

(2009) 07 DEL CK 0456

Delhi High Court

Case No: CM (M) 50 of 2007 and CM 15892 of 2008

Dr. Pradeep Kumar Sharma

APPELLANT

Vs

Ratna Sharma

RESPONDENT

Date of Decision: July 3, 2009

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Hindu Marriage Act, 1955 - Section 24

Citation: (2009) 160 DLT 622 : (2009) 2 DMC 177 : (2009) ILR Delhi 129 Supp : (2010) 8 RCR(Civil) 1765

Hon'ble Judges: Manmohan, J

Bench: Single Bench

Advocate: Pinky Anand and Aakanksha Munjhal, for the Appellant; Bina Gupta and Gaurav Singh, for the Respondent

Final Decision: Dismissed

Judgement

Manmohan, J.

Present petition has been filed under Article 227 of Constitution of India challenging the order dated 22nd November, 2006 passed in HMA No. 655/2006 whereby Additional District Judge has granted monthly maintenance to respondent-wife at the rate of Rs. 7,000/- and litigation expenses to the extent of Rs. 8,000/-.

2. Ms. Pinki Anand, learned Senior Counsel for petitioner-husband stated that respondent-wife is an able bodied educated person who is working as a teacher and earning almost Rs. 30,000/- per month from salary and tuition fees. In this connection, she referred to the statement of respondent-wife's brother, Mr. Abhishek, wherein he stated "My sister is working as a teacher in St. Fiedelis School, Aligarh and is maintaining her expenses on her own." She also referred to statement of respondent-wife's sister, Kumari Reena, wherein she stated "My sister

is working as a Teacher in St. Fiedelis School, Aligarh. The statement given by my brother Abhishek is my statement also."

3. Ms. Pinky Anand further stated that when the maintenance application was filed on 14th September, 2005, petitioner-husband was earning gross salary of Rs. 24,353/- and his net income was only Rs. 20,065/-. In this context, she relied upon a salary certificate issued by petitioner-husband's employer.

4. She further stated that petitioner-husband's father had undergone a bypass surgery in 2004 and the entire expenditure was borne by petitioner-husband. She contended that petitioner-husband was spending Rs. 10,000/- per month approximately on his father's medical expenses.

5. Ms. Pinky Anand also referred to the following judgments:

A) [Smt. Mamta Jaiswal Vs. Rajesh Jaiswal](#), wherein it has been held as under:

3. A wife is entitled to get pendente lite alimony from the husband in view of provisions of Section 24 of the Act if she happens to be a person who has no independent income sufficient for her to support and to make necessary expenses of the proceedings. The present petitioner, the wife, Mamta Jaiswal has made a prayer that she should be paid travelling expenses of one adult member of her family who would be coming to Matrimonial Court at Indore as her attendant. Therefore, the question arises firstly, whether a woman having such qualifications and once upon a time sufficient income is entitled to claim pendente lite alimony from her husband in a matrimonial petition which has been filed against her for divorce on the ground of cruelty. Secondly, whether such a woman is entitled to get the expenses reimbursed from her husband if she brings one adult attendant alongwith her for attending the Matrimonial Court from the place where she resides or a distant place.

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6. In view of this, the question arises, as to in what way Section 24 of the Act has to be interpreted: Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure ? Whether such spouse should be permitted to get pendente lite alimony at higher rate from other spouse in such condition ? According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself Or herself inspite of sincere efforts made by him or herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendente lite alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversary by implementing the provisions of law suitable to their purpose. In the present case

Mamta Jaiswal is a well qualified woman possessing qualification like M.Sc. M.C. M.Ed. Till 1994 she was serving in Gulamnabi Azad Education College. It impliedly means that she was possessing sufficient experience. How such a lady can remain without service ? It really puts a bug question which is to be answered by Mamta Jaiswal with sufficient cogent and believable evidence by proving that in spite of sufficient efforts made by her, she was not able to get service and, therefore, she is unable to support herself. A lady who is fighting matrimonial petition filed for divorce, cannot be permitted to sit idle and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. Section 24 is not meant for creating an army of such idle persons who would be sitting idle waiting for a "dole" to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her. The case may be vice versa also. If a husband well qualified, sufficient enough to earn, sits idle and puts his burden on the wife and waits for a "dole" to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolents as well as idles so also does not want an army of self made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, at least, has to make sincere efforts in that direction. If this criteria is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversary who happens to be a spouse, once dear but far away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony, and would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself. That cannot be treated to be aim, goal of Section 24. It is indirectly against healthiness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient effort are unable to support and maintain themselves and are required to fight out the litigation jeopardising their hard earned income by toiling working hours.

B) [Manokaran @ Ramamoorthy Vs. M. Devaki](#), wherein it has been held as under:

5...The above averment shows that the petitioner herein/husband is working in Senthil Auto Garage, Annai Sathya Nagar, Chennai-102 and drawing a salary of Rs. 2000/- per month. Likewise, it is also seen that the respondent herein/wife is working in Raj T.V and drawing a salary of Rs. 4,500/-. Though the said aspect has not been substantiated, I have already referred to the admission of the respondent herein in her counter statement filed in the main O.P.1310/2000 wherein she admitted that she secured a private job and is getting salary and staying with her brother. On the other hand, it is established particularly from Ex. R-1, the petitioner herein is getting only Rs. 70/- per day or Rs. 2000/- per month by working in Senthil Auto Garage. I have already referred to the language used in Section 24 which

makes it clear that for grant of maintenance pendente lite the party should not have sufficient independent income for her support. In the light of the materials available, particularly the admitted case of the respondent/wife, she is employed in a private Satellite T.V. and earning for her livelihood staying with her brother, it cannot be construed that she is not having sufficient independent income. The Family Court lost its sight to consider the above material aspect.

C) [Kumaresan Vs. Aswathi](#), wherein it has been held as under:

8. ...A plain reading of the above provision would show that the only condition required for grant of maintenance pendente lite is the party should not have sufficient independent income for her/his support. If it is found that the applicant has sufficient income for his/her support, no amount can be allowed as maintenance pendente lite as per Section 24 of the Act. But of course, if it is found that the applicant has no sufficient independent income for his/her support, such application can be considered and suitable maintenance amount can be awarded pendente lite.

6. On the other hand, Ms. Bina Gupta, learned Counsel for respondent-wife stated that respondent was not employed, had no source of income and was financially dependent on her father. She further stated that respondent-wife was only a diploma holder in electronic engineering and was not qualified to teach. She stated that respondent-wife neither had a Permanent Account Number nor she paid any income tax. Ms. Gupta further urged that statements of respondent's brother and sister u/s 161 Cr.P.C. were unsigned and false. In this context, she referred to the affidavits filed by respondent's brother and sister in the present proceedings. In both the affidavits, it has been specifically averred as under:

2) That the deponent didn't tell the investigating officer in his/her statement in Cr. No. -299/05, police station-Banna Devi, Distt. Aligarh anything pertaining to the employment of his/her sister, Ratna Sharma, it has been wrongly mentioned therein.

7. Ms. Bina Gupta stated that prior to receiving of bank draft from petitioner-husband, respondent-wife did not even have a bank account in her name and, therefore, she could not deposit the said draft for several days. She stated that after receiving the draft, respondent-wife opened a bank account with Bank of India, Aligarh. In this connection, she placed reliance upon a certificate issued by Bank of India.

8. Ms. Bina Gupta also referred to petitioner-husband's divorce petition wherein he has stated that respondent-wife is only an intermediate pass from Aligarh. The said averment in petitioner-husband's divorce petition is reproduced hereinbelow for ready reference:

...But the petitioner after marriage came to know that respondent is only Intermediate pass from Aligarh and pursuing her Bachelor's in Computer Application from Indira Gandhi National Open University. The petitioner did not paid any heed to this as the petitioner had never wanted a working wife rather he had wished for a house wife...

9. Ms. Bina Gupta further contended that the salary certificate referred to by Ms. Pinky Anand was not a "trustworthy" one as it had been issued by an "obliging employer". In this context, Ms. Gupta referred to petitioner-husband's income tax return for the period ending 31st March, 2006, which showed his annual income as Rs. 5,77,060/- that means a monthly income of Rs. 48,088/-. She also referred to petitioner-husband's latest income tax return for the assessment year 2008-2009 which showed his annual income as Rs. 6,37,702/- that means a monthly income of Rs. 53,141/-.

10. Ms. Bina Gupta further stated that petitioner-husband has not filed even a single document to substantiate his claim that he is spending Rs. 10,000/- per month on his father's medical expenses.

11. In rejoinder, Ms. Pinky Anand stated that petitioner-husband's current salary was irrelevant and what had to be considered was petitioner-husband's salary at the time when maintenance application was filed. She further pointed out that as respondent-wife had not filed an application for increase in maintenance, petitioner-husband's current salary was irrelevant.

12. Ms. Pinky Anand further reiterated by way of an affidavit handed over in Court during the course of hearing that respondent-wife was working as a school teacher at the time of grant of maintenance and that she had a bank account in Gramin Bank, Ram Ghat Road, Aligarh.

13. Having perused the impugned order and heard the parties at length, I am of the view that while granting maintenance u/s 24 of Hindu Marriage Act, 1955, Court does not have to grant mere sustenance amount, as maintenance directed to be paid is meant to ensure that the spouse enjoys the same monetary status and facilities as she or he was enjoying prior to separation. Consequently, I am not in agreement with the trial court that maintenance u/s 24 of Hindu Marriage Act has to be granted only for sustenance and for contesting the litigation. In fact, a Division Bench of this Court in Radhika Narang and Ors. v. Karun Raj Narang and Anr. in FAO (OS) No. 139/2006 decided on 16th January, 2009 has held as under:

26. Thus, after considering the above position of law, it is evident that the following principles emerge from the above judgments:?

a. Maintenance depends upon the summation of all the facts of the situation [as laid down in [Dr. Kulbhushan Kumar Vs. Smt. Raj Kumari and Another](#),].

b. For granting maintenance, the scale and mode of living, the age, habits, wants and class of the life of the parties has to be regarded [as laid down in Dr. Kulbhushan Kunwar v. Raj Kumari (supra)].

c. Maintenance being such that the wife could live in a reasonable comfort; considering her status and mode of life which she was used to while living with her husband [as laid down in [Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others](#),].

d. During the pendency of the suit for maintenance, which may take a considerable time to attain finality, the wife cannot be forced to face starvation till she is subsequently granted maintenance from the date of the filing of the suit [as laid down in [Neelam Malhotra Vs. Rajinder Malhotra and Others](#),].

e. Maintenance must necessarily encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. [as laid down in Komalam Amma v. Kumara Pillai Raghavan Pillai and Ors. SLP (C) No. 3670/2005 decided on 14th November, 2008].

f. Maintenance, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head. [as laid down in [Mangat Mal \(Dead\) and Another Vs. Smt. Punni Devi \(Dead\) and Others](#),].

g. Maintenance must vary according to the position and status of a person. It does not only mean food and raiment. [as laid down in [Her Highness Maharani Kesarkunverba Saheb of Morvi Vs. Commissioner of Income Tax, Bombay North, Kutch and Saurashtra](#),].

27. The purpose of providing maintenance, in our view, is thus meant to secure to a wife/spouse claiming maintenance, as far as possible, the status and facilities enjoyed by her prior to her separation from her husband when her maintenance claim is finally determined. The determination of maintenance not being governed by any rigid or inflexible rule gives wide power and discretion to the Court to do justice.

14. In the present case, I am of the view that there is no document to prove or show that respondent-wife has been in regular employment for consideration/salary. The alleged statements given by respondent's brother and sister are unsigned Section 161 Cr. P.C. statements, which are not admissible in trial and in fact, in view of the specific denial on affidavit by respondent's brother and sister, I am of the view that they cannot be relied upon.

15. Also keeping in view the respondent-wife's specific averment that she was not qualified to teach and petitioner-husband's admission that she was only

intermediate pass, I am of the prima facie opinion that respondent-wife was incapable of being employed as a teacher on a permanent/regular basis. Therefore, the judgment of Mamta Jaiswal (supra) relied upon by petitioner's Counsel is irrelevant and inapplicable to the facts of present case. I may also mention that despite respondent-wife's specific averment that she did not have a bank account prior to March, 2009, petitioner-husband, except stating on an affidavit that respondent-wife had a bank account with Gramin Bank, has not filed any document like banker's certificate etc. in support of his contention. Accordingly, in view of respondent-wife's specific averment on an affidavit along with Bank of India's certificate, I am prima facie of the view that respondent-wife did not even have a bank account prior to March, 2009. Consequently, I am prima facie of the opinion that the respondent has till date not been employed for consideration/salary and she has no source of independent income.

16. Moreover, Ms. Pinky Anand's statement that petitioner-husband is incurring a monthly expenditure of Rs. 10,000/- on his father's health, is a bald one and not supported by any bill or prescription.

17. In any event, keeping in view the petitioner-husband's annual income of Rs. 5,77,060/- and Rs. 6,37,702/- in 2006 and 2008 respectively, I am of the opinion that the impugned order granting monthly maintenance at the rate of Rs. 7,000/- is neither in excess of jurisdiction nor does it suffer from any material irregularity. Consequently, impugned order calls for no interference in Article 227 jurisdiction and the present petition and application are dismissed but with no order as to costs. The interim order dated 10th January, 2007 stands vacated.