

(1996) 04 GUJ CK 0024

In the Gujarat High Court

Case No : Civil Revision Application No. 1765 of 1995

Dudhiben Merakhbhai

APPELLANT

Vs

Nathabhai Hazabhai and Another

RESPONDENT

Date of Decision : 25-04-1996

Acts Referred:

Hindu Marriage Act, 1955 — Section 24

Citation : (1998) 2 CivCC 656 : (1998) 1 DMC 245 : (1997) 3 GLR 826

Hon'ble Judges : D.G. Karia, J

Bench : Single Bench

Advocate : Y.S. Lakhani, for the Appellant; R.M. Chhaya, for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

D.G. Karia, J.—This revision application arises out of the proceedings u/s 24 of the Hindu Marriage Act, 1955 relating to maintenance

pendente lite and expenses of Court proceedings, in the following facts and circumstances.

2. The respondent No. 1, Nathabhai Hazabhai, is the original applicant who has filed Hindu Marriage Petition No. 17 of 1994 against the

petitioner-wife and the respondent No. 2 for divorce from the petitioner-wife u/s 13 of the said Act, on the ground that the petitioner-wife has

been living in adultery with respondent No. 2. The said divorce proceedings are pending in the Court of the learned Assistant Judge, Junagadh.

The petitioner has joined respondent No. 2 as the paramour of the petitioner-wife.

3. By the application Exh. 10, the petitioner-wife claimed maintenance at the rate of Rs. 1,000/- per month and Rs. 2,000/- as expenses to contest

the divorce proceedings. The petitioner-wife, inter alia contended in the said petition that she has no independent income sufficient for her and that the respondent-husband is a well-to-do farmer having good income. The respondent-husband filed objections denying that the petitioner-wife has no income sufficient for her maintenance. He also denied that he has any agricultural property nor he is a farmer. He has stated that he is a small farm labourer and is maintaining himself with difficulty. He further contended that the petitioner-wife did not discharge her duties as a wife and has been staying with respondent No. 2 and has immoral relations with him.

4. The learned Extra Assistant Judge, Junagadh, by the impugned order dated July 7, 1995 passed below the said application Exh. It) in H.M.P.

No. 17 of 1994, rejected the application holding that there was no evidence that the respondent-husband has plentiful of income or held

immovable agricultural properties. The wife of respondent No. 2 on account of the petitioner-wife staying with respondent No. 2 as his wife, had

left the house of the respondent No. 2. It was also alleged by the respondent-husband that the petitioner-wife had conceived a child through the

respondent No. 1, but the pregnancy was got terminated and that the respondent No. 2 had taken the petitioner-wife from his house without

intimating him or other family members. Thus, considering the pleadings and the allegations, [lie learned Judge prima facie was of the view that it is

a fit case to refuse interim alimony to the wife. The petitioner-wife, being aggrieved by the said order of rejection ot the application Exh. 10, has

preferred the present revision application.

5. Mr. M.A. Kharadi, for Mr. Y.S. Lakhani, learned Advocate for the petitioner-wife has contended that the reasons assigned by the learned

judge are of the nature that the decree of divorce on the ground of adultery is passed and that there is no evidence to show the adulterous relations

of the petitioner-wife with respondent No. 2. Mr. Kharadi also submitted alternatively, the conduct of the petitioner-wife would not be relevant in

grant of maintenance pendente lite u/s 24 of the Hindu Marriage Act, 1955. In this connection, he has placed reliance on the case of Lallubhai

Keshavram Joshi v. Nirmalaben Lalluram Joshi, reported in (1972)13 GLR 626, Mr. R.M. Chhaya, learned Advocate appearing for the

respondent-husband, has supported the impugned order.

6. I have heard the learned Advocates for the parties.

7. Section 24 of the Hindu Marriage Act, 1955 contemplates that where in any proceedings under the 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 to the petitioner the expenses of the proceedings,

and monthly during the proceeding such sum as having regard to the petitioner's own income and the income of the respondent, as is found to be

reasonable by the Court.

8. Thus, the object of Section 24 of the Act providing for maintenance pendente lite to a party in matrimonial proceedings is obviously to provide

financial assistance to the indigent spouse to maintain herself or himself during the pendency of the proceedings and also to have sufficient funds to

carry on the litigation so that the spouse does not unduly suffer in the conduct of the case for want of funds. This object of the provisions of Section

24 is to be applied at the discretion of the Court, having regard to the facts and circumstances of the case.

9. In the present case, the learned Judge has prima facie believed that the petitioner-wife has been residing with the respondent No. 2 and she has

been looked after by the respondent No. 2. There are reciprocal rights and obligations of both the spouses. When wife is not discharging any of

the marital obligations and the Court below record finding that wife was living unchaste life, she cannot claim any maintenance.

10. It is true that the Court has to bear in mind that unless good cause is shown for depriving the claim, she or he, if not possessed of independent

means, is entitled to maintenance pendente lite and the expenses of litigation. However, when the applicant is being supported and maintained by

an adulterer and that the respondent-husband has not sufficient means, it may properly constitute good cause for rejecting the request for

maintenance pendente lite. In the facts of the case and circumstances, the learned Judge, in my view, has rightly exercised the jurisdiction in

rejecting the application.

11. Mr. Kharadi for Mr. Y.S. Lakhani, learned Advocate appearing for the petitioner-wife submitted that the reasoning given by the learned Judge

are such as if the decree for divorce is passed on the ground of adultery. On perusal of the impugned order, it is not so. What is observed by the learned Judge are the prima facie findings to the effect that at this stage the allegations cannot be said to be baseless. He has also recorded that there is no pleading by the petitioner-wife as to after separation, how and with whom she has been staying or as to who is maintaining her after she left the matrimonial home. The learned Judge has also observed that the general attitude of the wife would be to approach the Court for maintenance, if she is deserted by her husband. In the present case, no maintenance application u/s 125 of the Code of Criminal Procedure was ever preferred by the petitioner-wife, despite the fact that about more than two years had elapsed since separation. Considering the pleadings and the allegations, the learned Judge held that it was a fit case to refuse interim alimony to the wife. Having given careful and anxious thought and attention to all those pleadings and allegations, I do not see any reason to warrant any interference with the conclusions arrived at by the learned Judge.

12. In the case of *Lallubhai Joshi v. Nirmalaben Lalluram Joshi*, (supra), it has been held that the provisions of Section 24 of the Hindu Marriage Act are not controlled by the provisions contained in any other section of the Act. Therefore, conduct of the parties is not to be looked into by the Court while passing the order with regard to interim alimony. Relying upon this decision, Mr. Kharadi contended that the adulterous life, if any, of the petitioner-wife would be of no consequence and the wife would be entitled to get the maintenance during the proceedings. I am afraid, this contention cannot be accepted, inasmuch as the conduct of the parties, as is referred to in the case of *Lallubhai Joshi supra*) is a conduct during the matrimonial proceedings and thereby the pleadings and the allegations cannot be brushed aside. The contention of Mr. Kharadi is, therefore, required to be discarded.

13. In the above premises, the revision application fails and is rejected. Rule discharged. There shall be no order as to costs.