

Hari Chand Vs. Munni

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SooperKanoon Citation : sooperkanoon.com/685058

Court : Delhi

Decided On : Apr-23-1970

Reported in : ILR1970Delhi668

Judge : P.N. Khanna, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 25

Appeal No. : First Appeal No. 204 of 1968

Appellant : Hari Chand

Respondent : Munni

Advocate for Pet/Ap. : D.K. Kapur and; R.K. Bhatt, Advs

Judgement :

P. N. Khanna, J.

(1) This appeal under section 28 of the [Hindu Marriage Act, 1955](#), herein called 'the Act', has been filed by the husband, Hari Chand, against the judgment and decree dated November, 27, 1968 of the learned Additional District Judge, Delhi, directing the appellant to pay to the respondent wife during her life, Rs. 50.00 per month as maintenance so long as she does not remarry and costs.

(2) The appellant had filed the petition for restitution of conjugal rights against his wife, the respondent which was decreed in his favor. As the wife did not comply with the said decree, the appellant filed an application for divorce against her, which was decreed in his favor on November 14, 1967. The respondent- wife, thereafter, filed an application under section 25 of the Act claiming that she had no independent income of her own and was entitled to be maintained by the respondent. It was stated that the respondent was engaged in the business of calendar pressing of saries and doing work for different firms of dry cleaners. The total income from these sources was alleged to be Rs. 500.00 per month. She, therefore, prayed for maintenance allowance of Rs. 150.00 per month. It may be mentioned that there is a child of the marriage, who is stated to be eleven years of age now and is with the respondent-wife.

(3) The appellant in his reply to the said application pleaded that he was still willing to keep and maintain the respondent as his wife. For that reason he said that the respondent was not entitled to any maintenance. He denied that he was earning Rs. 500.00 or thereabout per month. According to him his total monthly income was not more than Rs. 200.00 per month.

(4) The learned Additional District Judge following the judgment in Ashok Rattlal Trivedi v. Smt. Anjani Madhusudan Oza, : 4(1968)DLT235 , decided by M. M. Ismail J. of this court, held that the petition for maintenance was maintainable notwithstanding the fact that the said petition had been filed after the decree for divorce had been passed. He also held that after the decree for divorce, the respondent was justified in refusing to live with the appellant. On the question of quantum of maintenance the learned Additional District Judge was not satisfied with the evidence produced on behalf of the respondent. He, however, relied on the averments of the appellant in his written reply to the respondent's application under section 25 of the Act, to the effect that he was earning not more than Rs. 200.00 per month. He also noticed that at the trial the appellant had led evidence to show that he was earning a salary of Rs. 175.00 per month, but in view of the appellant's own aforesaid reply he considered the said figure of Rs. 200.00 to be his monthly income. As the respondent had no independent income of her own and besides herself, she had to maintain the minor child born out of the wedlock,

he fixed Rs. 50.00 per month as her maintenance.

(5) On behalf of the appellant, her learned counsel, Mr. D. K. Kapur, contended that according to section 25 of the Act the order of the court fixing the maintenance amount could be passed, before, at the time of or after the passing of the decree; but the application had to be made before the passing of the decree of divorce or annulment and when the applicant still enjoyed the status of a wife or the husband, as the case may be. According to him, the language of section 25(1) was clear enough to show; that the application could not be made after the decree for divorce as then the parties would not be the wife or the husband, as the case may be, while the language of section requires the application to be filed by the wife or the husband. The application in this case having been made after the passing of the decree was, therefore, not maintainable. In support of this contention, he relied on a Division Bench judgment of the Madras High Court reported in *Naravanaswami v. Padmanabhan*, : AIR1966 Mad394 , where the Court was of the view (though it was not necessary for the purpose of the appeal before them to decide that question) that section 25 cannot be construed in such a manner as to hold that notwithstanding the nullity of the marriage, the wife retained her status for purposes of applying for maintenance. Apart from the fact that the observations in that case before the Madras Bench were in the nature of obiter dicta the said view was influenced by the view expressed in *Mehta Gunventray Marginal v. Bai Prabha Keshavji*, : AIR1963 Guj242 , where as single Judge of the Gujarat High Court held that no application could be made under section 25 subsequent to the passing of the decree for dissolution or annulment of marriage. This view was not accepted by a Division Bench of the Gujarat High Court in *Patel Dharamshi Premji v. Bai Sakar Kanji*, : AIR1968 Guj150 , where Bhagwati J. speaking for the Bench observed that 'there is therefore no doubt in our minds that when section 25 subsection (1) talks of an application by the wife or the husband, it does not mean that the party making the application must be the wife or the husband at the date of the making of the application. All that the subsection requires is that an application must be made by the wife or the husband, who is a party to the main proceeding, if she or he wants the incidental relief of permanent alimony and such an application may be made in the main proceeding either before or at the time of passing the decree granting substantive relief at any time subsequent to the passing of such

decree.' The Bench was of the view that the application under section 25 was maintainable notwithstanding the fact that it was made after the passing of the decree for divorce. In *Ashok Rattilal Trivedi v. Smt. Anjani Madhusudan Oza*, : 4(1968)DLT235, M.M. Ismail J of this court considered the cases of *Gumantray v. Bai Prabha* (supra) and *Narayanaswami v. Padmanabhan* (supra), but was not impressed by the reasoning contained in the said judgments. The learned Judge observed:

'INshort, the question is whether the expression 'the wife or the 'husband' occurring in the section is merely descriptive and has been used in the general sense as to indicate a man or a woman who went through a form of marriage and which marriage was the subject matter of a proceeding in the 'court or does it indicate a man or a woman enjoying the status of a husband or a wife by virtue of a valid and subsisting marriage For more than one reason, I am of the view that the expression 'the wife or the husband' in the section has not been used in such restricted sense.'

(6) The learned Judge further observed:

'THEstrongest indication of this fact and the strongest refutation of the contention of the petitioner is found in section 25(3) itself. That sub-section has clearly been quoted and the expression husband and wife in that sub-section clearly refers to the man and the woman after a decree of nullity has been passed with reference to their marriage which was the subject matter of the proceedings before the Court.'

(7) There is thus sufficient authority for the view that there is no bar to an application being made under section 25 of the Act at the time of the passing of any decree or any time subsequent thereto. A reference to the language of section 25, more especially to its sub-section (3), is quite useful. Section 25 of the Act reads as follows:-

'25.(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the 'case may be, order that the

respondent shall, while the applicant remains unmarried, pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant, as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant and the conduct of the parties, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent. '(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just, '(3) If the court is satisfied that the party in whose favor an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it shall rescind the order.'

(8) The expression 'wife' or 'husband' used in sub-section (3) obviously means a person who was the wife or the husband, as the case may be, before the passing of the decree. Although the reference in the section is to a party in whose favor an order has been made and which order could be made after the decree, the said party has been styled as the 'wife' or the 'husband', as the case may be, when it is intended to be penalised by a rescission of the order passed in its favor, in the event of misconduct or remarriage. Even otherwise, there is no justification for restricting the meanings of the expressions, when the entire scheme of the Act is taken into consideration, which was designed to bring about a liberal change in the law relating to marriage among Hindus. It could never have been intended that an order granting maintenance, which could be passed after the decree of the court, could be passed only if the application had been made before the final orders, at which stage, final decision could not have been predicted. A spouse cannot be denied the benefits of section 25, merely because an application under this section was not made on its behalf, before the final decision, as it may have continued to harbour a hope of success in the final outcome.

(9) In view of the above, the contention of the learned counsel for the appellant cannot be accepted. The petition under section 25, therefore, was competent

even though it had been filed after the passing of the decree for divorce.

(10) The other question discussed at the Bar relates to the quantum of maintenance. The learned counsel for the appellant contended that the only evidence produced by the parties shows that the appellant was earning at that time Rs. 175.00 per month. The court, according to him was not justified in fixing Rs. 200.00 per month as the income of the appellant. The contention, however, is without any force in view of the written reply of the appellant himself to the application, that he was earning not more than Rs. 200.00 per month. In case, he was getting a salary of Rs. 175.00 per month, he would have mentioned that figure and would not have referred to Rs. 200.00 per month. The assessment made by the learned Additional District Judge at Rs. 50.00 per month towards the maintenance of the respondent with whom a minor child of the parties is residing, is quite reasonable.

(11) Under the circumstances, there is no substance in the appeal and the same is dismissed with costs. Counsel's fee Rs. 100.00.