

Kaushal Kumar Vs The State of Bihar and Another

Court: Patna High Court

Date of Decision: Dec. 13, 2007

Acts Referred: Hindu Marriage Act, 1955 â€” Section 24, 25
Penal Code, 1860 (IPC) â€” Section 498A

Citation: (2008) 1 PLJR 767

Hon'ble Judges: Navaniti Pd. Singh, J

Bench: Single Bench

Advocate: Mahesh Narayan Parbat, Sanjay Kumar Jha, Ved Prakash Shrivastava, Praveen Prabhakar and Gupteshwar Prasad, for the Appellant; Vivek Prasad and Vijay Kr. Verma and Mr. Anil Kumar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Navaniti Pd. Singh, J.

The petitioner is the husband against whom order of interim maintenance u/s 24 of the Hindu Marriage Act has been

passed in a divorce proceeding instituted in the year 2002 by the wife, who is respondent No. 2 herein, and has appeared and filed counter

affidavit. It is not disputed as between the parties that they were married in the year 1990 and within a few days they separated. Thereafter for the

last 17 years they have not living together. After 12 years of the marriage, in the year 2002 the respondent-wife filed a divorce petition and made a

prayer therein for interim maintenance. It is also not in dispute that while the matter was pending, in 2004 wife instituted a case u/s 498A of the

Indian Penal Code (after 14 years of separation and 2 years after divorce application was filed) against the husband. It is also not in dispute that

the wife is educated and is a post-graduate. It is also not in dispute that she has been living with her parents all along at Patna whereas the

petitioner is of remote village from Siwan. Respondent-wife pleaded before the trial court that the petitioner sufficient landed property. No

evidence of any sort was brought on record in support of this submission.

2. The husband, on the other hand, submitted that till recently he was unemployed but has managed an employment at Bokaro in the State of

Jharkhand and started earning some money. It is on coming to know this that these proceedings were initiated.

3. The trial court has noticed some of the aforesaid facts in its order and has specifically noticed that no evidence of any source of income of

husband has been brought on record, yet an interim maintenance of Rs. 1500/- has been awarded by the trial court only on the ground that a well

bodied husband is under moral obligation to maintain his wife irrespective of his income and as such would be liable to pay the same.

4. While considering the question of maintenance the Court has to balance the equity. The Court has to consider both the sides. The Court cannot

after such a long period ignore the separation or ignore the qualification of the lady and without taking into account, the share of the wife in her

parental property, which she is now entitled in law by virtue of amendment to the Hindu Succession Act, 1956 cannot hold a lady to be totally

destitute with all obligation on the husband even when the husband saddled with the responsibility, his earning potential and his mean have to be

taken into account.

5. At this stage learned counsel for the wife states that he has stated by way of an affidavit before this Court the reasons for initiating the divorce

proceeding in the year 2002. The reason being that the petitioner has re-married. On the other hand, the petitioner states that this pleading has

been taken for the first time before this Court. There is neither a whisper " thereof in the divorce application or in the application for maintenance

and it is, for the first time, before this Court and five years after the proceedings were initiated, such a plea is being raised, which is equally

misconceived as other litigations. which were initiated by her after filing of the divorce proceeding.

6. Having considered the matter, I do not wish to go into the merit of the allegation and counter allegation as between the parties. Those by itself

clearly established, undisputedly, the facts that the marriage even though solemnized has failed irretrievably and the two are not living together for

the last 17 years they are agreeable to file a divorce petition by mutual consent, so that bad blood may not flow. This is, however, subject to

permanent alimony in terms of Section 25 of the Act.

7. In view of the aforesaid fair stand taken by the parties, I direct both the parties to file an application for divorce by mutual consent in the case

already pending before the trial court. The same shall be accepted and a decree for divorce by mutual consent be granted but before that is done,

the Court would after taking into account the various relevant factors, some of which has been indicated above, fix a permanent alimony if he so

finds desirable and pass order in accordance with law. The order fixing interim maintenance, which as discussed above, is based on no material on

record, muchless, in support of averments is quashed but, however, it is subject to the decree of divorce by mutual consent and final alimony that

may be fixed by the trial court.

8. If the trial court finds that the writ petitioner is unnecessarily delaying the proceeding, the trial court would be free to pass such an order as he

would deem fit and proper in that case. This disposes of the writ petition.