present they are not minors and they had already attained majority.

10. In [Smt. Alka Bhaskar Bakre Vs. Bhaskar Satchidanand Bakre](#), , while dealing with Section 26 of the Act it was held that an order of maintenance can be passed only during the minority of the children and once they attained the majority, the provisions of the said Section would cease to apply. Strong reliance also was placed on the decision of this Court referred (1) supra wherein the learned Judge held at para-7:

A bare reading of the provision discloses that the right to claim maintenance is conferred, only on the husband or the wife, as the case may be, in case it is established that they do not have any independent income, sufficient to maintain themselves. Even a liberal interpretation of this provision, does not enable the Court to grant maintenance to any person, other than the wife and husband. It is impermissible to grant maintenance to children of the parties, in the proceedings under the Act. It is not as if there is no provision for this purpose. Section 125 Cr.P.C.

and the Hindu Adoptions and Maintenance Act provide for grant of maintenance for the children also. In that view of the matter, the order under revision cannot be sustained. It is, however, made clear that it shall be open to the respondent, or the minor child in question, to claim maintenance under the provisions of Hindu Adoptions and Maintenance Act, 1956, or Section 125 Cr.P.C., as the case may be.

The learned Judge expressed the said view in the light of the language employed in Section 24 of the Act.

11. However, Sri Ravi Kiran placed strong reliance on the decision of the Apex Court referred (2) supra wherein the Apex Court while dealing with Section 24 of the Act observed at para-5:

Wife says that the husband has not given true account of his assets and income and has rather suppressed the same. Though the wife has not been able to give any specific evidence to support her contention but circumstances show that the husband has not given true state of affairs of his income. He has pleaded that both his wife and his eldest daughter are earning Rs. 10,000/- per month but there is no basis for such an allegation. The fact remains that the wife has no source of income and she is also maintaining her eldest unmarried daughter. Under the Hindu Adoptions and Maintenance Act, 1956 it is the obligation of a person to maintain his unmarried daughter if she is unable to maintain herself. In this case since the wife has no income of her own, it is the obligation of the husband to maintain her and her two unmarried daughters one of whom is living with wife and one with him. Section 24 of the Act no doubt talks of maintenance of wife during the pendency of the proceedings but this section, in our view, cannot be read in isolation and cannot be given restricted meaning to hold that it is the maintenance of the wife alone and no one else. Since wife is maintaining the eldest unmarried daughter, her right to claim maintenance would include her own maintenance and that of her daughter. This fact has to be kept in view while fixing the maintenance pendente lite for the wife. We are aware of the provisions of Section 26 of the Act providing for custody of minor children, their maintenance and education but that section operates in its own field.

12. In the light of the view expressed by the Apex Court the interpretation adopted by the Apex Court relating to the language employed in Section 24 of the Act to be followed by this Court, the same being a binding precedent. Even otherwise, this Court had carefully gone through the reasons recorded by the learned Judge and this Court is thoroughly satisfied that the order under challenge in the present Civil Revision Petition does not suffer from any legal infirmity warranting interference at the hands of this Court.

The Civil Revision Petition is accordingly dismissed. Parties to bear their own costs.