

**Rajendra Kumar Mishra Vs. Sushila Devi**

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**Court :** Madhya Pradesh

**Decided On :** Jan-10-1994

**Reported in :** II(1994)DMC23; 1995MPLJ68

**Judge :** D.M. Dharmadhikari, J.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 24; Code of Criminal Procedure (CrPC) - Sections 125

**Appeal No. :** C.R. No. 147 of 1993

**Appellant :** Rajendra Kumar Mishra

**Respondent :** Sushila Devi

**Advocate for Def. :** J.K. Agnihotri, Adv.

**Advocate for Pet/Ap. :** Rajendra Tiara, Adv.

**Judgement :**

**D.M. Dharmadhikari, J.**

1. In the matrimonial proceedings, the learned Judge of the Trial Court difected the husband to pay 1/2 of his salary as maintenance pendente lite to the wife under Section 24 of the [Hindu Marriage Act, 1955](#) (in short 'the Act'). The learned Counsel appearing for the husband in this revision submits that the rate of

maintenance fixed is too high. The normal rate should have been 1/5 of the salary of the husband. Reliance is placed on *Raghvendra Singh Chaudhary v. Seema Bai*, 1988 M.P.L.J. 450, *Radhikabai v. Sadhuram Awatrai* 1969 M P L. j. 565 and *Dharmichand v. Smt. Shobha Devi*, AIR 1987 Raj. 159. The learned Counsel for the husband also submits that in fixing the rate of maintenance Court overlooked the relevant considerations that the husband has to maintain his aged parents and the wife has also some earning from bidi rolling done by her in the village.

2. The learned Counsel appearing for the wife in reply submits that the right of maintenance has been fixed looking to the needs of the wife and children living with her. It is also submitted that there is no scope for interference in the order of the Trial Court in exercise of revisional power by this Court.

3. In my opinion, no hard and fast rule can be made applicable to the question of fixing the rate of maintenance. The provision of Section 24 of the Act is that where one of the spouses has no independent income sufficient for his or her support and to meet necessary expenses of the proceedings, the other spouse having means can be directed to pay monthly maintenance pendente lite. The needs of the wife, source of her own earning, as also the needs of the husband and the members living with him, are all relevant considerations. There cannot be any hard and fast rule for directing payment of 1/5th or 1/3rd of the income of the husband if he is a salaried person (See AIR 1987 Raj. 159).

4. In the instant case, it has come on record of this case before me that the husband has aged parents who also need support from him. The fact that the wife has some independent income working as labourer or bidi roller is not in dispute. So far as the children are concerned, they have independent right to claim maintenance in proceedings under Section 125 of Cr.P.C. Under Section 24 of the Hindu Marriage Act, the maintenance pendente lite is to be fixed only for the wife and not for the children. As has been stated before me at the bar, from the total salary drawn by the husband, 1/2 of the amount i.e. Rs. 752/- was paid to the wife under the order of the Trial Court. Taking into consideration all the above relevant facts, in my opinion, the maintenance amount is liable to be reduced to Rs. 500/- per month, particularly keeping in view the fact that the husband has other family

members in the house to be maintained by him and the wife has some self-earning.

5. The revision, therefore, partly succeeds and is allowed to the extent that the amount of maintenance is reduced to Rs. 500/- per month to be paid by the husband to the wife from 1st of February, 1994. In the circumstances, there shall be no order as to costs.

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