
(2004) 03 AHC CK 0016
In the Allahabad High Court
Case No : F.A.F.O. No. 109 of 2003

Smt. Geeta Mishra

APPELLANT

Vs

Dr. Raj Narain Mishra

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 24

Citation : (2004) 2 ACR 1990 : (2005) 2 RCR(Civil) 137 : (2005) 2 RCR(Criminal) 168 : (2005) 1 RCR(Criminal) 168

Hon'ble Judges : Kamal Kishore, J; Jagdish Bhalla, J

Bench : Division Bench

Advocate : P.K. Punhani, Kalpna Pathak and Rakesh Bahadur, for the Appellant;
C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Jagdish Bhalla and Kamal Kishore, JJ.—This appeal arises out of the order dated 4.1.2003, passed by the Principal Judge, Family Court, Lucknow, in Misc. Case No. 240-C of 2000 whereby the Respondent-Dr. Raj Narain Mishra has been directed to pay a sum of Rs. 2,500 per month as maintenance to the Appellant.

2. The grievance of the Appellant is that award of Rs. 2,500 per month as maintenance to the Appellant is very meagre amount considering the price index and the hard days of life and as such she has prayed for enhancement of the maintenance allowance. According to the learned Counsel, the Appellant has no source of income and is wholly dependant on her father.

3. A perusal of the order sheet indicates that notice was issued twice to the Respondent but no one appears on his behalf. The counsel for the Appellant has also filed a copy of the newspaper containing the notice through C.M. Application No. 1654 of 2003 but inspite of publication, neither the Respondent appeared nor any one put appearance on his behalf.

4. It has been emphatically argued by Ms. Kalpana Pathak, advocate that the Appellant is an unemployed graduate and her father is an old and retired person. It is very difficult for the father to maintain the Appellant and to meet her day-to-day expenses. The father of the Appellant is a pensioner and has to look after his family, which consists of four other children and the wife. Out of the four children, three are studying. The Respondent is an M.B.B.S. doctor by profession and is a private practitioner having roaring practice. His clinic is situated at Triveni Nagar, Lucknow. It has been further submitted by the learned Counsel that the Appellant wishes to pursue vocational studies so that she may stand on her own legs. According to the learned Counsel not only the amount awarded as maintenance allowance is incorrect but the Family Court has wrongly awarded the maintenance from the date of order, i.e., 4.12.2003 and not from the date of institution of the application.

5. In the case of *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , it has been held that right to life includes the right to livelihood, except according to just and fair procedure, and violation thereof hits Article 21 of the Constitution of India. Section 125 of the Code of Criminal Procedure provides Rs. 5,000 as maximum limit of maintenance whereas u/s 24 of the Hindu Marriage Act the amount of maintenance can be fixed considering the needs of the divorced woman, standard of life enjoyed by her and the earning capacity or the means of the husband.

6. In the case of *All India Imam Organization and others Vs. Union of India and others*, , it was held by the Apex Court that as the Imams have no other occupation or profession or service for their livelihood except doing duty as Imams, therefore, they were entitled to emoluments even in the absence of statutory provisions since the right to life enshrined in Article 21 of the Constitution means right to live with human dignity.

7. In the case of *Dhan Raj Vs. Kishni and Another*, , the Rajasthan High Court has held that judicial notice can be taken of the fact of inflation resulting in fall of purchasing power of money and consequent rising cost of commodities.

8. Considering the aforesaid reasons and the fact that the Respondent is having sufficient means and earning a lot, the appeal is allowed and the amount of maintenance, i.e., Rs. 2,500 per month granted by the family court by the order dated 4.1.2003 is modified and the amount of maintenance is enhanced to Rs. 3,500 per month (Rupees three thousand and five hundred). The Respondent Dr. Raj Narain Mishra shall pay Rs. 3,500 per month from 4.1.2003. It has been brought to our knowledge that after the order dated 4.1.2003, the Respondent has not paid single penny towards maintenance to the Appellant. Accordingly, it is provided that family court shall take necessary steps for the execution of its order dated 4.1.2003.

9. The appeal stands allowed accordingly.