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**(1959) 12 CAL CK 0013**  
**In the Calcutta High Court**  
**Case No : Extraordinary Suit No. 7 of 1958**

Amar Kanta Sen

APPELLANT

Vs

Sovana Sen and Another

RESPONDENT

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**Date of Decision :** 18-12-1959

**Acts Referred:**

Hindu Marriage Act, 1955 — Section 25

**Citation :** AIR 1960 Cal 438

**Hon'ble Judges :** S. Datta, J

**Bench :** Single Bench

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## Judgement

S. Datta, J.—On or about the 17th August 1959 this application was made by Sovana Sen inter alia for an order that the permanent maintenance at A sum of Rs. 350/- or any sum which this Hon'ble Court may think proper be directed to be paid to her by the respondent Mr. Amar Kanta Sen.

2. This application arises out of a judgment delivered by me on 10-7-1959 whereby the marriage between her and Amar Kanta Sen was dissolved. She stated in her petition that she came of a very respectable family and was married to a respectable person and was throughout accustomed to a decent way of living. She cannot marry nor does she intend to marry in her life over again and wants to lead a very chaste and decent life dedicating herself to the welfare of her son and to her musical pursuit and painting for which she has special aptitude. She further stated that she was not in good health and was unable to support herself and that she was now practically without means and had no friends or relations who would support her. She further stated that her monthly expenses came to about Rs. 315/- per month for which she has given particulars. She also further stated that she had incurred heavy debts to the extent of Rs. 4000/- to maintain herself in her lonely and destitute condition.

3. The husband was drawing a salary of Rs. 1700/- per month.

4. She further asserted that she was entitled under the Hindu Law to he

maintained by her husband so long as she lived a decent life according to the standard she had so long been accustomed to and so long as her husband was capable to bear such expenses; the obligation to maintain her was his moral and personal obligation,

5. In the affidavit in opposition dated 28-8-1959, it was asserted that he received a net salary of Rs. 879 and 90 np. and the salary was not Rs. 1,700/-. It was also pointed out that she had committed adultery not only with Purnendu Roy but also with two other gentlemen according to my findings. She was not accordingly entitled to maintenance because she had betrayed her obligations as a wife. It was further denied that her monthly expenses amounted to Rs. 315/- or that she had incurred a debt of Rs. 4000/-.

6. In the affidavit in opposition he further asserted in paragraph 13 thereof on the basis of informations received by him from Delhi that Sobhana Sen was selected for appointment and offered an appointment as Assistant Producer (Music), All India Radio, New Delhi,

7. In her opposition filed by her on 7-9-1959, she denied the allegations made in paragraph 13 of the affidavit in opposition and prayed that the court should not take any notice of the said allegation in the affidavit in opposition.

8. In this connection the parties at my direction filed further affidavits and produced some letters or copy letters.

9. In this case there was dissolution of the marriage on the ground of adultery of the applicant. The applicant's case that her husband had committed adultery was found to be not supported by evidence. The applicant is a graduate and an adept in music. She according to her own petition earned about the time, of making the petition a sum of about Rs. 90/- per month. After she joined the All India Radio at Delhi she has been earning a sum of about Rs. 300/- per month. The respondent's salary is Rs. 1360/- out of which a sum of Rs. 475/- was shown in the suspense account and a sum of Rs. 879/- was shown as payable for the month of August 1959. Before the dissolution of the marriage there was an order for the payment of maintenance at Rs. 200/- per month from May 1956.

10. It is clear from the evidence before me that the applicant was appointed an Assistant Producer (Music) of the All India Radio on a salary of Rs. 300/- (consolidated) prior to 7-9-1959 and she joined her duties at Delhi on 17-9-1959.

11. There is no evidence before me as to any misconduct of the applicant after the judgment.

12. In this background the application has to be considered in the light of Section 25 of the Hindu Marriage Act 1955 which is as follows:

"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, while the applicant remains unmarried, 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 and the conduct of the parties, 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 such 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 remarried or, if such party is the wife, that has not remained chaste, or if such party is the husband that he has sexual intercourse with any woman outside wedlock, it shall rescind the order."

13. This follows more or less Section 37 of the Indian Divorce Act 1869 except that in the Hindu Marriage Act like obligation is imposed in similar circumstances upon the wife to maintain her husband. The Indian Divorce Act 1869 is modelled in its turn on Section 32 of the Matrimonial Causes Act 1857 which is as follows:

"The Court may, if it shall think fit, on any such decree, order that the husband shall to the satisfaction of the Court secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any)" to the ability of the husband, and to the conduct of the parties it shall deem reasonable, and for that purpose may refer it to any of the conveyancing counsel of the Court of Chancery to settle and approve of a proper deed on instrument to be executed by all necessary parties; and the said Court may in such case, if it shall see fit, suspend the pronouncing of its decree until such deed shall have been duly executed; and upon any petition for dissolution of marriage the Court shall have the same power to make interim orders for payment of money, by way of alimony or otherwise, to the wife, as it would have in a suit instituted for judicial separation."

There was some change in Section 19 of the Matrimonial Causes Act 1950 which is the counterpart of Section 32 of the said Matrimonial Causes Act.

14. In 1902 P. 270. *Ashcroft v. Ashcroft and Roberts* it was held inter alia that the Court has an absolute discretion vested in it by the section (meaning Section 32 of the Matrimonial Causes Act; 1857) to be exercised according to the circumstances of each case. Thus, it will order the husband to secure a provision for his guilty wife, even though his own conduct has been unimpeachable, if the wife is proved to be entirely without means of support and unable through ill-health to earn her own living. The relevant portion of the judgment of his lordship Lord Justice Vaughan Williams is as follows:

"In this particular case there is no suggestion whatever of any misconduct on the part of the husband; but the learned Judges is of opinion that what is proved is that the wife has no means of subsistence, and that she is unable to earn any. This, then, is not a case in which the guilty wife is able to earn her own living; it is a case in which, owing to the state of her health she is unable to do so. Under the circumstances I think we ought not to interfere with the order of the learned Judge, and that we ought to affirm and approve of it."

15. In 1905 P. 4 Squire v. Squire and O'Callaghan it was held as follows;

"The Court, in exercising its discretion in favour of and granting a divorce to a husband who had previously been judicially separated on the ground of his cruelty, ordered that the decree dissolving the marriage should not be made absolute unless and until the husband should secure an allowance of ₹52 a year, payable weekly, to the divorced wife."

16. The relevant portion of the judgment of Jeune P. is as follows :

"I certainly think that the petitioner ought to make the respondent an allowance, and I think the ground for that is that the respondent should not be caused, by being left without some allowance to pursue a course of life which I should much regret if she were let to pursue. She ought to be preserved from imminent temptation. In this connection I do not lay much stress on the husband's past conduct towards his wife. In my view, the main ground for ordering him to make her an allowance is not his own conduct in the past, but that she may be reasonably safe from the terrible temptation which might otherwise assail her. The conduct of the husband is not, in my view, materially in issue in dealing with this matter. But, in the view I take of this class of case, it is material that the dum casta clause should be inserted. The wife should know and should be made to feel that her livelihood depends on her leading a chaste life in the future."

17. It may be noticed that in both cases the allowance given works out at the rate of ₹1 per week.

18. Let us now turn to the position of an unchaste wife under the Hindu Law without forgetting that there was no provision for Divorce therein as marriage "according to the Hindu Law, was a holy union for the performance of religious duty." In "Principles of Hindu Law" by D. F. Mulla. 12th Edition, the law on this point is summarised as follows:

"A wife who persists in following a vicious course of life, forfeits her right to maintenance even though it is secured by a decree. But it would seem that if she completely renounces her immoral course of conduct, her husband is liable to furnish her with a bare or what is also called starving maintenance, that is, food and raiment just sufficient to support her life. The burden of proving that the erring wife has returned to purity is on the wife herself."

19. It will be seen that even under the Hindu Law a wife who was found unchaste was only entitled to a bare or starving allowance. In this respect there seems to

be very little difference in principle between the English Law and the Hindu Law, before the Hindu Marriage Act, 1955.

20. In my opinion on the authorities referred to she is entitled to a bare subsistence allowance or starving allowance. When she is earning a living and is not in helpless position her right to maintenance, even of the bare subsistence disappears for the allowance is meant to prevent "starvation." In these circumstances she is not at all entitled to any allowance after 17-9-1959 when she joined the service,

21. The next question for consideration is the maintenance she is entitled from her former husband from the date of the dissolution of marriage between the parties on 10-7-1959 till 17-9-1959 when she joined the All India Radio at Delhi.

22. The amount of Rs. 315/- which she assessed as her expenses in the petition is much more than a starving allowance. It exceeds the Interim maintenance of Rs. 200/-. In my opinion the starving allowance cannot exceed even in the circumstances of the case taking a very liberal view a sum of Rs. 125/- per month. It is this amount of Rs. 125/- which she would have "been entitled if she had no income at all.

23. She, however, earned a sum of Rs. 90/-per month during the said period.

24. Therefore the alimony per month which she can legally claim from Mr. Sen is the difference between Rs. 125/- and Rs. 90/- that is to say, Rs. 35/- per month. The total figure works out to Rs. 79.33 np. in all for the said period. Hence, Mr. Sen the respondent should pay Rs. 79.33 np. to the petitioner who has described herself as Sovana Sen.

25. It appears from the affidavits as well as a circular issued by one Mr. Bhatt, Deputy Director and a letter dated 27-8-1958 by Mr. Uma Shankar. Director of Planning, All India Radio, Delhi that the applicant deliberately persisted in her case that she did not obtain an, appointment from the All India Radio, Delhi until the 24th September 1958 with a view to obtain an undue advantage in this application.

26. In view of the aforesaid conduct of the wife I direct that each party will bear his Or her own costs.