

**Sakshi Rawal and Ors. Vs. Pankaj Rawal**

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**SooperKanoon Citation :** [sooperkanoon.com/1121](http://sooperkanoon.com/1121)

**Court :** Delhi

**Decided On :** Nov-25-2014

**Judge :** Manmohan Singh

**Appellant :** Sakshi Rawal and Ors.

**Respondent :** Pankaj Rawal

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Order delivered on: November 25, 2014 I.P.A. No.1/2014 & I.A. No.302/2014 SAKSHI RAWAL & ORS Through ..... Petitioners Mr.Rajiv Bajaj, Adv. versus PANKAJ RAWAL Through ..... Respondent Mr.Mohit Auluck, Adv. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

(ORAL) 1. The petitioners filed the present petition under Sections 18 and 20 of the Hindu Adoption and Maintenance Act for grant of maintenance.

2. Petitioner No.1 is the wife of the respondent while petitioners No.2 and 3 are their daughters, both of them are minor. It is stated by the petitioner No.1 that the petitioners do not have their individual source of income and it is difficult for them to survive.

3. It is stated in the petition that the petitioner No.1 was forced to leave the matrimonial home alongwith petitioners No.2 and 3 after facing atrocities. On various occasions she was taunted for not bringing sufficient dowry and for

belonging to lower background. However, she left the matrimonial home only when the respondent physically abused her.

4. The respondent has refused to maintain the petitioners who do not have any suitable accommodation. It is stated that the respondent is a man of status and can afford to provide petitioners with an alternative accommodation.

5. It is averred that the petitioner No.1 has always wanted and made endeavours to stay with the respondent in their matrimonial home. However, she has often been harassed by her mother-in-law, father-in-law and sister-in-law. The respondent and his family members harassed the petitioner No.1 at the time of birth of both their girl children, petitioners No.2 and 3 for not giving birth to a male child. Due to the birth of the second birth child, atrocities towards the petitioners no.1 increased.

6. The petitioner made endeavours to make respondent understand that there is no difference between female and male child but respondent does not support the petitioner. Respondent stopped providing the petitioners their basic needs and the servants were instructed by the mother-in-law of the petitioner No.1, not to serve the petitioners.

7. It is averred that respondent and his family members have always raised demands from the father of petitioner No.1, who in a hope that his daughter would live happily in her matrimonial home, kept on fulfilling their unreasonable demands.

8. It is stated in the petition that the respondent is a man of source who has a wholesale and retail shop and godown at 1127, Main Bazar, Paharganj, New Delhi under the name and style PAUL SHOES which deals in selling of shoes and shoe products. The respondent also has business of finance money under security at Paharganj. He has invested money under shares, bonds, securities and life insurances. He is the sole incharge of the business. The father and mother of the respondent are not dependent upon the respondent as they have their own source of income through interest which they have saved in the Bank Account.

9. It is averred that respondent is a well established per and has a luxuries life style and spends about Rs. 30,000/- for purchasing branded clothes and shoes quarterly. He has a Honda Jazz car and two scooters, spends about Rs. 20,000/- monthly on petrol. Respondent has two full time maids and one cook who are paid about Rs. 20,000/- as salary.

10. On the other hand, the petitioner No.1 has remained a house- maker and has no source of income except maintenance that she may obtain on orders by this Court. It is stated that petitioner No.1 requires money for maintaining herself as well as her two daughters, their play school fees, expenses for curricular activities as well as their medical expenses which includes regular vaccination and medicines.

11. The petitioners are totally dependent upon father of petitioner No.1. All the winter clothes as well as gold articles are under the possession of the respondent. The petitioners claim that they are entitled to live in the same status as the respondent is living and seek maintenance.

12. The matter was adjourned from time to time for settlement. The petitioner No.1 is ready to go to matrimonial home with her husband/respondent. The respondent is not agreeable to settle the matter with the petitioner. He says that in view of rude behaviour of petitioner No.1 with the parents of the respondent, it is not possible to take her back to the matrimonial home, though he is ready to take the custody of both children.

13. The matter was discussed in Chamber. However, it could not be resolved. The petitioner No.1 has mentioned during the talks for settlement that the main cause of her husband for not taking her back to the matrimonial home is that she has two baby girls and her husband needed a boy. resolved. Otherwise the matter could have been She assured to the respondent that even her parents would not come to see her at the matrimonial home in case the respondent is ready to settle the disputes. As there are two different versions of the petitioner No.1 and respondent, at this stage without deciding the case on merit, let her request for enhancement of amount be considered.

14. The petitioner No.1 has no independent source of income. The respondent is the only son of his father. According to the respondent, he is an employee of his father and is getting salary of Rs.10,000/per month.

15. The respondent has not denied the fact that his father has a commercial shop and godown at 1127, Main Bazar, Paharganj, New Delhi under the name and style Paul Shoes which deals in selling and dealing in shoes and shoes product where the respondent is allegedly working.

16. It is settled law that while deciding amount of ad-interim maintenance the Court also ought to take into consideration properties of the husband and his joint family and their business and social status as well as financial position.

17. Quantum of maintenance contemplated under Section 24 of the Act is that which appears to the Court to be reasonable. In considering the question, naturally, the Court must take into consideration income of the spouses and the needs of the claimant having regard to the status of the parties, their family background, the standard of living to which the claimant has been accustomed, legal and other obligations of the person liable to make the payment and other relevant circumstances.

18. In the case of Sh.Bharat Hegde vs. Smt. Saroj Hegde, 140 (2007) DLT16it was observed that the relevant considerations to be taken into account at the time of assessing maintenance claims are: Status of the parties, reasonable wants of the claimant, the independent income and property of the claimant, the number of persons, the non-applicant has to maintain, the amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in matrimonial home, non-applicants liabilities, if any, provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant, and the payment capacity of non-applicant. Equally, and as it often is the case, some guesswork is not ruled while estimating the income of the non-applicants when all the sources or correct sources are not disclosed. Paras 7 & 8 of the said judgment read as under:

7. Maintenance awarded cannot be punitive. It should aid the applicant to live in a similar life style she/he enjoyed in the matrimonial home. It should not expose the

non applicant to unjust contempt or other coercive proceedings. On the other hand, maintenance should not be so low so as to make the order meaningless.

8. Unfortunately, in India, parties do not truthfully reveal their income. For self employed persons or persons employed in the unorganized sector, truthful income never surfaces. Tax avoidance is the norm. Tax compliance is the exception in this country. Therefore, in determining interim maintenance, there cannot be mathematical exactitude. The Court has to take a general view. From the various judicial precedents, the under noted 11 factors can be culled out, which are to be taken into consideration while deciding an application under Section 24 of the Hindu Marriage Act. The same are:

1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non applicant has to maintain.
5. The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
8. Payment capacity of the non applicant.
9. Some guess work is not ruled out while estimating the income of the non applicant when all the sources or correct sources are not disclosed.
10. The non applicant to defray the cost of litigation.
11. The amount awarded under Section 125 Cr.PC is adjustable against the amount awarded Under Section 24 of the Act.

19. In Vinny Parmvir Parmar vs. Parmvir Parmar, (2011) 7 Scale 741, the Supreme Court held that the quantum of maintenance inter alia depends on the status of the husband. The Court in para 12 held as under:

12. .The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance and others whom he is obliged to maintain under the law and statute. The Courts also have to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to live when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party..

20. In Jasbir Kaur Sehgal vs. District Judge, Dehradun and Ors.,1997(7) SCC7 the Supreme Court held that there can be no set formula laid down for fixing the amount of maintenance. Rather, it depends on the facts and circumstance of each case. Thus, the Court must consider the status of the parties, their respective needs and the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance. Accordingly, the amount of maintenance should be such that the wife is able to live in reasonable comfort considering her status and lifestyle she had while living with her husband and she does not feel handicapped during the prosecution of her case.

21. Learned counsel for the petitioners submits that at present, the minimum school expenses and day to day expenses of two children including education, clothing, food, medical treatment are Rs.20,000/apart from other liabilities of the petitioner No.1 to run the kitchen and to maintain herself.

22. Till further hearing, the respondent shall pay a sum of Rs.15,000/- per month instead of Rs.10000/- per month as fixed by the Court vide order dated 20th February, 2014.

23. List on 9th February, 2015. (MANMOHAN SINGH) JUDGE NOVEMBER25 2014