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**Ranganathan Vs. Shymala**

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**SooperKanoon Citation** : sooperkanoon.com/806464

**Court** : Chennai

**Decided On :** Nov-05-1988

**Reported in** : (1989)1MLJ323

**Appellant** : Ranganathan

**Respondent** : Shymala

**Judgement** :
ORDER

**K.M. Natarajan, J.**

1. C.R.P. No. 1324 of 1986-converted into C.M.S.A. No. 8 of 1988: in view of the order passed in C.M.P. No. 12496 of 1988 this petition is converted into C.M.S.A. and disposed of accordingly. The only substantial question of law arises in this appeal is whether the permanent alimony can be granted to a wife under Section 25 of the Hindu Marriage Act, even though the main petition for annulment of marriage under Section 12 of the Act is dismissed.

2. According to the learned Counsel for the appellant, Mr. M.N. Padmanabhan, that under Section 25 of the Hindu Marriage Act, a permanent alimony can be granted only when in the petition filed by either of the spouse under Sections 9, 10, 11, 12 or 13 of the Act, a decree is passed and not in cases where the petition is dismissed. According to the learned Counsel only in cases where the marriage relationship comes to an end or altered, a permanent alimony can be granted and

not in cases where the relationship of the marriage is subsisting and the remedy of the spouse is to proceed under the Hindu adoption and Maintenance Act, 1956 for the relief of maintenance and not under the Hindu Marriage Act. In support of his contention, the learned Counsel relied on various decisions reported in Shantaram Gopalshet Marar v. Hirabai I.L.R. 1962 Bom.27; Minarani Majumdar v. Dasarath Majumdar : AIR1963 Cal428 , Shantaram Dinakar Kamik v. Malti Shantaram Kamik : AIR1964 Bom83 , Akasam Chinnababu v. Akasam Parbati : AIR1967 Ori163 (D.B), Purshotam v. Devki , Gurucharan Kaur v. Ramchand , Darshan Singh v. Mst. Daso , Sushamma v. Satishchandra A.I.R.1984 Delhi.l and Vmod Chandra Sharma v. Rajesh Pathak : AIR1988 All150 . The ratio laid down in the above said decisions is to the effect that in the context of Section 25 of the Act, the expression 'passing any decree' means any of the decrees provided for under Section 9 to 13 of the Act, and not the dismissal of a petition, But although technically speaking dismissal of a suit may be called a decree, such a decree is not contemplated under Section 25 of the Act. The learned Counsel appearing on either side frankly conceded that there is no judgment of this Court on this question. However, the learned Counsel for the appellant submitted that there is one decision of this Court under Section 37 of the Indian Divorce Act, reported in Devasakayam v. Devamony 43 M.L.J. 763 : A.I.R.1923 Mad. 211 : 17 MLW 90, where it was held as follows:

It is not competent to the Court dismissing a husband's petition for dissolution of marriage, to award maintenance to the wife, under Section 15 or 37 of the Indian Divorce Act. Though the wife might have filed an application for divorce or judicial separation on the husband's petition under Section 15 of the Act, still in the absence of a decree for dissolution of judicial separation, no order for maintenance can be made under the Act.

To appreciate the aforesaid decision, it is worthwhile to quote the provisions of Section 37 of the Indian Divorce Act, which runs thus:

The High Court may, if it thinks fit, on any decree absolute declaring a marriage to be dissolved, or any decree of judicial separation obtained by the wife, and the District Judge may, if he thinks fit, on the confirmation of any decree of this

declaring a marriage to be dissolved or any decree of judicial separation obtained by the wife, order that the husband shall, to the satisfaction of the Court secure to the wife such gross sum of money or such annual sum of money for any term not exceeding her own life, as having regard to her fortune (if any) to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties. In every such case the court may make an order on the husband for payment to the wife or such monthly or weekly sums for her maintenance and support as the Court may think reasonable.

Section 25 of the Hindu Marriage Act reads as follows:

(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 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 to 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, the conduct of the parties and other circumstances of the case, 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, 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 favour 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 wed-lock, it may at the instance of the other party vary, modify of rescind any such order in such manner as the Court may deem just.

This Section 25 of the Hindu Marriage Act is not identical to Section 37 of the Indian Divorce Act. It is clear from Section 37 of the Indian Divorce Act, that only in a case where the Court on passing any decree absolute declaring a marriage to be dissolved, or any decree of judicial separation by the wife and on its confirmation, make an order on the husband for payment to the wife, the monthly or weekly maintenance. But, this is not the case in so far as Section 25 of the Hindu Marriage Act is concerned. Hence, that section is not at all helpful in deciding the issue involved in this appeal. The very Section 37 itself contemplates passing of a decree for dissolution or a judicial separation for granting a permanent alimony to the wife. But Section 25 of the Hindu Marriage Act contemplates only passing of any decree and it does not further proceed to say a decree for either dissolution, nullity of marriage, restitution of conjugal rights, or judicial separation.

3. It is clear from the above two provisions that what is contemplated under Section 37 of the Indian Divorce Act, 1869 is materially different from the language used by the Legislature under Section 25 of the Hindu Marriage Act, 1955, and that the decision rendered in Darsan Singh v. Mst. Daso , cannot afford any guidance in construing the language used by the Legislature in Section 25 of the Hindu Marriage Act, 1955. We are now concerned with the words at the passing of any decree or any time consequent thereto with regard to the grant of permanent alimony in favour of the defeated spouse'. In this connection, it is worth while to refer to the various decisions relied on by the learned Counsel for the appellant. In Akasam Chinna Babu v. Parbati : AIR1967 Ori163 a Division Bench of the said Court relying on the earlier decisions reported in Harilal Purushotham v. Lilavathi Gokaldas : AIR1961 Guj202 , Shantaram Gopalshet v. Hirabai : AIR1962 Bom27 , Shantaram Dinakar v. Malti Shantaram Karnik : AIR1964 Bom83 , Minarani v. Dasarath : AIR1963 Cal428 , held that the expression 'any decree' means passing of any of the decrees mentioned in Sections 9 to 14 of the Act and it does not include an order of dismissal and further the passing of an order of dismissal is not the same thing as passing of a decree and that therefore it cannot be regarded as the passing of a decree and permanent alimony cannot be granted to a party while dismissing the petition under Act. In the decision reported in Smt., Sushama v. Satishchandra,. : AIR1984 Delhi1 , a Division Bench of the said Court, while

considering the earlier decisions held as follows:

Hindu Marriage Act (25 of 1955) Section 25 Permanent alimony and maintenance- When can be granted words 'passing any decree' in Section 25, mean passing of decree of divorce, restitution of conjugal rights or judicial separation. Alimony and maintenance cannot therefore be granted as passing of decree dismissing divorce petition.

Permanent alimony and maintenance under Section 25 can only be granted in case divorce is granted and not if the marriage subsists. The word 'decree' is used in matrimonial cases in a special sense different from that in which it is used in Civil Procedure Code. The passing of the 'decree' in Section 25 means the passing of the decree of divorce, restitution of conjugal rights, or judicial separation and not the passing of a decree dismissing the petition. If the petition fails then no decree is passed, i.e, the decree is denied to the applicant. Alimony, cannot therefore, be granted in a case where a decree for a divorce or other decree is refused because in such a case the marriage subsists.

The power to grant alimony contained in Section 25 can only be exercised when the court is faced with the problem of setting the mutual rights of the parties after the matrimonial ties have been determined or varied by the passing of the kind of decree mentioned to Sections 9,10,11 and 13 of the Act and not in other cases.

Sections 23,26 and 27 also show that a decree is passed only when application for divorce or other relief is granted and not when the application is dismissed.

The Division Bench has elaborately dealt with the reasoning in paragraphs 5 to 8 and ultimately came to the conclusion that the word 'decree' in a specific sense is different from that in which it is used in the Civil Procedure Code and that accounted for the reasons which have prompted the reference to the Bench for proper consideration of the term 'decree' used in the context under Section 22 of the Act. The learned Judges have also considered the word 'decree' used in Sections 26, 27 and 28 of the Act, in support of the said conclusion.

As rightly observed by the learned Judge in the above mentioned case alimony on a permanent basis is maintenance given to an ex-spouse of the marriage by the other ex-spouse and if a petition fails, then the marriage still subsists unaltered by the intervention of any decree. In that event, the normal rights of the parties to be found in the legal system under which they are married has to prevail. There is no question of alimony being granted in such cases, because the matrimonial rights of the parties are to be found in the legal system which operates, requiring one of the parties to support the other and if there is failure to do so, then the other partner can seek maintenance by recourse to the civil or criminal court. There is no question of granting alimony in such cases. It has to be maintenance simpliciter as per Section 18 of the Hindu Adoptions and Maintenance Act. Furthermore, Sub-section 3 to Section 25 of the Act provides that alimony has to end on the re-marriage of the ex-spouse on proof of sexual relations with another partner unchastity. These conditions clearly show that the matrimonial ties have to be determined before an order for alimony can be passed. In cases, where the dismissal of the petition is made there is no alteration or the variation of the rights of the matrimonial parties and the question of granting alimony does not arise. Under Section 23 of the Act, certain safeguards are provided for passing a decree for divorce or other relief and not for the dismissal of those petitions. Similarly regarding the custody of the child under Section 26 of the Act and the disposal of the property under Section 27 of the Act, reliefs are granted only in cases where the decrees for the relief under Sections 9 to 14 of the Act were granted.

4. As regards the contention that all the decrees made by the court in any proceeding under this Act be treated as the decrees of the court made in exercise of its original civil jurisdiction and every such appeal such lie to the Court to which appeals ordinarily lie from the decisions of the Court given in exercise of its original civil jurisdiction of the said decree referred to under Section 2 of the Act which includes the dismissal of the petition and as such the same meaning has to be attributed to the word 'decree' under Section 25 of the Act. It is seen that the word 'passed' under Section 25 of the Act has not been made use of on Section 28 of the Act and on the other hand, the word 'made' alone has been used. The difference clearly reflects the intention of the Legislature in the sense of 'granting relief and 'making any decree'. The term 'making any decree' is used for or against

any of them for the granting of any relief or refusing any relief. The word decree in its ordinary connotation may mean normal expression of the adjudication to determine the rights of the parties in any case. The definition of the word 'decree' given under Section 2(2) CP. Code may be applicable so far as may be to the expression 'decree' under Section 25 of the Act. Section 21 of the Hindu Marriage Act makes the Civil Procedure Code applicable for regulating proceedings under the Act, subject to the provisions of the Hindu Marriage Act, and the rules of the High Court. In the decision reported in Darshan Singh v. Mst. Daso , it was observed as follows:

Passing of any decree under Section 25 of the Act would mean decree granting relief of the nature stated in Section 9 to 13 of the Act and the expression 'decree' made under the provisions of the Act would mean decrees granting relief or refusing relief and it cannot be the intention of the legislature to attach finality to the orders of the District Judge regarding the dismissal of the petition under Section 9 of the Act is maintainable and I further hold that as relief of restitution of conjugal rights has not been granted, award of maintenance under Section 25 of the Act was without jurisdiction.

In the decision reported in Vinod Chandra Sharma v. Rajesh Pathak : AIR1988 All150 , it was held as follows:

Where an application for divorce is dismissed there is no decree passed. Obviously, alimony cannot, therefore, be granted in a case where a decree for divorce is refused because in such a case the marriage will subsist. The power to grant alimony contained in Section 25 has to be exercised when the court is called upon to settle the mutual rights of the parties after the marital ties have snapped by determination or variation by the passing of the decree of a type mentioned in Sections 19,11 and 13 of the Act, read with Sections 23,26 and 27 of the Act, a decree can be assumed to have been passed when an application for divorce or similar other relief is granted but merely not when the application is dismissed.

In the above quoted case, reliance was also placed on the decision reported in Smt Sushama v. Satishchandra A.I.R. 1984 Dell, The details of the said decision has been discussed in the earlier part of this judgment.

5. On going through the ratio laid down in the above decisions which is supported by convincing reasons, I am of the view that the word 'passing of any decree' has been properly interpreted. I am also in respectful agreement with the decisions rendered by the various High Court that 'the passing of a decree' under Section 25 of the Act means the passing of the decree of divorce, restitution of conjugal rights or judicial separation and not the passing of a decree through which the petition itself is dismissed and therefore, it is clear that alimony cannot be granted in cases where a decree for divorce is refused. On the other hand, I do not find any merit in the submissions made by the learned Counsel for the respondent-wife, Mr. R.S. Venkatachari, who drew my attention to the views expressed by the learned author, Mr. N.R. Raghavachariar in the text Book 'Hindu Law' (Principles and Precedents), 8th Edition at page 77 wherein it was observed as follows:

Words at the time of 'passing any decree' may support the argument that it is only if the main petition is decreed that a maintenance order for life of the petitioner can be passed by the matrimonial court and not when the petition is dismissed (Purushotham v. Devaki , Shantaram v. Malti A.I.R. 1965 Bom.L.R. 441, Shantaram v. Mirabai : AIR1962 Bom27 , Kadia Harilal Purushotham v. Kadia Leelavathi Gopaldas : AIR1961 Guj202 , Minarani v. Dasarath : AIR1963 Cal428 ) and as by the dismissal of the petition the parties are left in the position in which they were prior to the institution of the matrimonial proceeding under this Act the ordinary Court of the country has jurisdiction to entertain a suit for maintenance. There are two ways of considering this question. One construction is to hold that passing any decree includes passing a decree of dismissal of the petition. In this view the court having jurisdiction for ordering permanent maintenance is the matrimonial Court under the Act. If, on the other hand, the expression 'passing any decree allowing the petition' then the above contention would be plausible (Ramachandra Behera v. Shehalat Dei : AIR1963 Cal428 , it appears, however, that the former construction is the preferable one. A decree may be a decree allowing the petition of a decree dismissing the petition. The words 'any decree' must take in both kinds of decrees. If the latter construction should be considered as the correct one, then the words will not say 'decree' but merely 'a decree'. See contra in Minarani v. Mujumdar : AIR1963 Cal428 , Besides there would be no meaning in allowing the parties to go to some other court and start their battle

once again after they had done it before the Matrimonial Court which knows their respective strength and can be expected to do justice, especially when the court is one of the superior courts in the country being a District Court or its equivalent.

There is absolutely, no case law to support this view. On the other hand, the learned Author himself had observed the words 'at the tune of passing any decree' may support the argument that it is only if the main petition is decreed that order for alimony for life of the petitioner can be passed by the matrimonial Court and not when the petition is dismissed. The said view is proper and reasonable and the construction is also a plausible one, as in cases where no relief is granted, the remedies are provided by recourse to the civil or criminal Court under Section 18 of the Hindu Adoption and Maintenance Act or Section 125, Criminal Procedure Code, as the case may be, As been observed, Section 21 of the Hindu Marriage Act is not at all helpful to decide the questions involved here, as the Section 21 of the Act relates to only regulating the proceedings under the Act as far as may be by the Civil Procedure Code, 1908, and that too subject to the other provisions contained in the Hindu Marriage Act, and the rules framed thereunder. I do not find any merit in the contentions of the learned Counsel for the respondent, Mr. R.S. Venkatachari, that the preamble to the Hindu Marriage Act says that the Act is enacted only for the betterment of the wife and on the other hand, it is seen that the preamble relating to the Hindu Marriage Act lays down rules, viz., formation of marriage and soleminsation thereof and matrimonial reliefs etc., It is also not helpful to decide the interpretations of the word 'passing of any decree' and the 'granting of relief of permanent alimony in cases, where the relief is negatived. For the discussion already made, I have no hesitation in holding that the existence of any of the decree referred to in Sections 9 to 13 of the Act is a condition precedent to the exercise of the jurisdiction under Section 25(1) of the Act; and granting the ancillary relief for permanent alimony and maintenance and not when the main petition was dismissed and no substantial relief was granted under Sections 9 to 14 of the Act. Since there was no 'passing of decree' as contemplated under Section 25(1) of the Act, the jurisdiction to pass an order for maintenance under that section does not arise.

6. Further, the learned Counsel for the respondent also relied on a decision reported in Nalini v. Velu : AIR1984 Ker214 . That was a case under Section 24 of the Hindu Marriage Act and that has nothing to do with the provisions of Section 25 of the Hindu Marriage Act. It was held in the above decision that 'arrears of maintenance allowable from the dates service of summons of the main petition for restitution of conjugal rights on the wife, notwithstanding the maintenance application was filed only at the appellate stage of the main proceedings. The learned Counsel for the respondent also filed three petitions C.M.P.13290 to 13292 of 1988 for awarding interim maintenance and the legal expenses, fees and other charges to the respondent. The respondent claimed interim maintenance at the rate of Rs. 500 per month. Both the courts below on the basis of the materials available before them fixed the quantum of maintenance at Rs. 300 per month. The appellant also did not dispute the same. It is to be noted that even though the respondent is not entitled to the permanent alimony till her lifetime, in view of the findings already arrived at in this judgment, she is certainly entitled to claim maintenance till the termination of the proceedings in view of the provisions under Sections 24 and 25 of the Act. Hence, I feel that it is just and proper to award the pendente lite maintenance till the disposal of the appeal; A.A.A. No. 38 of 1986 to the respondent, even though her claim for permanent alimony till her lifetime is negatived.

7. In the result, C.M.S.A. 8 of 1989 (C.R.P. No. 1324 of 1986) is partly allowed and it is further ordered that the orders passed by the court below in I.A. No. 79 of 1983 in H.M.O.P. No. 49 of 1982, which was confirmed by the District Court in C.M.A. No. 10 of 1984, are all set aside and instead, the appellant is directed to pay the respondent the pendente lite maintenance allowance at the rate of Rs. 300 per mensem till 1-11-1988 when A.A.A.O. No. 38 of 1986 is dismissed from the date of the order of the Principal Subordinate Judge. However there will be no order as to costs.

8. At this stage learned Counsel for the respondent prays for tune for payment of arrears of maintenance. -Three months time is granted for payment of arrears.

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