

Hema Vs. S. Lakshmana Bhat

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Court : Kerala

Decided On : Jul-19-1985

Reported in : AIR1986Ker130

Judge : U.L. Bhat, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 24 and 25; [Divorce Act, 1869](#) - Sections 36

Appeal No. : C.R.P. No. 1557 of 1985-G

Appellant : Hema

Respondent : S. Lakshmana Bhat

Advocate for Def. : R.D. Shenoi, Adv.

Advocate for Pet/Ap. : R. Raya Shenoi, Adv.

Disposition : Petition allowed

Judgement :

ORDER

U.L. Bhat, J.

1. Revision petitioner is the wife of the respondent. They are governed by the provisions of the Hindu Marriage Act (for short 'the Act'). They were married on 24-

8-1975 and lived together till December, 1979. Thereafter, they have been living apart. Each has his/her own explanation for the present state of affairs.

2. Husband filed H.M.O.P.4/1983 seeking divorce under Section 13 of the Act and the wife filed written statement resisting the petition. On 5-7-1983 she filed LA. 957/1983 claiming maintenance pendente lite at the rate of Rs. 2,500/- per month and also Rs. 2,000/- as expenses for conducting the case from the husband. Husband resisted the application and the learned Subordinate Judge disposed of the application directing the husband to pay maintenance pendente lite at the rate of Rs. 800/- per month from 5-7-19.83 and to pay a sum of Rs. 1,000/- as expenses of the proceedings. The wife, being dissatisfied with the quantum awarded, has filed this revision.

3. Husband is a well placed businessman in Mattancherry. He as well as his wife have affluent background and belong to trading families. Evidently, the wife has lost her father. She is at present living with her relations namely mother, uncle and brother and is dependent wholly on her uncle and brother for eking out her livelihood. According to her, she has no income at all. The husband alleged, and this allegation has been accepted by the court below, that a sum of Rs. 22,000/- is lying in fixed deposit in the wife's name in a bank and that a piece of land has been purchased in her name. The wife alleged that the records relating to fixed deposit are with the husband and therefore she has no control over it. Learned counsel for the respondent submits that the records have been submitted before court. The fact remains that the fixed deposit has matured and interest has ceased to run. This cannot be a source of income at present. There is no case that the piece of land standing in her name fetches any income. Thus, the court below proceeded on the basis that the wife has no income of her own.

4. The husband is a businessman in Mattancherry, being a partner in family business. The wife alleged that his monthly income exceeds Rs. 10,000/-, an allegation denied by him. However, in his counter statement, he did not disclose his income. Nor did he produce any documents before the court below to show his income. In these circumstances, the court below came to the conclusion that he must have monthly income of Rs. 10,000/-. It was on that basis that maintenance

was fixed at the rate of Rs. 800/-per month. According to the wife, maintenance fixed is too low. Respondent seeks to justify the quantum of maintenance fixed by challenging the finding of the court below that the husband's income is Rs. 10,000/- per month.

5. In the court below the wife filed an application calling upon the husband to produce assessment orders relating to income-tax and wealth tax. Husband did not produce the documents before the court pleading that they are privileged documents. Learned counsel for the respondent has now produced two assessment orders relating to income-tax. First order dt. 13-3-1984 relates to the assessment year 1981-82. His income is fixed at Rs. 59,269/-. Tax and surcharge levied is Rs. 13,908. Net income for that year is Rs. 45,361. The second order dt. 29-12-1984 relating to the assessment year 1982-83 shows his income as Rs. 47,836/-. Tax assessed is Rs. 8,760/-. Thus, his net income for that year is Rs. 39,076/-. Taking these two assessment orders, his average net income for the two years is Rs. 42,218.50. He has not produced assessment orders relating to the later assessment years. Nor has he produced his accounts or other records to show his income for the year 1983-84 or 1984-85. However, his income could not be Rs. 10,000/- per month. His annual income could be estimated at Rs. 48,000/-. This would be Rs. 4,000/- per month.

6. The court below has not given any reason for fixing Rs. 800/- per month as maintenance to be paid pending the proceedings. The claim is under Section 24 of the Act. Section 24 states that where in any proceedings under the Act, it appears to the court that either the wife or the husband, as the case may be, has no independent incomesufficient for her or his support and the necessary expenses of the proceedings, it may, on the application of the wife or the husband order the respondent to pay to the petitioner the expenses of the proceeding, and monthly, during the proceeding, such sum as having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable. If the wife or the husband, as the case may be, has no independent income sufficient for her or his support and necessary expenses of the proceeding, the Court can pass appropriate order having regard to the income of the spouses. It would be worthwhile to compare the provision in Section 24 with that in Section 25

dealing with permanent alimony and maintenance. That section requires the court to have regard to the income and other property of the spouses. It is significant to note that Section 24 refers only to income and not other property. Therefore, in considering a case arising under Schedule 24 of the Act, it is only the income and not other property which requires to be considered.

7. 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 life to which the claimant has been accustomed to, legal and other obligations of the person liable to make the payment and other relevant circumstances.

8. Learned counsel for the respondent drawing inspiration from the proviso to Section 36, [Divorce Act, 1869](#), contended that Rs. 800/- per month out of a monthly income of Rs. 4,000/- should be the maximum that could be awarded. Section 36, Divorce Act, permits the wife to present a petition for alimony pending the proceeding. The proviso states, inter alia, that the alimony pending the suit shall in no case exceed 1/5th of the husband's average net income for three years next preceding the date of the order. It is contended that the ceiling fixed in this provision must be taken into consideration in passing an order under Section 24 of the Act also. This view appears to be unacceptable. The Legislature when enacting the Act certainly had before it the provisions of other parallel Acts. Yet, the Legislature deliberately refrained from incorporating in Section 24 of the Act any ceiling of the nature provided in the proviso to Section 36, Divorce Act. The ceiling was contemplated in a legislation enacted more than hundred years ago. During the last hundred years, phenomenal changes have taken place in Indian society and the societal values. There has been rethinking even regarding the position of spouses in the institution of marriage and the concept of divorce. More and more liberality is being injected into the law regarding divorce. A more humanitarian approach is being taken in regard to grant of reliefs to spouses, in particular, the wife or even the divorced wife. Concept of equality between the spouses has gained recognition. That is why Section 24 of the Act enables either spouse to

make a claim. Status of the wife as an equal partner in marriage is now generally accepted. The idea of ceiling of 1/5th of the income has lost all relevance and advisedly such a ceiling has not been incorporated in Section 24 of the Act. The Legislature has declared its policy under Section 24 of the Act, the policy being that the quantum to be fixed is what (is) reasonable under the circumstances. To hold that there must be an artificial ceiling read into the provision would be to fly in the face of the legislative policy so clearly expressed in the provision.

9. The High Courts of Rajasthan, Himachal Pradesh and Orissa have supported the concept of ceiling even in regard to Section 24 of the Act. See *Mukan Kunwar v. Ajeetchand* AIR 1958 Raj 322, *Smt. Shushila Devi v. Dhani Ram* AIR 1965 Him Pra 12 and *Prasanna Kumar Patra v. Smt. Sureswari Patrani* AIR 1969 Orissa 12. The High Courts of Bombay, Allahabad and Gujarat have taken a contrary view in *Dinesh Gijubhai Mehta v. Smt. Usha Dinesh Mehta* AIR 1979 Bom 173, *Preeti Archana Sharma v. Ravind Kr. Sharma* AIR 1979 All 29 and *Dhirajben Prabhudas Parmar v. Rameshchandra Shambhulal Yadav* AIR 1983 Guj 215. For the reasons already indicated by me I find it difficult to follow the former view. With great respect, I am in agreement with the latter view.

10. I have already indicated that the court below has not given any reasons for fixing Rs. 800/- per month as interim maintenance. The parties come from affluent background. The spouses lived together for about 4 1/2 years and then fell out. Necessarily, they must have been accustomed to fairly high standard of living. Both the spouses are from trading families accustomed to a degree of comfort. The husband has not shown that he has any other obligations or commitments to meet out of his income. Considering all these circumstances, sum of Rs. 800/- fixed by the court below appears to be absolutely inadequate. In the facts and circumstances of the case, a sum of Rs. 1,000/- per month would be a reasonable amount.

11. Question which next arises for consideration is from what date this amount is to be paid. The court below has directed that the amount is to be paid from the date of LA. 957/1983 namely 5-7-1983. Regarding this aspect, various High courts have taken differing views. This has been noticed by the Law Commission in its

working paper relating to Section 24 to Section 26 of the Act. There are three distinct trends noticeable in this regard. The Jammu and Kashmir High court in *Puran Chand v. Kamala* AIR 1981 J & K 5 has held that maintenance is payable from the date on which issues are framed in the main proceeding. The Andhra Pradesh High Court in *Narendra Kumar v. Smt. Suraj* AIR 1982 Andh Pra 100 has taken the view that maintenance is payable from the date of the application for interim relief. The High Courts of Calcutta, Delhi, Mysore and Punjab and Haryana have taken the view that interim maintenance can be made effective from the date of summons on the main petition. See *Sobhana v. Amar Kanta* AIR 1959 Cal 455, *Samir Banerjee v. Sujatha Banerjee* (1966) 70 Cal WN 633 at P. 642, *Gajna Devi v. Purushothaman* AIR 1977 Delhi 178, *Subramaniam v. M. G. Saraswathi* AIR 1964 Mys 38, *Sarita Mehta v. Arvind Kumar Mehta* (1978) 80 Pun LR 213.

12. This Court also had opportunity to consider the question. First decision on the point is the one in *Radhakumari v. K. M. K. Nair* 1982 Ker LT 417 : (AIR 1983 Ker 139) where Sukumaran J. noticed that Section 24 does not contain any limiting provision regarding the date from which the order should be effective, and held that the object of the enactment does not justify the court imposing on itself any such fetter when the Parliament in its wisdom has not chosen to do so. The learned Judge directed that payment will be effective from the date of service of summons in the main petition. This view was followed in *Nalini v. Velu* 1984 Ker LT 790 : (AIR 1984 Ker 214) where Paripoornan J. observed that there is no legal impediment in directing that maintenance should be paid from the date of service of summons in the main petition. With great respect, I agree with this view. Postponement of the effective date would be to put the spouse already in a disadvantageous position, in a more disadvantageous position. I direct that maintenance pendente lite will be paid from the date on which summons in the main petition was served on the wife.

13. The court below has fixed expenses of the proceeding at Rs. 1,000/-. This also appears to be inadequate to meet the situation. The main petition was filed in early 1983. We have already passed the middle of 1985. Expenses of the proceeding include not merely the fees payable to the advocate or the court fee payable on petitions and the like. It includes all expenses which the spouse has to incur in the

process of effective conduct of the litigation. She is at present residing in Kodungallur, in her uncle's house. To attend court, she has to come all the way from Kodungallur to Cochin. Frequent trips may be necessary for this purpose. On the occasions when she comes down she will have to meet additional expenses. Taking all these circumstances into consideration, the amount fixed by the lower court appears to be absolutely inadequate. Rs. 2,000/- would be a reasonable sum.

In the result, the order passed by the court below is modified as follows ;

1. The respondent-husband shall pay maintenance pendente lite at the rate of Rs. 1,000/- per month from the date on which summons in the proceeding was served on the wife till the disposal of the main petition.
2. The respondent-husband will also pay a sum of Rs. 2,000/- to the wife as expenses of the proceedings.
3. Arrears of maintenance as well as the amount fixed for expenses of the proceedings shall be paid within two weeks from today.

Revision petition is allowed to the extent indicated above.