
(1995) 02 MP CK 0031
In the Madhya Pradesh High Court
Case No : First Appeal No. 77 of 1991

Smt. Sangeeta Saxena

APPELLANT

Vs

Gyanendra Saxena

RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 24, 9

Citation : (1995) 2 DMC 78

Hon'ble Judges : A.S. Tripathi, J

Bench : Single Bench

Advocate : N.K. Modi, for the Appellant; Arun Pateria, for the Respondent

Final Decision : Allowed

Judgement

A.S. Tripathi, J.—This revision has been preferred against the order dated 11th of November, 1991 passed by VII Additional District Judge, Gwalior whereby he had allowed the subsistence allowance u/s 24, Hindu Marriage Act since 10th of May, 1990 at the rate of Rs. 300/- per month to the appellant and Rs. 100/- per month to the girl child who was aged 7 years, living with the petitioner.

2. The appellant has urged that the appellant was married to the respondent on 23rd November, 1987. A child was born to her in this wedlock in October, 1988. Since 26th July, 1989 the appellant was living separately with her parents. The respondent in the meantime had filed a civil suit for restitution of conjugal rights under the provisions of Hindu Marriage Act which was pending. During the pendency of that suit an application was presented by the appellant on 25th of August, 1989 for granting subsistence allowance and costs of the proceedings u/s 24 of Hindu Marriage Act. That application was considered and the trial Court had allowed a meagre amount of maintenance at the rate of Rs. 250/- per month for the appellant and Rs. 50/- per month for the girl child. Against that order a revision was preferred before the High Court and the High Court had directed that the trial Court shall reconsider the matter and remanded the case back and

after rehearing of the parties this present order under appeal, was passed.

3. It has been urged that although the trial Court had enhanced some maintenance from Rs. 250/- to Rs. 300/- per month to the appellant and from Rs. 50/- to Rs. 100/- per month to the child which is too meagre and insufficient to maintain themselves during the pendency of the proceedings.

4. After hearing Shri N.K. Modi, learned Counsel for the appellant and Shri Arun Pateria, learned Counsel for the respondent it has been admitted that the suit for restitution of conjugal rights filed by the respondent was dismissed on 28th July, 1994. The suit was dismissed on the application of the respondent himself that he did not want to proceed with the suit. It was urged by learned Counsel for the respondent that the application itself was presented for dismissal of the suit on 22nd June, 1990 and the proceedings prolonged due to filing of a revision by the appellant before the High Court and proceedings being stayed, the respondent was not liable to pay any subsistence allowance of the period after 22nd of June, 1990.

5. This point was vehemently opposed on behalf of the appellant on the ground that no doubt an application was presented on 22nd of June, 1990 for dismissal of the suit but the proceedings prolonged on the own initiation of the respondent and the appellant had to seek redress by filing a revision for enhancement of the maintenance. In this way the proceedings were prolonged simply for the purpose that the arrears be paid by the respondents and then the proceedings be made to come to be end.

6. Coming to the provisions of Section 24 of the Hindu Marriage Act, the liability is on the person who initiates the proceedings to maintain the opposite party during the pendency of the proceedings if the opposite party was unable to maintain herself to meet the expenses of the proceedings. In this particular case, the respondent had filed the suit for restitution of conjugal rights. The proceedings were initiated by the respondent which remained pending till 28th July, 1994. Cause may be prolonging of the proceedings by filing a revision by the appellant or on the own conduct of the respondent. The fact remains that the proceedings remained pending till 28th July, 1994 and Section 24 of the Hindu Marriage Act does not envisage any contingency for disallowing the claim for subsistence allowance before the proceedings came to an end. In this view of the matter for whatever reason the proceedings continued till 28th of July, 1994, the appellant was entitled to get the allowance as provided u/s 24 of the Hindu Marriage Act under the law.

7. Learned Counsel for the respondent further urged that the appellant herself was employed since 24th of August, 1992 in a private school in Gwalior and was getting salary at the rate of Rs. 2364/- per month. This document is not disputed and it is admitted that the appellant was in employment and was getting salary for her maintenance since 24th August, 1992.

8. Even the respondent alleged that before that date the appellant was in

another employment in another school drawing some salary, which is not disclosed, in Mohalla Thathipur of the Gwalior City. There is nothing on record to suggest that the appellant was in any employment before 24th August, 1992 in any other school and was able to maintain herself getting sufficient salary therefrom. In this appeal, at this stage, no further evidence can be admitted on any point whatsoever besides the fact to prove that the defendant/appellant was able to maintain herself even before 28th of August, 1992 by getting salary from somewhere. This point was not, at all, raised before the trial Court or any evidence was produced either before the trial Court or before this Court to indicate that the defendant was also able to maintain herself even at the time of filing of the suit, and, therefore, in these circumstances the only acceptable evidence on record is that the certificate of salary produced by the respondent has been admitted by the appellant that she was in employment since 24th of August, 1992 only.

9. Now, regarding the point of maintenance the trial Court had enhanced the maintenance for the appellant from Rs. 250/- to Rs. 300/- and for child from Rs. 50/- to Rs. 100/- per month in view of the directions given by the High Court on remand.

10. So far as the subsistence allowance as provided u/s 24 of the Hindu Marriage Act is concerned that has no bearing or relation with the quantum of maintenance demanded or admissible to the defendant/appellant or to her child. The amount made out u/s 24 of the Hindu Marriage Act is reasonable amount to meet the expenses to the Court proceedings and also of the maintenance regarding food, lodging, travelling expenses and other necessary expenses during the period of litigation. This is not mere maintenance allowance as is to be paid under any provision of the Hindu Adoptions and Maintenance Act, 1956 or u/s 125 of the Code of Criminal Procedure. u/s 24 of the Hindu Marriage Act the allowance which is to be allowed must be reasonable besides the maintenance, also to meet expenses of the Court proceedings. Therefore, in these circumstances, this has no relation to the mere maintenance of the child or the lady. Further the means of the opposite party has also to be taken into consideration. Admittedly, the respondent is serving as Sub-Engineer in Irrigation Department of State of Madhya Pradesh. His salary chart has been given earlier, issued by the Executive Engineer of the Water Resources Division, Morena according to which he was drawing salary at the rate of Rs. 2735/- per month. In another chart issued by the Executive Engineer, dated 13th of December, 1994 the total emoluments of the respondent were Rs. 4670/- and he was getting net salary of Rs. 4115/- per month after total deductions. Earlier he was getting after total deductions only Rs. 1255/- per month.

11. The salary structure of the respondent was also not very high but the minimum allowance, reasonable u/s 24 of the Hindu Marriage Act has to be allowed to the litigating lady and the child.

12. Learned Counsel for the respondent further pointed out to the Court that the

respondent had been suffering from Brain-Tumour since long and he had to go to Delhi for treatment and to Madras for a major operation in which he had incurred a huge sum to meet out the expenses. In such a situation he was not in a position to pay any allowance to litigating wife and the child u/s 24 of the Hindu Marriage Act.

13. Whatever may be the situation but the provisions of Section 24 of the Hindu Marriage Act are mandatory and the Court has to assess the reasonable amount to be paid to the litigating opposite party not as a grace rather as penalty against the person who initiated the proceedings instead of reconciling the matter at home.

14. Therefore, even if it is considered that the respondent was suffering from a major disease and had to incur a lot of expenses in the treatment even then the mandatory provisions of Section 24 had to be complied once he had chosen to initiate legal proceedings against the wife and child.

15. Therefore, keeping in view all these facts and circumstances of the case, taking into consideration the salary structure of the respondent and keeping in view the employment of the appellant since 24th of August, 1992 it is reasonable and justified in the circumstances that the allowance to be paid to the litigating defendant/appellant from the date of application till she get employment i.e. 24th of August, 1992, must be the minimum at the rate of Rs. 400/- per month.

16. So far as the child is concerned, she is a girl child of 7 years. She must be getting education and her minimum expenses must be incurred by the lady maintaining her and also meeting her educational expenses, must be Rs. 200/- per month in these hard days.

17. Therefore, it will be fully justified under the provisions of Section 24 of the Hindu Marriage Act that the respondent must be paid the allowance at the rate of Rs. 400/- per month from the date of application i.e. 25th of August, 1989 till 24th of August, 1992 amounting to Rs. 14,400/- (Rupees fourteen thousand four hundred) in all.

18. Similarly, for the girl child the amount be paid by the respondent during the period from date of application till the dismissal of the suit comes to Rs. 12,000/- (Rupees twelve thousand) approximately. So, the total amount to be paid by the respondent to the appellant and the girl child comes to Rs. 26,000/- (Rupees twenty six thousand) approximately to make it the round figure.

19. The appeal is accordingly allowed. The subsistence allowance u/s 24 of the Hindu Marriage Act is enhanced at the rate, as indicated above. It is directed that the respondent shall pay to the appellant and the girl child as on today the total sum of Rs. 26,000/- (Rupees twenty six thousand) only, to be paid in equal instalments beginning from 1st of March, 1995 to be paid finally within a year by 1st of March, 1996 positively failing which this amount shall bear interest at the rate of 12% (twelve per cent) per annum from 1st of March, 1995 till it is paid.