

**Ganga Devi Vs. C.B. Joshi**

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**Court :** Allahabad

**Decided On :** Oct-01-1993

**Reported in :** I(1994)DMC72

**Judge :** M.L. Bhat, J.

**Acts :** Hindu Marriage Act, 1956 - Sections 25

**Appeal No. :** First Appeal No. 806 of 1991

**Appellant :** Ganga Devi

**Respondent :** C.B. Joshi

**Advocate for Def. :** None

**Advocate for Pet/Ap. :** A.K. Yog and ;Rajesh Tandon, Advs.

**Disposition :** Appeal allowed

**Judgement :**

**M.L. Bhat, J.**

1. The respondent had filed a divorce petition against the appellant, which was granted on 27-9-1983. It was held by the Court below that the appellant had deserted the respondent and she did not want to live with the respondent, therefore, the marriage between the parties be terminated. The respondent had

also raised a ground of mental cruelty for seeking divorce. This ground was based on the allegation of unchastity against the appellant, who was alleged to have told the respondent, her husband, on the very first day of marriage that she was having sexual relations with some third person, who was named in the divorce petition and she treated that man as her husband & did not allow the respondent to consummate the marriage with her. However, this plea was disbelieved by the Court below and it was held that the respondent-husband has failed to prove mental cruelty as alleged by him. Therefore, the ground for divorce of mental cruelty had failed. At the time of passing of the decree, the Trial Court did not pass any order with regard to alimony and it was observed that the question of maintenance allowance to the wife could be considered when application under Section 25 of the Hindu Marriage Act is made by her.

2. After decreeing the suit the wife seems to have made an application for payment of maintenance under Section 25 of the Hindu Marriage Act. That application was rejected by the Court below on 24-4-1988. The appellant-wife challenges the order of the Court below and prays that the order under appeal be set aside.

3. Court below is influenced by the allegations levelled by the husband against the appellant-wife regarding her unchastity. The unchastity is taken as a ground for refusing the maintenance allowance. The Court below has also said that the appellant-wife has deserted the husband, therefore, it will not be proper to allow permanent alimony to the wife. According to the Court below the appellant had played a drama of marriage and she could not be entitled to permanent alimony.

4. Section 25 of the Hindu Marriage Act was referred by the learned Counsel for the parties. Section 25 of the Act provides that at the time of passing any decree or at any time subsequent thereto, if the application is made for the purpose of permanent alimony by either the wife or the husband as the case may be, for payment of alimony the Court can grant maintenance having regard to the respondent's income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case and alimony may be granted which may appear to the Court to be just and such

payment may be secured, if necessary, by a charge on the immovable property of the other side. However, if there is any change in the circumstances of either party at anytime after an order is made, the Court may at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just. If after passings of the order the Court is satisfied that the party in whose favour an order for alimony was made has remarried or if such party is the wife, she has not remained chaste or if such party is the husband, he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind such other in such manner as it may deem just.

5. From reading the provisions, of Section 25 of the Act the Court has to consider the circumstances as also the income of the party claiming alimony and the income of the party from whom alimony is claimed and it may vary the alimony order after passing the order if the circumstances are changed or if the wife has resorted to unchastity or the husband has indulged in adultery. Therefore, each case has to be decided on its own merits. The learned Counsel for the respondent has submitted that the wife has deserted the husband, therefore, she is not entitled to get any maintenance. It is also submitted that the wife has her own property from which she gets income, therefore, the husband cannot be asked to pay any maintenance to her.

6. It is true that the decree for divorce is based on desertion but Section 25 of the Act does not debar the wife to claim permanent alimony if a decree is passed against her on the ground of her deserting the husband. The object of paying permanent alimony is that a chaste wife is saved from being forced to live a life of destitute and is not driven to street and exploited by the vagaries of society. However, the wife, who is unchaste, is not to be paid any alimony and even if alimony is granted to her, the order can be cancelled if the Court is satisfied that she has resorted to un-chastity. Therefore against the appellant in this case ground of unchastity, as alleged by the respondent, has not been proved in the divorce petition. She is entitled to alimony and she cannot be refused the same. The Trial Court's order in this regard is bad and suffers from legal infirmity. The Trial Court has incorrectly held that the wife-appellant has been found unchaste, therefore, she cannot be granted alimony. This finding is perverse and based on

incorrect facts.

7. The appellant-wife has no property of her own. She may in future inherit some property from her father. There is no proof that at present any income is derived by her from her father's property. She has a chance to succeed her father if she outlives her father. By that time she may get immovable property but at present it cannot be said that she has her own property, which is sufficient to fall back upon.

8. The appellant has claimed Rs. 600/- per month. The husband is said to be a well-placed officer in the Central Government. He is an Assistant Professor in some Research Institute. It is on record that his pay was Rs. 1600/- plus dearness allowance. This pay scale and D.A. must have been increased by now. Therefore, he can pay a reasonable amount to the appellant as permanent alimony every month.

9. Having considered all facts and circumstances of this case and the income of the husband as also the necessity of the appellant-wife, I direct that the respondent shall pay Rs. 400/- per month to the appellant as permanent alimony w.e.f. 29-4-1988 i.e. from the date of order of rejection of her application by the Trial Court. The arrears of alimony shall be paid within two years from today in four equal six monthly instalments by the respondent. However, monthly alimony from today onwards shall be paid every month on or before 30th of each month. The judgment of the Court below is set aside. With the above directions, the appeal is allowed and disposed of finally. There will be no order as to costs in this appeal.

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