

(2005) 01 CAL CK 0003

Calcutta High Court

Case No: C.O. No. 3231 of 2004

Shrimati Pampa Das

APPELLANT

Vs

Sri Sanjib Das

RESPONDENT

Date of Decision: Jan. 19, 2005**Acts Referred:**

- Constitution of India, 1950 - Article 227
- Hindu Marriage Act, 1955 - Section 23, 24, 25

Hon'ble Judges: Subhro Kamal Mukherjee, J**Bench:** Single Bench

Judgement

S.K. Mukherjee, J.

In this revisional application under Article 227 of the Constitution of India order No. 18 dated May 17, 2004 passed by Mr. A.K. Das, learned Judge, Family Court, Calcutta in Matrimonial Suit No. 65 of 2003 has been impugned.

2. By the order impugned the learned Judge rejected an application for maintenance pendente lite and expenses of proceedings filed by the wife u/s 24 of the Hindu Marriage Act, 1955, inter alia, with the findings that the wife left her matrimonial home at her own will and without any sufficient reason and as she had made complaints to the police, she was not entitled to maintenance u/s 24 of the Hindu Marriage Act, 1955.

3. The moot point involved in this application is that whether for the purpose of awarding maintenance pendente lite and expenses of the proceedings the conduct of the applicant is relevant?

4. In order to appreciate the aforesaid point it is necessary to recapitulate the provisions of Sections 24 and 25 of the Hindu Marriage Act, 1955.

Section 24. Maintenance, pendente lite and expense of proceedings. - Where in any proceeding 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 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.

Section 25. Permanent alimony and maintenance. - (1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the Respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the Respondent's own income and other property, if any, the income and other property of the applicant the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the Respondent.

(2) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under Sub-section (1), it may, at the instance of either party, vary, modify, or rescind any such order in which manner as the Court may deem just.

(3) If the Court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that he has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party, vary, modify or rescind any such order in such manner as the Court may deem just.

5. In the case of [Lallubhai Keshavram Joshi Vs. Nirmalaben Lalluram Joshi](#), it is held that the conduct of either party is immaterial while considering an application u/s 24 of the Hindu Marriage Act, 1955 although it is relevant for passing an order u/s 25 of the said Act. Section 23 or any other provision of the said Act does not control Section 24 of the said Act. If the applicant for pendente lite maintenance is found to have no independent income, the Court is competent to grant it.

6. In the case of [Gangu Pundlik Waghmare Vs. Pundlik Maroti Waghmare and Another](#), it is observed that obviously this section is enacted with the object of providing maintenance to the spouse during pendency of the proceedings, who is not otherwise able to maintain himself or herself and has to depend upon the other spouse for that purpose. The same is the object for making provision for the expenses of the proceedings. The Legislature by enacting this provision appears to have taken note of the fact that during the pendency of the proceedings under the Act, say for divorce or judicial separation, the unity of the family would be disrupted and one of the two spouses would be thrown out from the protection and shelter of

the other and would be rendered without any means not only to maintain herself or himself but also to meet the expenses necessary for the proceedings which he or she has to undergo. It is in order to obviate such a hardship that the Legislature thought it fit to make a provision in the Act for maintenance pendente lite and expenses of the proceedings from the spouse who has means to pay the same, if the other has no means. If that be the purpose of the Legislature in enacting this provision, it appears that the question whether the spouse claiming relief under this section is guilty of any marital misconduct or offence would not be relevant for the purpose of directing payment. It is presumed that the proceeding which is initiated under the Act would be for divorce, judicial separation or other matters based on certain allegations with regard to the misconduct or marital offences committed by the other spouse. Now if these allegations were to be gone into at the time of deciding as to whether the applicant, u/s 24 of the Act, is entitled to payment of maintenance or expenses, it would amount to prejudging the whole issue. It is needless to say that proceedings u/s 24 of the Act are intended to be summary in nature and it would not be appropriate at that stage to decide if the spouse making the application under that section is or is not entitled to the said payment because of the misconduct or commission of marital offence by him or her. No doubt, it is entirely in the discretion of the Court to make or not to make an order under the said section. But that discretion has to be exercised by it on the requirements laid in that section itself and if that section does not prohibit the Court from directing payment of maintenance and expenses on the ground of misconduct, it would not be in keeping with the purpose of the section to refuse to do so merely in exercise of the discretion vested in the Court under that section.

7. In the case of *Dwarkadas Gurumukhdas Agarwal v. Bhanuben* reported in AIR 1986 Gujarat 8 it is observed that if the conduct of a spouse claiming such a right is to be considered so relevant in the original proceedings as to negative the right which the law has invested in a spouse lacking the capacity for his or her maintenance, the Legislature would have certainly provided to that effect as it has done in Section 25 of the Hindu Marriage Act. It can be urged with force that the conduct of a spouse claiming such a right is entirely irrelevant since otherwise the Legislature would have made an appropriate provision in Section 24 as it has done in Section 25.

8. For the purpose of awarding maintenance pendente lite and expenses of proceedings the conduct of the applicant is immaterial. The provisions of Section 24 of the Hindu Marriage Act, 1955 do not authorize the Court to look into the conduct of the applicant at the time of consideration of an application for awarding maintenance pendente lite. This is apparent from the fact that the legislature has made provisions for consideration of the conduct of the parties at the time of awarding permanent alimony u/s 25 of the Hindu Marriage Act, 1955. A proceeding for awarding alimony pendente lite and expenses of the proceedings is summary in nature and the Court is not authorize to go into the merits of the claim and the

counter claim of the parties. When an applicant applies for maintenance pendente lite and for expenses of the proceedings, it is not open to the Court to pre-judge the issues and to hold that as the applicant is guilty of matrimonial offences, the applicant is not entitled to alimony pendente lite and expenses of the proceedings inasmuch as such question is extraneous to the consideration.

9. Therefore, the learned Judge in the Family Court committed error of jurisdiction in dealing with the application u/s 24 of the Hindu Marriage Act, 1955 by the wife.

The order impugned is, set aside. The application u/s 24 of the Hindu Marriage Act, 1955 is sent back to the learned Judge for decision on merits.

I trust and hope that the learned Judge shall decide the application on merits by March 31, 2005 positively.

I make no order as to costs.

Xerox plain copy of this order duly counter signed by the Assistant Registrar (Court) be given to the parties on usual undertakings.