

(1986) 02 CAL CK 0028

Calcutta High Court

Case No: C. O. No. 3014 of 1985

Somen Ghosh

APPELLANT

Vs

Bani Ghosh (Nee Sen)

RESPONDENT

Date of Decision: Feb. 20, 1986**Acts Referred:**

- Hindu Adoptions and Maintenance Act, 1956 - Section 18, 24, 25
- Hindu Marriage Act, 1955 - Section 24, 4

Citation: 90 CWN 816**Hon'ble Judges:** Sushanta Chatterjee, J; Mookerjee, J**Bench:** Division Bench**Advocate:** Pravat Kumar Mukherjee and Debabrata Mukherjee, for the Appellant; Purnenda Chandra Sen, for the Respondent

Judgement

Mookerjee, J.

The short point in this Revisional Application is even when the applicant wife does not prove the actual income, if any, earned by the husband opposite party, whether the court has jurisdiction to award the applicant alimony u/s 24 of the Hindu Marriage act, 1955. By the order complained of in this Revisional Application, the learned Additional District Judge, 9th Court, Alipore 24-Parganas has inter-alia, held that even when he has no independent income of his own, the husband has responsibility to maintain his wife who has also no independent income and, therefore, he has directed the petitioner to pay his wife, the opposite party herein, maintenance at the rate of Rs. 200/- per month and sum of Rs. -200/- as litigation expenses. We find no substance in the extreme submission made on behalf of the petitioner that unless the petitioner husband actually earns any income, u/s 24 of the Hindu Marriage act, the court cannot order him to pay maintenance pendente lite and expenses of proceeding to his wife. In this case, undisputedly, the opposite party wife, who applied u/s 24 of the Hindu Marriage Act has no independent income for her support and the expenses of the proceeding. Section 4 of the Hindu

Marriage Act is not relevant for deciding the question. Right of a Hindu wife to claim maintenance from her husband is no longer based only upon texts, rules or interpretations of the Hindu Law or any custom or usage in force immediately before the commencement of the Hindu Marriage Act, 1955. Apart from the provisions of section 18 of the Hindu Adoption and Maintenance Act which came into force after the commencement of the Hindu Marriage Act, 1955, under sections 24 and 25 of the said Act of 1955 in any matrimonial proceeding the court may order for payment of respectively maintenance pendente lite, for litigation expenses and for permanent alimony and maintenance, no doubt, under the aforesaid provisions of the Hindu Marriage Act the court may make such orders either in favour of the wife or the husband who has no independent income sufficient for her or his support. Provisions of sections 24 and 25 of the Hindu Marriage Act, 1955, however, do not in any way override or abrogate right of a wife for maintenance as an incident of the status or estate of matrimony.

2. In case in a matrimonial proceeding the wife is the petitioner and it appears to the court that she has no sufficient independent income, in making an order u/s 24 of the Hindu Marriage Act, 1955 it would be reasonable for the court to take among other things into consideration the legal obligation of the respondent husband to provide for maintenance and support of his wife. Unlike provisions contained in other matrimonial laws either the wife or the husband who has no sufficient independent income is entitled to apply u/s 24 of the said Act. of 1955 for ordering the respondent wife or the husband to pay maintenance pendente lite and expenses of the proceeding. But, as already stated, the same does not in any way alter the law relating to the obligation on the part of the husband to maintain his wife.

3. The court u/s 24 of the Hindu Marriage Act, 1955, has been given a wide discretion in the matter of granting alimony pendente lite but the discretion is judicial and not arbitrary or capricious. It is to be guided on sound principles of matrimonial laws and to be exercised within the ambit of the provisions of the section and having regard to the object of the Act (vide Mulla's Hindu Law, 15th Ed. page 873). In fixing the sum of maintenance and legal expenses to be paid to the petitioner, who makes an application u/s 24 of the Act, the court shall have regard to the petitioner's own income and income of the respondent. But we are unable to accept the contention of Mr. Mukherjee on behalf of the petitioner, that as there was no evidence that his client was receiving any income or salary, no order u/s 24 of the Hindu Marriage Act ought to have been made in favour of the wife, the opposite party to the Revisional Application. Mr. Mukherjee in this connection had drawn our attention to the discussion under the heading "Has No Independent Income Sufficient" in Mulla's Hindu Law, 15th Ed. pages 872-73. The said passage does not really support the contentions of Mr. Mukherjee. Because it has been observed therein: "It is also implicit in the section that the order would not be made if the respondent to the application is shown to have no property nor earning capacity or is shown to have very small income. But the fact that the respondent is

not receiving any income from property for the time being would not be sufficient answers to the claim". Reference may also be made to the discussion on the point at page 885 of the aforesaid book on the subject of assessment of quantum of maintenance payable u/s 25 of the Hindu Marriage Act. The learned author has inter alia observed It would also be open to take into account the earning capacity of the husband as well as the wife. The court has ample discretion and in a deserving case may ascertain not only what money's the husband had but what money he could have had if he liked and take into consideration his capacity and ability to provide maintenance. The court will look at the realities and not permit itself to be misled by appearances. Rayden on Divorce, Vol. I 13th Edn. in Notes at pages 872-873 with reference to the provisions of Matrimonial Causes Act, 1973 makes similar observations.

4. In the instant case, the husband was undisputedly at one time employed in a company named Kohinoor Rubber Works. In her evidence given in the court below the wife had no doubt stated that she did not know where her husband worked now. In her cross-examination, she had denied the suggestion that her husband was out of employment. Although in his evidence the husband, Samar Ghosh, had claimed that he was not employed at present and had to tender resignation as his wife and others held out threats. But he had admitted that he had no paper to show that he had left his work. He also admitted that he had no witness for leaving his job or to show what was his salary. He had also admitted that he got a job at Ranigunj but he had left it due to threats by the other party. Again, he had no paper or witness to show that he had lost this job also. In all likelihood, there would be papers in case he had resigned his job. But he did not adduce either oral or documentary evidence to corroborate his claim that he was out of employment. The husband was an able-bodied youngman of about 34 years of age. Although there was no evidence before the court below of the actual income, if any earned by him, the court below legitimately could take into consideration his ability to earn a reasonable amount of income. Having regard to the facts and circumstances of the case, we are, however, of the opinion that the sum of Rs.150/- per month fixed as interim maintenance is disproportionate to the earning capacity of the petitioner husband. A remand at this stage will result in further delay of the matrimonial proceedings. Therefore, upon the available evidence and on a consideration of the circumstances of the case, we reduce the monthly maintenance from Rs. 150/- (one hundred and fifty) to Rs. 100/- (one hundred) per month with effect from February, 1986. The maintenance, however, will be payable at the rate fixed by the learned District Judge up to the month of January, 1986. Arrear monthly maintenance if any and the current maintenance would be remitted by the petitioner husband, each month within the 15th of each succeeding month according to English calendar without deducting any Money Order charge. In case of change, if any, of the means and circumstances of the parties, the trial court would be at liberty to pass appropriate orders in terms of section 24 of the Hindu Marriage Act and for that

purpose this order made by us shall be deemed to have been made by that court. We record that up to the month of December, 1985, the husband petitioner has paid monthly maintenance to the respondent wife. We express no opinion on the merits. Let the matrimonial proceedings in the trial court be disposed of expeditiously, if possible, within year from this day.

The Revisional Application is disposed of without cost.

Susanta Chatterjee, J.

I agree.