

Amar Singh Vs. Vimlesh

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Court : Delhi

Decided On : Sep-01-1996

Reported in : 64(1996)DLT426; 1996(39)DRJ160

Judge : J.B. Goel, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 24

Appeal No. : Civil Revision Appeal No. 24 of 1996

Appellant : Amar Singh

Respondent : Vimlesh

Advocate for Pet/Ap. : Dilraj Kumar, Adv

Judgement :

J.B. Goel, J.

(1) PETITIONER/HUSBAND has-filed this civil revision petition challenging the legality and propriety of order dated 27th October, 1995 passed by the learned Additional District Judge, Delhi under Section 24 of the Hindu Marriage Act (hereinafter called the Act) in favor of the respondent/wife.

(2) Briefly the facts are that the parties are Hindus and were married according to the Hindu rites and customs on 9.7.1980. Two children were born out of the wed

lock. The petitioner/husband had filed petition for dissolution of marriage on the ground of adultery under Section 13(i)(ib) of the Act and also impleading the alleged adulterer as respondent No.2.

(3) He has alleged that on 30.7.1991, the respondent/wife left the matrimonial home to an unknown place and took away all the gold and silver ornaments and cash amounting to Rs.35,000.00 which was withdrawn by her from the bank on 6.6.1991 and another RS.100.00 on 28.6.1991 without the knowledge and consent of the petitioner. After she had disappeared from his house on 30.7.1991 the petitioner had reported the matter at police station Pahar Ganj and later he came to know that after leaving the matrimonial home she had gone Along with respondent No.2. On 8.8.1991 the petitioner was summoned by the Investigating Officer (for short 1.0.) in the said Police Station where he found the wife as well as respondent No.2 sitting with the 1.0. and in the presence of the said 1.0. the wife refused to join the matrimonial home and expressed her desire to live with respondent No.2 as his wife. Compromise to this effect was drawn which was signed by the petitioner, respondent/wife and respondent No.2 which was attested by the 1.0. He filed petition for divorce thereafter. Both the children are living with the husband.

(4) In those proceedings the respondent/wife filed an application under Section 24 of the Act for pendente lite maintenance and litigation expenses. She alleged that she wanted to contest the petition for divorce filed by the petitioner; that she was an illiterate lady and has no property or means to support her and to meet the litigation expenses and traveling expenses; she was being supported by her parents who were not in a position to maintain even themselves; she was living at Khurja about 100 kms. away and would need her father or a relative to escort her to Delhi to defend the proceedings. Regarding the financial status of the husband, she has alleged that he was in sound economic condition. He was employed in the Municipal Corporation of Delhi getting a salary of Rs.3200.00 per month. Besides this he was earning about Rs.75.00 to RS.100.00 per day by driving a three wheeler scooter; his income was Rs.6,000.00 per month. It is further alleged by her that the petitioner had kept another woman and was living with her. She claimed Rs.5,000.00 as litigation expenses, Rs.250.00 traveling expenses per

date of hearing and Rs.800.00 per month as maintenance for herself. She filed her affidavit in support of the petition. The husband contested this application and alleged that she was living in adultery with Rakesh Kumar, respondent No.2 with whom she had eloped on 30.7.1991; she had also made a statement before the 1.O. at P.S. Paharganj on 8.8.1991 wherein she admitted that she was living with respondent No.2 of her own wish and she did not want to live with the petitioner. The wife, husband and said Rakesh Kumar had signed that statement So he was not liable to pay any maintenance or any litigation expenses as she was living and was being supported by respondent No-2/adulterer. He denied that she was living with her parents at Khurja. Also according to him he was getting a salary of Rs.2,626.00 per month and out of this income he was supporting his two school going children living with him and his widow sister, and his this income was not sufficient for all these persons. It was also alleged that the wife was running a beauty parlor and earning Rs.4,000.00 per month and as such she was not entitled to any maintenance etc. He filed his affidavit in support. He denied that he was plying a three wheeler scooter or had any other income. The wife filed a rejoinder denying the averments made by the husband.

(5) The learned trial court in the impugned order dated 27.10.1995 has observed that 'It is, however, not disputed that she is staying with her parents at Khurja.' Regarding the allegation of adultery he observed that at this stage from the material on record no comment can be made on that controversy. He did not accept the plea of the husband that the wife had any income. He also did not believe the case of the wife that besides the salary the husband was having any other income by plying three wheeler scooter. On the basis of the salary certificate he came to the conclusion that the monthly salary of the husband would be about Rs.3,000.00 per month. Except the two children the learned trial court did not express any opinion if the petitioner was maintaining or supporting any other dependent or relation. On the material available he awarded Rs.500.00 per month as pendente lite maintenance, Rs.2,000.00 as litigation expenses and second class rail fare to and fro Khurja besides RS.100.00 for each dates fixed for reconciliation and for the evidence of the parties. The maintenance was awarded from the date of the application which was filed on 23.12.1992.

(6) Being aggrieved from this order the petitioner has filed the present petition. The wife and the alleged adulterer were impleaded as the respondents 1 and 2. Both of them had appeared in this court on 18.5.1996 but thereafter both of them have not appeared.

(7) Learned counsel for the petitioner has contended that the petitioner has sought divorce on the ground of adultery. She had eloped with respondent No.2 and now she is living in adultery with him; she had admitted before the court in writing that she was living and wished to live with respondent No.2 and had declined to live with the petitioner. In the circumstances, she was not entitled to any maintenance. But the relevant material on this aspect has not been considered by the learned trial court. He has placed reliance on observations made by the Rajasthan High Court in this decision where the principles relevant for award of maintenance in such circumstances have been noticed as under:-

'5.First the Court has to consider whether or not it should grant maintenance pendente lite and expenses of proceedings under this section at all. The leading principle to remember in this connection is that if the applicant has no independent means he or she is entitled to maintenance and expenses under this section, unless good cause is shown for depriving him or her of it. What can be a good cause for this purpose has also been the subject of a series of decisions in matrimonial cases and Courts have held that the matters that may properly be considered are (1) whether the applicant is being supported by an adulterer, and (2) whether the respondent has not sufficient means. (See Manchanda's commentary on S.36 of the Indian Divorce Act).'

(8) As appears from the application under Section 24 of the Act the wife alleged that she wanted to contest the petition for divorce filed by the petitioner/husband against her, that she was an illiterate lady, has no property or means to support her or to meet the litigation expenses and she was dependent upon and living with her parents at Khurja about 100 Kms. away wherefrom she will be able to come with the assistance of her father or some relation to defend the divorce proceedings. She thus needed maintenance and necessary expenses. She denied the allegations of adultery and of elopement alleged by the husband and alleged

that these are false and defamatory. She also alleged that the alleged adulterer, Rakesh is a nephew of the husband and the petitioner in collusion with him had made these allegations; she denied that she was living with him and stated that she was living with her parents at Khurja. She has also denied that she had eloped with Ramesh or. she had made and signed any statement before the i.e at Police Station Paharganj on 8.8.1991 as alleged. She alleged that it was a manipulated document and had been forged in collusion with the police officer posted at Police Station Paharganj, with whom he had links. She also alleged that the husband had illicit relations with some lady and for that reason he had turned her out of the house. She also had attached photograph of the lady with the reply in the Trial Court.

(9) The wife thus has seriously contested the allegation of adultery imputed to her and on the other hand she has also imputed that it is the husband who has kept another woman with him and on account of that he has turned her (wife) out of the matrimonial home, and also forged document about statement/ admission alleged to have been made by her admitting her illicit relations with Rakesh. She has categorically stated that she is living with her parents at Khurja and not with .respondent No.2.

(10) At this stage the court would not be in a position to judge the merits of the rival contentions of the parties when deciding the application for interim maintenance and would not allow its discretion, to be fettered by the nature of allegations made by the parties and nor would examine the merits of the case.

(11) The address of the husband, wife and alleged adulterer given in the appeal is 2343, Basti Peepal Wali, Delhi. Several attempts were made to serve the wife in these proceedings on that address but she was not found there and it was reported that she is living at Khurja. There was no other material to show that she was actually living with respondent No.2. At this stage, on the material available before him the learned Trial Court could not have gone into the merits of the alleged misconduct on the part of the wife so as to disentitle her to claim maintenance.

(12) It is needless to say that proceedings under section 24 of the Act are intended to be summary proceedings in nature and it would not be appropriate at this stage to decide if the spouse making the application under section 24 is or is not entitled to the said payment because of the misconduct or commission of matrimonial offence by him or her. A plain reading of provisions of section 24 shows that the only condition precedent for grant of maintenance pendente lite to any of the parties to the proceedings under the Act is that the applicant has no independent income sufficient for his or her support and to provide him or her necessary wherewithal to enable him or her to seek appropriate relief in proceedings under the Act.

(13) In *Malkan Rani Vs . Krishan Kumar I.D. Dua, J.* (as he then was) for the Division Bench observed that the object and purpose of section 24 of the Act was to enable the Court to see that the indigent spouse was put in a financial condition in which the party concerned might produce proper material and evidence in the case and that a party was not handicapped in or prevented from bringing all the relevant facts before the Court for decision of the case because of his or her poverty. This has been followed by this Court in *Anuradha Vs . Santosh Nath Khanna : AIR1976 Delhi246* . In the circumstances, no fault can be found in the Trial Court not taking into consideration the allegations made in the petition that the wife was living in adultery which were refuted by her.

(14) Correctness of the quantum of maintenance and other expenses awarded by the learned Trial Court has not been challenged during the arguments. Monthly salary of the petitioner has been assessed by the Trial Court at Rs.3,000.00 per month which is not disputed. Two children who are school going are living with him. Even taking into consideration that the widowed sister is also being supported by him, the amount of maintenance at the rate of Rs.500.00 per month and other amounts awarded to meet the expenses to defend her cannot be said to be unreasonable. For the determination of a monthly payment to support the needy spouse, one of the principles to be considered is the 'number of persons opposite party is obliged to maintain' and by dividing the disposable income of the husband equally between all the members of the family. On this principle also the amount of maintenance awarded is not excessive.

(15) In view of the above discussion no interference is called for by this Court. There is no merit in this revision petition and the same is hereby dismissed at admission stage. No order as to costs.

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