
(2009) 03 P&H CK 0213
In the Punjab And Haryana At Chandigarh

Shri Rajiv Chanana

APPELLANT

Vs

Smt. Gauri Nagpal Chanana

RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

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

Citation : (2009) 3 CivCC 469 : (2009) 154 PLR 743 : (2009) 3 RCR(Civil) 41

Hon'ble Judges : S.D. Anand, J

Bench : Single Bench

Judgement

S.D. Anand, J.—The controversy between the warring couple is with regard to the validity or otherwise of the impugned order dated 4.4.2008 passed by the learned Additional District Judge, Panchkula directing the fixture of a sum of Rs. 70,000/- (Rs.25,000/- for estranged wife, Rs. 20,000/- and Rs. 25,000/- for Utkarsh and Nishkarsh respectively who are concededly siblings of each other and were born to the respondent-wife from the loins of the petitioner-husband) as maintenance pendente-lite.

2. The amount was ordered to be payable with effect from 1.12.2007. While quantifying the amount aforementioned, the learned Trial Judge also observed that the amount awarded in the proceedings u/s 125 Cr.P.C. would be inclusive of this amount. In the course of the application itself, the respondent had made an averment that she would withdraw the plea u/s 125 Cr.P.C in case maintenance pendente-lite comes to be awarded by the learned Trial Court in the proceedings u/s 24 of the Hindu Marriage Act (hereinafter referred to as "the Act"). The respondent-wife applied for the grant of litigation expenses and maintenance pendente-lite for self and two minor sons (concededly begotten by her from the loins of the petitioner-husband) who are putting up with her. The maintenance pendente-lite applied for was quantified at Rs. 5 lacs in toto. The respondent-wife further claimed entitlement to that amount with effect from January, 2005 i.e. with effect from the date the couple separated. Besides it, she applied for litigation expenses to the tune of Rs. 5 lacs + a sum of Rs. 55,000/- per

appearance as Counsel fee.

3. While averring that she has no means of sustenance for self and her two minor sons, she conceded that interim maintenance at the rate of Rs. 25000/- in her favour and in favour of her two children had been awarded in the proceedings u/s 125 Cr.P.C. That amount was averred to be meager in the context of her requirements and that of her sons, both of whom are studying in St. John School, Sector-26, Chandigarh. The elder child is a student of 10th standard; while the younger child is a student of 6th standard. In order to quantify the amount required for her children, it was averred that their monthly expenditure comes to Rs. 10,000/- (at the rate of Rs. 5,000/-). Besides this, the averment proceeded, money is also required for purchase of school uniform, stationery, transportation and participation in other cultural activities including out station educational trips. Apart therefrom, the elder son is a patient of chronic Asthma and a sum of Rs. 10,000/- per month was claimed "for his adequate medical care". For the younger child, the averment made was that he requires specialised personal coaching by a private tutor as he is suffering from "NYSTAGMUS" a disease which blunts his vision to see blackboard. It also restricts his movement in the open because he cannot face the sun. He is also on medication and his special spectacles cost Rs. 10,000/- per piece. For the moment, he has only one spectacles. He should otherwise have two with him at a time because, as a child, there is every possibility of his breaking or misplacing the same. While averring that she is putting up in a rented accommodation (6381 B, Rajvee Vihar, Mani Majra, A WHO Apartments), the respondent-wife pointed out that the appellant husband is financially very well off and leads a luxurious life. During the happier times, there was a car assigned to drop the children at the school and to bring them home as well. There was an Art Teacher who used to coach the children thrice in a week. An Aerobics-cum-Yoga instructor had been engaged to assist the younger son in his exercises in order to enable him to make up for the lack of out door activity. There were two full time maid as well to look after the respondent-wife and her children. The appellant used to present costly gifts like jewellery items and clothes to the respondent on days of festivals and anniversaries etc. The appellant retained all these costly gifts etc. when she was turned out of the matrimonial house. In order to support the averment that the appellant-husband is the financially well off and had been leading a luxurious life style, the respondent-wife indicated a number of instances when she and her children were taken by the respondent overseas and also inland visits to place like Bombay, Goa, Jaipur, Udaipur and Shim la. The out-of-country sojourns included visits to Singapur, Malaysia, Kathmandu, Nepal, London, Amsterdam, Hongkong, Indonesia and Switzerland. It was also averred by the respondent-wife that appellant-husband had been hosting functions at costly local Restaurants, hotels and clubs like Chandigarh Club, Pizza Hut, Jail Rock House, Hotel Mountview, Whispering Willows and Hot Millions. It is also the averment that the respondent had earlier owned and possessed the following four cars:

a) Hyundai Santro-Regn. No. CH-03-D-3801

b) Toyota Corolla CH-03-L-5230

c) Ceilo-HR-03-B-9672 d) Ford Ikon.

4. The appellant-husband did not deny that he was leading a comfortable life but he denied following a fabulously rich life style. Qua the Hyundai Santro and also Ford Ikon cars, he averred that it is his younger brother Sandeep Chanana who is registered owner thereof. Qua Toyota Corolla and Ceilo car, he averred that those are owned by M/s Jesa Ram Vishan Narain. He did otherwise concede that he is a partner (to the extent of 1/3 share) in that firm, the other partners being his mother and younger brother Sandeep Chanana. The appellant did not dispute having undertaken most of the foreign trips in the company of the respondent-wife and children but averred that those were for an educational purpose. He did not dispute having held functions at the local clubs etc. but denied that the expenditure averred by the wife had been incurred thereon. The plea taken by him was that very small indicated amounts were spent on those parties. He conceded that a one kanal residential house (bearing No. 511 P, Sector 6, Panchkula) is in his name but averred that it, infact, is owned by his mother Mst. Shakuntala Chanana and he is only Benami holder thereof. Qua another one kanal house (bearing No. 825 Sector 8, Panchkula), it was alleged that it is owned by his mother and younger brother. He, however, denied that the house aforementioned had been inherited from his father. It was alleged, in the context, that the above indicated house was purchased in the year 1988; whereas the father of the appellant had died in the year 1986. Qua the title of industrial plot (No.421, Industrial Area, Phase II, Ram Darbar, Chandigarh), it was averred that Parkash Mills is a sister concern of M/s Jesa Ram Vishan Narain which is being run over there. He also conceded being a member of PCA Mohali and Chandigarh club. He, however, denied being a member of Sterling Resort. He conceded that he does travel by air but asserted that he travels by economy class. He did not dispute that one of his sons is suffering from chronic asthma disease. Qua the other child, the averment (that child aforementioned was also ailing) was denied. Qua the fact that respondent and her children are residing in rented accommodation, it was averred that she was earlier putting up at her natal house and she herself opted to shift to the rented accommodation. The further averment otherwise was that "however, aforesaid minor sons are always welcome to live with the petitioner at House No. 51 IP, Sector 6, Panchkula and to enjoy the same status which they have been enjoying before they were taken away by the Respondent."

5. The learned Counsel for the appellant argued, at the very outset, that the plea u/s 24 of the Act is not competent in view of the fact that respondent-wife had herself agreed to accept a sum of Rs. 25,000/- as maintenance pendente-lite for self and her two children in the proceedings u/s 125 Cr.P.C. Once the respondent had herself consented to that quantification of the amount payable as maintenance pendente-lite, the argument proceeds, she cannot be heard to re-

agitate the aspect of quantification.

6. The plea raised is denuded of merit. Annexure P-2 is a true copy of the statement made by the Counsel for the parties in the context on 3.1.2007. It is reproduced hereunder for facility of reference:

Statement of both the parties who have agreed upon a sum of Rs. 20,000/- P.M. interim maintenance and are ready to give the same as per the court order. Petitioner i.e. all the three petitioners are ready to take a sum of Rs. 20,000/- P.M. and the respondent is ready to pay the said amount until the final decision is arrived at.

On that basis, the learned Trial Court passed the following order:

In view of the statement given by the parties the application for interim maintenance is disposed in terms that the petitioner No. 1 shall be entitled to Rs. 10,000/- per month as maintenance and petitioners No. 2 and 3 shall be to Rs. 5,000/- each per month i.e. total Rs. 20,000/- per month from the date of application. A sum of Rs. 50,000/- by cheque has been paid today, which is taken by the Counsel for the petitioners, subject to realization. Now the case is adjourned to 18.1.2007 for payment of arrears of maintenance by the respondent and reconciliation amongst the parties.

7. It would be apparent from a perusal of the statement and order quoted above that the parties had agreed upon a sum of Rs. 25,000/- per month only as an interim maintenance. By the very nature of things, any consented fixture of interim maintenance cannot, by any stretch of interpretation, disable the respondent-wife from raising a plea for the award of (higher) maintenance in the proceedings u/s 24 of the Act.

8. It is apparent, from a conjunctive perusal of the pleadings of the parties, that the appellant-husband did not dispute the fact that a son of the parties is suffering from chronic Asthma; while the other is suffering from "NYSTAGAUM" disease. The only difference of opinion is qua the seriousness of ailment of those children. The respondent-wife made a presentation of the fact that those diseases are of serious character. The appellant-husband presented those in a diluted form. Nonetheless, it is apparent that the appellant husband conceded that two children of the parties are not in normal state of health and they do require medication etc. for which extra expenditure is to be incurred.

9. Learned Counsel for the petitioner-husband argued that the impugned order passed by the learned Additional District Judge, Panchkula, deserves to be negated in view of the fact that the Court had not taken into consideration the income tax liabilities of the petitioner and that the Trial Judge also ignored from consideration the fact that the respondent-husband is required to pay instalments of certain loans which he had raised from a nationalised bank.

10. Learned Counsel for the appellant, then, argued that the impugned fixture (Rs.70,000/- per month as maintenance pendente lite) is apparently on the

higher side in view of the fact that the annual income of the husband was much lesser than averred by the respondent-wife. In support of the advocated view, reliance was placed upon the Income Tax Returns, copies whereof were placed on record. As per Annexure P-7 (copy of Income Tax Return), the headwise income earned by the appellant-husband was given as under:

1. Income from the salary : Rs. 1,20,000/- 2. House property : Rs. 85,000/- 3. Business income : Rs. 1,39,200/- 4. Income from other sources : Rs. 39,234/- 5. Interest from M/s Jessa Ram Vishan Narain : Rs. 17,618/-

11. It would be relevant to notice hereunder certain averments made by the appellant-husband in the course of the reply. He did concede having presented valuable gifts to the respondent wife on her birthday and on their marriage anniversary. ("However, petitioner did present gifts in the shape of a gold set, valuable saree, camera, and a watch on different occasions such as on marriage anniversary and her birthday but the total valuation thereof does not exceed more than Rs. 2,00,000/-.") He otherwise proceeded to aver that "she had removed from there all jewellery, valuable clothes, 6 years National Saving Certificates, very valuable watches make Omega Constellation & Patak Philippe and other valuable household articles all of which are with her." He conceded that he is a man of means and has been undertaking inland and frequent overseas travel with the family ("However, petitioner is a man of means but the regular travels which he had initially with the respondent whereafter with the respondent & Master Utkarsh Chanana, elder son of the petitioner & the respondent, whereafter, with the respondent, Master Utkarsh Chanana, elder son of the petitioner and the respondent, were with the idea of getting them educated, resultantly they were more of the nature of educational trips rather than pleasure trips."), he also conceded that he had taken the respondent to Bombay and Goa for honeymoon. The averment was that the couple stayed in hotel Sea-Rock for two days at the former place; whereas at the latter place, the couple stayed for five days in Dalmia Resort "at the courtesy of Shri Munish Khurana, brother-in-law of the petitioner, who is a member thereof."). That the parties visited Singapore and Malaysia in May, 1991 and that they also paid a four days visit (by Air) to Kathmandu in the year 1993-94 was conceded by the appellant-husband who also claimed to have visited London and Amsterdam for a spell of 12 days in the company of the respondent and the elder child of the parties. That the parties and their two children paid five days long visit to Hongkong in the year 1998 and that they visited Singapore and Indonesia in December, 2001 was also conceded by him. He proceeded to aver that he had brought the respondent and the two children of the parties to Malaysia-Langkawi-Penang, Singapore. He added that they had gone there on Cruise. That the petitioner brought the wife and two sons of the parties to Switzerland and London in the year 2004 was also conceded by him. In that very context, the appellant-husband made the following averments:

However, before leaving for Switzerland & London in 2004 petitioner had on

14.6.2004, Respondent purchased foreign currency of Rs. 1,98,916/- from M/s Paul Merchant Ltd. S.C.O. No. 829-830, Sector 22-A, Chandigarh and on 15.6.2004 petitioner purchased foreign currency of Rs. 4,04,668/- from M/s Paul Merchants Ltd., S.C.O. No. 829-930, Sector 22-A, Chandigarh.

12. He also conceded the get togethers organised by him at Chandigarh Club in 1992 and another time in the year 1995. The holding of a function at Hotmillion in the year 1996 was also conceded by him. He only differed with the respondent-wife on the number of invitees and the expenditure incurred thereon. There is force in the plea on behalf of the respondent-wife that the Income Tax Returns filed by an individual do not necessarily reflect the actual annual professional intake. However, if we strictly go by the amount shown as income in the account books, it would be impossible to fathom how exactly he could frequently undertake foreign trips in the company of the respondent-wife and their children. The conceded facts (quoted in an earlier part of this order) are a clear pointer to the effect that the appellant-husband is leading a luxurious life style and that his income tax return is not reflective of the truthful factual income.

13. In the totality of the circumstances of the case, the finding recorded by the learned Trial Court with regard to the quantification of the entitlement of the respondent-wife (for self and her two children), and reasoning noticed in support thereof, cannot be faulted on any score.

14. Though the averment made by the respondent-wife to the effect that she has been forced to live in rented accommodation with the two children of the parties was denied by the appellant husband who alleged that it was she only who left the matrimonial house in the company of her children, it is apparent that she is presently putting up in a rented accommodation. By the very nature of things, the wife and the children of the parties do require a shelter for protection and safe living. Both the children of the parties are studying in reputed convent school. The wife and the children are entitled to retain that very level of economic existence as they were enjoying when all was well in the family.

15. An able bodied husband is legally bound to provide for his wife and children who have no means of sustenance. The provision to be made has to include the living arrangement and other facilities in day-to-day life which they were enjoying during happier times when the family was united. The accurate equivalence may be a far cry but the estranged spouse and the progeny can legitimately claim entitlement to a near equivalence. The adjudicatory exercise in the context has to be an endeavour aimed at that object and that is what the learned Trial Judge did in this case with care. The exercise is affirmed by this Court.

16. In the light of the foregoing discussion, the petition filed by the husband is held to be denuded of merit and is ordered to be dismissed. The amount of maintenance pen-dente-lite shall, however, be payable with effect from the date of the application. In that view of things, the respondent shall not be entitled to

any amount of maintenance in the proceedings u/s 125 of the Code of Criminal Procedure.

17. The learned Counsel appearing on behalf of the petitioner-respondent requests for the issuance of a direction to the learned Trial Court to dispose of the petition itself on priority. The learned Counsel appearing on behalf of the respondent-wife has no objection to the allowance of the request. It is ordered accordingly.

The learned Trial Court shall dispose of the trial itself on an early date by giving priority over the other files.