

(1994) 10 AHC CK 0019

In the Allahabad High Court

Case No : Criminal Revision No. 1672 of 1989 & Criminal Revision No. 1672 of 1989

Maresh Babu Saxena

APPELLANT

Vs

Addl. Chief Judicial Magistrate and Others

RESPONDENT

Date of Decision : 06-10-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 397
Hindu Marriage Act, 1955 — Section 24

Citation : (1996) 2 DMC 559

Hon'ble Judges : N.B. Asthana, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.B. Asthana, J.—This revision by the husband has been directed against the judgment and order dated 22.8.89 passed by the then Additional Chief Judicial Magistrate, Bareilly in Criminal Case No. 110 of 1987 u/s 125, Cr. P.C. directing him to pay Rs. 500/- per month as maintenance allowance w.e.f. 6.11.87 the date when the application for maintenance was filed. The revisionist had also filed an application u/s 24 of Hindu Marriage Act in the Court of District Judge, Rewa, Madhya Pradesh. In these proceedings the Opposite Party was directed to pay Rs. 250/- per month as interim maintenance allowance to the opposite party No. 2. A sum of Rs. 1,000/- was granted to meet the expenses in defending the application u/s 24 of Hindu Marriage Act.

2. The Trial Court while fixing the maintenance allowance also took into consideration the sum for Rs. 250/- per month granted to her as interim maintenance allowance by the District Judge, Rewa and upon consideration of the salary being earned by the revisionist fixed Rs. 500/- per month as maintenance allowance. Feeling aggrieved by that order the husband has preferred this revision.

3. The learned Counsel for the other party has also put in appearance and with

the consent of the learned Counsel for the parties the revision is being disposed of finally.

4. The only point urged in this revision is that the maintenance allowance fixed is excessive in view of the monthly salary of the revisionist. The Trial Court has come to the conclusion that the basic salary of the revisionist is Rs. 1,440/- per month besides other allowance admissible to him and that after compulsory deductions he is getting a pay packet of Rs. 1,469/- per month. In the grounds of revision the revisionist has nowhere specifically denied that his monthly pay packet is Rs. 1,469/- per month. From the order passed by the District Judge, Rewa it is also clear that the revisionist is getting a pay packet of Rs. 1,469/- per month after usual deduction. He is also earning overtime which ranges between Rs. 150/- to 200/- per month. Besides this amount he also gets bonus.

5. In view of the material placed on record it can safely be said that the revisionist is getting a pay packet of about Rs. 1,600/- per month. Rs. 1,000/- has been granted to meet the expenses of litigation but it has to be noted that the revisionist resides at Bareilly with her father while application u/s 24 of Hindu Marriage Act has been filed at Rewa. In the normal course opposite party must be attending the Court at Rewa on each of the dates fixed in the application. Going from Bareilly to Rewa is quite expensive. This has also to be taken into consideration while fixing the maintenance allowance. She would not be going all alone to Rewa.

6. There is no other burden upon the revisionist. His father is a retired government servant and is getting pension. There is nothing on the record to show that he is spending money in educating his younger brother or sister. The maintenance allowance u/s 24 of the Hindu Marriage Act is granted pendente lite. This maintenance allowance would cease to be payable upon the termination of the proceeding.

7. In view of the material placed on record I am of the opinion that the maintenance allowance granted at the rate of Rs. 500/- per month cannot in anyway be said to be excessive.

8. Reliance on behalf of the revisionist has been placed upon *Ram Singh v. State and Anr.*, AIR 1963 Allahabad, 355, in which it was held that amount of maintenance allowance has to be fixed having due regard to income of the husband and other facts necessary to be considered. In the instant case the Magistrate has considered the income of the husband and other necessary facts.

9. Reliance has also been placed upon *Nanak Chand v. Chand Kishore*, AIR 1970 SC 446. I have carefully perused this ruling. It does not help the revisionist in any way. It was a ruling upon grant of maintenance allowance to the dependent children.

10. Although no arguments were advanced upon the question whether the opposite party was entitled to claim maintenance allowance but I have perused

the material available on record in this respect also. The revisionist had accused her of unchastity but was unable to substantiate that charge. He stated that he is not willing to keep the opposite party No. 2 with him as she is a women of loose character. According to the opposite party No. 2 the revisionist is having illicit relations with Smt. Tanuja and for that reason he has deserted her. It is clear from the evidence that the revisionist has deserted the opposite party and is not willing to keep her with him and for that every reason application u/s 24 of the Hindu Marriage Act has been filed.

11. The revision is devoid of any substance and is accordingly dismissed. The stay order dated 18.8.90 is vacated.