

**Smt. Pushpa Devi Vs. Om Prakash**

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**Court :** Rajasthan

**Decided On :** Aug-28-1984

**Reported in :** 1984WLN798

**Judge :** S.K. Mal Lodha, J.

**Appeal No. :** S.B. Civil Revision No. 250 of 1984

**Appellant :** Smt. Pushpa Devi

**Respondent :** Om Prakash

**Disposition :** Petition allowed

**Judgement :**

**S.K. Mal Lodha, J.**

1. The wife (petitioner) has filed this revision under Section 115 CPC against the order dated March 15, 1984, of the Additional District Judge, Raisinghnagar, by which he awarded interim maintenance at the rate of Rs. 125/- per mensem from the date of the application under Section 24 of the Hindu Marriage, Act (No. XXV of 1955) ('the Act' herein) filed by the wife and held that on the wife's application under Section 24 of the Act, her daughter who is living with her cannot be granted any maintenance. It is not necessary to recall the facts in detail, Suffice it to mention that the husband (non-petitioner) filed a petition under Section 13 of the

Act for dissolution of marriage by a decree of divorce. During the pendency of the petition on July 21, 1983, an application was filed by the wife under Section 24 of the Act. It is necessary to quote the relevant portion of the application which runs as

3 ---blfy, vizkfFkZuh ds ekrk firk vFkok T;knk nsj rd ,d vizkfFkZuh dh cPph ds Hkj.k isk'k.k dk [kpZ o vizkfFkZuh ij mDr eqdnek dk [kpkZ ogu djus es vleFkZ gS

4 ;g fd vizkfFkZuh dk ifr uSfrd dkuwu og gj izdkj vizkfFkZuh o vizkfFkZuh dh cPph dk Hkj.k iks'k.k djus dk tqEesokj gS A

---fuosnu gS fd vizkfFkZuh dks vius o viuh cPph vuhrk ds xqtkjs ds fy, de ls de 500@& ;i;s ekgokj vizkfFkZuh ds ifr ls fnyok;s tk, A

This application was opposed the husband. A rejoinder was filed by the wife. Affidavits were filed. An opportunity was afforded to both the parties for cross-examination on the affidavits, but they did not express any desire to do that. The learned Additional District Judge awarded Rs. 125/- per month as interim maintenance to the wife (petitioner) and also a sum of Rs. 500/- as expenses of the proceedings. In the order under revision the learned Additional District Judge has stated as under:

iq'iknsoh us fuokZg HkRrs dh nj[okLr es viuh cPph ds fy, fuokZg HkRrs dh Hkh ekax dh gS A ysfdu /kkjk 24 fgUnw fookg es oSokfgd thou ls mRiUu cPps ds ekfld HkRrs ls lEcU/k es dksbZ izko/kku ugh gS A vr% iq'ik nsoh ds fuokZg HkRrk fnyok;k tkus ds le; bl rF; dks egRo ugh fn;k tk ldrk fd bu nksuks dk oSokfgd thou ls mRiUu ,d cPph mlds lkFk jg jgh gS esjh jk; es eq0 iq'ik noh dks vius Loaa; ds xqtkjs ds fy, 125@& ;i;s izfrekg lk;kZlr gS [kkldj tcfd og vius eka cki ds edku es jg jgh gS A

The wife has filed this revision praying for the enhancement of the interim maintenance.

2. A show cause notice was issued. Mr. A. R. Mehta has appeared on behalf of the husband (non-petitioner).

3. In view of the short law point involved in this revision, I consider it proper to dispose of this finally without requisitioning the record.

4. It was contended by the learned Counsel for the petitioner that on the petitioner's application under Section 24 claim for maintenance of a child can be taken into account and that the learned Additional District Judge in not considering this has failed to exercise jurisdiction vested in him by law. Mr. A. R. Mehta learned Counsel for the non-petitioner supported the observations made by the learned Additional District Judge and submitted that in view of the language employed in Section 24 of the Act, no interim maintenance can be awarded to the children. Learned Counsel appearing for the parties except making their oral submissions did not cite any case law on the point. There is divergence of judicial opinion on the point and I will briefly refer the cases on which I have been able to lay my hands. But before I do that, it will be relevant to refer to the provisions contained in Section 24 and 26 of the Act which are material for the purpose.

Section 24. Maintenance 'Pendente lite' and expenses of the proceedings: Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, 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.

Section 26. Custody of children: In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education for minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance education of such children as might have been made by such decree or interim orders in case the proceedings for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any

such order and provisions previously made.

5. Here it may be mentioned that Mr. A. R. Mehta, learned Counsel for the non-petitioner referred to Section 25 of the Act which has no application whatsoever, for it deals with permanent alimony and maintenance.

6. In *Akasam Chinna v. Farbati* : AIR1967 Ori163 , the question arose whether daughter is entitled to the grant of pendente lite maintenance in an application filed under Section 24 of the Act. The learned Judge observed that in view of the clear provisions of Section 24, there cannot be any dispute that the wife is entitled to pendente lite maintenance and that there is no independent income sufficient for her support and also the necessary expenses of the proceedings. The learned Judge, however, opined that Section 24 does not authorise grant of pendente lite maintenance to the daughter, and in terms applies either to the wife or the husband as the case may be. Before a learned single Judge of the Patna High Court in *Bankim Chandra v. Anjali Roy* : AIR1972 Pat80 , a similar question arose whether monthly allowance can be granted under Section 24 for the support of the children. The learned Judge has observed as under:

No monthly allowance can be granted under Section 24 for the support of the children. That being so, the grant of monthly allowance of Rs. 325/- not only for the support of the respondent but also for the support of the three children is contrary to law and has been made by committing an illegality in exercise of the jurisdiction of the Court under Section 24 of the Act.

These are two decisions which support the view taken by the Additional District Judge. The learned Judge in *Baboolal v. Smt. Premlata* 1973 WLN 809 did agree with the observations made in *Akasam Chinna's* case, AIR 1967 Orissa 163 that Section 24 of the Act does not authorise grant of any pendente lite maintenance to the children and observed as under:..but I cannot help observing that the attention of the learned Judges was not directed to the provision of Section 25 of the Act which clearly empowers the court to Order maintenance pendente lite for the children of the wedlock during the continuance of the proceedings between the spouses under the Act for judicial separation or for other reliefs.

In *Balbir Kaur v. Raghubir Singh* the learned Judge relying on *Usha v. Sudhir Kumar* ILR (1973)2 P & H 248 held that the wife's application under Section 24 of the Act, the provision for necessities of the minor children can also be taken into account while fixing the quantum or rate of interim maintenance. The learned Judge has expressed himself in the following words:

The respondent would in any case, have a joint responsibility for the maintenance of the two children even if the appellant's contention that he alone is liable as described as a moot point at this stage.

The question before the Division Bench of Punjab and Haryana High Court on *Smt. Usha v. Sudhir Kumar* (Pb & Hry.) 1975 HLR 1 was whether under Section 24 of the Act claim for maintenance of child can be taken into account, The learned Judges have observed in para 7 as follows:

There is no doubt that under Section 24 of the Act, the child cannot claim maintenance and it is only either of the two spouses who can make a claim. At the same time, (sic) clear that a claim can be made for maintenance of a child during proceedings under the Act and the Court can in exercise of powers vested in it by Section 26 of the Act pass such interim orders in any proceeding under the Act, from time to time, as it may deem just and proper with respect to the maintenance and education of minor children, consistently with their wishes, wherever possible. But even if no application under Section 26 is made and a wife makes an application under Section 26 and claim that the amount which She necessarily requires to maintain herself includes the provision for necessities for her infant child, the same can no doubt be taken into account infixing the quantum of allowance under that provision.

(Emphasis supplied)

Before Benkataswami, J. in *Thimmappa v. Nagaveni* (Karnataka) 1976 KLR 693 Sections 24 and 26 of the Act came up for consideration and on behalf of the respondent a contention was raised that even if the application is constructed as one filed under Section 24 of the Act whether it was still open to the Court to take into account the expenses of the children who are to be maintained by the mother

for the purpose of determining the rate of such maintenance. An alternative argument was also raised that in such a case, was it open to the Court to take into consideration the provisions of Section 26 of the Act and award maintenance separately in regard to the children. The learned Judge dissented from the view taken in *Akasam Chinna's* : AIR1967 Ori163 and *Bankim Chandra's* case : AIR1972 Pat80 . The learned Judge agreed with the following observations made in *Katamanchi Appa Roa v. katamanchi Paradesharma* 1974 (II) An WR 359:

So far as the first point is concerned, it has to be noticed that while granting maintenance pendente lite to the wife or to the husband as the case may be, regard should also be had to Section 26. While Section 24 of the Act provides for granting maintenance to the wife or the husband as the case may be, Section 26 speaks of passing interim order and also make provision in the decree by the Court with regard to custody maintenance and education of the minor children consistently with their wishes. When the wife makes an application under Section 24 of the Act to the Court for the grant of interim maintenance to the children also the Court can grant the relief to the children also under Section 25 wherever it considers just and proper.

7. The learned Judge opined that when a wife claims maintenance and she has some children of her to support any interim maintenance that may be awarded to the wife would be meaningless if the same was not intended for the maintenance of the children also.

8. The view taken in *Bankim Chandra's* case : AIR1972 Pat80 was also dissented by the learned Judge of the Delhi High Court in *A. Damodar v. Bimla alias Permila* 1974 PLR (D) 1 at 33. It was observed:

Section 24 of the Act by nature is a summary remedy provided for immediate relief for that by that object it stands to reason that the husband cannot plead that the order under Section 24 of the Act cannot be passed directing the maintenance to be taken to the minor child who is living with the wife.

9. In my considered opinion the word 'wife' or the 'husband' should not be interpreted in such a strict and literal sense so as to rule out grant of maintenance

to tie children who live with the wife and are dependent upon her. When the children live with the wife and in the very nature of the circumstances, the requirement of wife with include the requirement of minor children dependent on her and living with her. This is borne out from the reading of Section 26 of the Act which has already been reproduced here in above.

10. Having regard to the language used in Sections 24 and 26 of the Act, I am in respectful agreement with the view taken in Katamenchi Appa Rao's case ILR (1973)2 P&H; 248, Smt. Usha's case 1975 HLR 1 and Thimmappa's case 1976 KLR 693. I have not been able to persuade myself to subscribe to the view taken by the learned Judges in Akasam Chinna's case : AIR1967 Ori163 and Bankim Chandra's case : AIR1972 Pat80 . With profound respect, I express try dissent.

11. The upshot of the above discussion in that the learned Additional District Judge while granting the maintenance to the wife under Section 24 of the Act has failed to exercise jurisdiction vested in him by law when he held that no order for grant of interim maintenance can be made on the application under Section 24 of the Act filed by the wife, for the minor daughter who k dependent on her and living with her. The order that wife is only entitled to maintenance at Rs. 125/- per mensem that the claim for interim maintenance of the daughter cannot be considered on that application, cannot be sustained. As the important factor has not been taken into consideration, the order dated March 15, 1984 of the Additional District Judge, Raisinghnagar has to be set aside. The learned Additional District Judge Raisinghnagar is directed to redetermine the amount of interim maintenance to be allowed to the wife keeping in view the observations made here in above. The learned Additional District Judge will decide the question of interim maintenance on the basis of the material that is already on record after affording an opportunity of hearing to both the parties. The revision petition is, accordingly, allowed. In the circumstances of the case there will be no order as to costs of the revision petition.