(1978) 01 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1019 of 1977

Smt. Pushpa Rani APPELLANT

Vs

Shri Asa Nand RESPONDENT

Date of Decision : 03-01-1978

Acts Referred:
Hindu Marriage Act, 1955 — Section 24

Citation : (1978) 01 P&H CK 0029

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

Bench : Single Bench

Advocate : S.C. Kapoor, for the Appellant; M.P. Maleri, for the Respondent

Final Decision : Allowed

Judgement

D.S. Tewatia, J.—This revision petition arises out of an application u/s 24 of the Hindu Marriage Act, (hereinafter referred to as the Act) moved by the petitioner-wife in proceedings u/s 13 of the Act launched against her by her husband respondent herein. In her application she claimed Rs. 500/- towards litigation expenses and Rs. 200/- as maintenance amount per month. The trial Court required both the parties to file affidavits in support of their case. The petitioner-wife claimed that the monthly income of the respondent-husband was Rs. 550/-, while the respondent-husband asserted that his income was only Rs. 320/- per month. The trial Court taking Rs. 550/- as the gross monthly income and Rs. 320/- as the net income, took only Rs. 320/- as the monthly income of the husband and awarded Rs. 50/-as the maintenance per month and that too from 1st June, 1977, a day prior to the date on which it decided that application that is 2nd June, 1977, and Rs. 200/- towards litigation expenses.

2. In assessing the quantum of maintenance, the learned trial Court was primarily influenced by three factors (1) that Rs. 320/- was the net income of the husband, (2) that the husband may have to support his parents, sister and brothers, and (3) that the wife was living with her parents.

3. The learned counsel for the petitioner-wife, on the strength of a Division Bench of this Court reported in Usha v. Sudhir Kumar (1974) 76 P.L.R. 195 has asserted that the learned trial Court erred in holding that he was to take into consideration the net income of the husband for the purpose of deciding the quantum of maintenance and not the gross income and also in taking into consideration for the purpose, the factum of the petitioner-wife''s living with her parents. The learned counsel for the petitioner-wife also asserted that there was no material on the record that the respondent-husband had to maintain his parents, sister and brothers and, therefore, the trial Court was not right in taking that fact into consideration while assessing the personal needs of the husband.

4. The Division Bench of this Court that has been relied upon on behalf of the petitioner-wife has clearly enunciated that the Court has to take into consideration the disposable income of the husband or the wife for assessing the quantum of maintenance that may be awarded to the wife or the husband, as the case may be. According to the learned Judges, constituting the Division Bench, the gross income would be the disposable income minus such expenditure as the income tax etc., which has got to be deducted from the gross income. It has further been held that a wife is not expected to live in the street in order to justify her claim for maintenance and, therefore, her living with her parents would not justify the scaling down of the quantum of maintenance to which she may be entitled on the basis of the monthly Income of her husband.

5. In the present case the husband is a clerk employed by the Government of India. He was In a position to give details of his income and refute the wild assertion that his income wag Rs. 550/- per month if he considered that an exaggeration. That he has not done. In a situation where a certain given fact was within the knowledge of one party here the husband and that party also had the ability to prove that fact with documentary evidence and if that party does not do so, then it cannot be said that the evidence given by the wife regarding the income of her husband is unreliable and is to be rejected out of band.

6. In the circumstances, taking the gross income of the husband at Rs. 550/- per month only an allowance of Rs. 50/- can be made at the most towards the deduction by way of compulsory provident fund etc. and, therefore his disposable income has to be considered at Rs. 500/- per month. Taking into consideration the facts that the husband had to live in an expensive city like Delhi and the wife has to live in a less expensive city such as Sonepat, am of the opinion that she is entitled to a sum of Rs. 100/-per month only as maintenance and this she shall be entitled from the date on which she moved her application for maintenance i.e. 17th January, 1977 and not 1st June, 1977.

7. As far as the amount awarded towards the litigation expenses is concerned, I do not think any modification therein is called for.

8. The revision petition is, therefore, allowed to the extent indicated above, with costs.

