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Court : Jammu and Kashmir

Decided On : Nov-19-1986

Reported in : AIR1988J& K22

Judge : R.P. Sethi, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 24 and 26

Appeal No. : C.R. No. 126 of 1985

Appellant : Gulab Chand

Respondent : Sampati Devi

Advocate for Def. : Hari Singh Hardesh, Adv.

Advocate for Pet/Ap. : J.S. Kotwal, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

R.P. Sethi, J.

1. Are the minor children of the parties entitled to maintenance under the provisions of the Hindu Marriage Act ?, is the question which requires determination in this revision petition.

2. I have heard the learned counsel for the parties and have perused the record.

3. Relying upon two judgments of this court reported in 1980 J & K LR 176 : (AIR1981 J & K 5) and 1983 Kash LJ 49 : (AIR1982 J & K 95), the learned counsel appearing for the petitioner has submitted that the order impugned passed by the trial court in so far as it grants maintenance to the children is liable to be set aside. It is argued that the children if aggrieved can have recourse to other remedies for the grant of maintenance, such as, initiating proceedings under Section 488, Cr. P.C. or filing suit under the Hindu Adoptions and Maintenance Act, but cannot be granted maintenance under the Hindu Marriage Act which governs the rights and obligations mainly of the parties to the marriage and not for their children.

4. Sections 24, 25 and 26 of the Central Act corresponding to Sections 30, 21 and 32 of the Jammu and Kashmir Hindu Marriage Act, hereinafter called the Act, governs the provisions regarding the grant of maintenance pendente lite, expenses of the proceedings, permanent alimony and provisions for the custody of children by passing appropriate orders for their maintenance and education. A combined reading of the aforesaid provisions would make it clear that the legislature had intended to grant maintenance to the deserving-spouse or their children. The reason for enacting the provisions for maintenance is obviously that a wife or husband or their minor children who have no independent income sufficient for his, her or their support or enough to meet the necessary expenses of the proceedings may not be handicapped. The grant of maintenance was considered necessary on social and moral grounds. The object behind being to provide financial assistance to the indigent spouse to maintain herself or himself during the pendency of the proceedings and also to have sufficient funds to carry on the litigation so that the spouse does not unduly suffer in the conduct of the case for want of funds. The provisions of Section 26 of the Central Act corresponding to Section 32 of the State Act have been enacted to safeguard the rights and interests of the children of the parties to the proceedings under the Act. The intention to incorporate the aforesaid provision is that the children of the parties should not suffer because of the follies committed by their parents in their matrimonial ties. The Court has been empowered to pass such orders and make such provisions which are deemed by it to be just and proper regarding their

maintenance. Orders under this section can be passed at any time of the proceedings. The provisions are based upon the principles of welfare of the society in general and to invest the powers of the guardian upon the Court in order to look into and safeguard the interests of the minors in particular. Similar provisions are made in Section 8 of the Special Marriage Act, 1954, Section 41 of Divorce Act, 1869, 1949 of the Parsee Act 1936, Section 26 of the Matrimonial Causes (Causes?) Act, 1950 and Sections 17-19 of U. K. Matrimonial Proceedings and Property Act 1970. The amount which can be allowed to the children is meant for their maintenance and education. The meaning of the word 'maintenance' is not restricted to include boarding and lodging and some sort of education, But its scope can be enlarged under special circumstances to include within its ambit any other contingency keeping in view the social status of the parties and the children. The term maintenance even though not defined under the Act would have the same meaning as is given to it under Section 3(b) of Hindu Adoptions and Maintenance Act, by which it has been provided that maintenance would include in all cases, provisions for food, clothing, residence, education and material attendance and treatment and in the case of an unmarried daughter also the reasonable expenses of and incident to her marriage. While granting maintenance pendente lite to the wife or the husband, as the case may be, the Courts are under an obligation to have regard to the provisions of Section 26 and pass appropriate orders envisaged by the aforesaid provisions. The provision for the grant of maintenance contemplated by the aforesaid sections of the Hindu Marriage Act is in fact a revolutionary step adopted in India for the first time, inasmuch as there is no corresponding provision in any enactment relating to matrimonial laws of the Western civilisations by which a husband could file a petition for maintenance against the wife or the child claim such a relief from his father or his mother. The provisions of maintenance are however available to minor children alone are distinguishable from the provisions of Section 488, Cr. P. C. where any child can claim maintenance from his father notwithstanding his age but on proof of neglect to refuse and maintain such a child. Similarly under the Hindu Marriage Act, maintenance could be claimed from the mother as well for which no provision is made under the ordinary criminal law. Giving any other interpretation would amount to defeating the purpose for which the provisions were incorporated in the

Hindu Marriage Act. The authorities of this Court reported in 1980 J & K LR 176 : (AIR 1981 J & K 5) and 1983 Kash LJ 49 : (AIR 1982 J & K 95) are distinguishable because they have not dealt with the provisions of Section 26 of the Central Act and Section 32 of the State Act while passing the orders holding that wife alone was entitled to get the maintenance and the children could not be granted such a relief. It appears that the attention of the Court was never drawn towards the aforesaid provisions specifically made for the grant of maintenance to the children.

5. It was argued by the learned counsel for the petitioner that as no specific application was filed under Section 26 of the Act, the Court below could not have granted the relief of maintenance in favour of the children. However where it is proved that any one of the spouses has made an application under Section 24 of the Central Act or Section 30 of the State Act for interim maintenance, the Court is entitled to grant maintenance not only to such a spouse but also for children when maintenance is claimed on their behalf by the party filing such an application. If maintenance is allowed to any of the spouses only, the same would be meaningless if it does not provide for the maintenance of the children living with such a spouse unable to maintain himself or herself. While dealing with such a situation it was held in (1974) 2 Andh WR 359 '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 orders and also making provisions 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 relief to the children under Section 26 wherever it considers just and proper.' Similarly Karnataka High Court in AIR 1976 Kant 215 held : 'Be that as it may, it seems to me that when a wife claims maintenance and she has some children of her own to support and maintain, any interim maintenance that may be awarded to the wife would be meaningless if the same was not intended to provide for the maintenance of the children also. In my view, the enunciation of the High Court of Andhra Pradesh with which I am in respectful agreement, is clearly applicable to the facts of the present case.' Again the Division Bench of Karnataka High Court in

Smt. Subhasini v. B. Rule Umakanth, AIR 1981 Kant 115 held that, 'where an application for maintenance was filed under Section 24 with an averments of the existence of minor child the Court could make an order awarding maintenance pendente lite in respect of minor child as well as the applicant having regard to the provisions of Section 26 of the Hindu Marriage Act. No separate application is required to be made under Section 26 of the Central Act. It is sufficient if the material averments are made in the application under Section 24 of the Hindu Marriage Act and evidence produced in support thereof.' Under similar circumstances it was held in AIR 1974 Raj 93, "that where no separate application under Section 26 was made nor separate maintenance was demanded for children, but it was clear from the wife's application under Section 24 and affidavit that in making demand for maintenance for herself, she had included the expenditure she was incurring over maintenance of her children it was held that Court would be justified in fixing amount of maintenance taking note of the fact that she was maintaining her minor children out of her income.' It was also held by the Calcutta High Court in case Manoj Kumar Jaiswal v. Smt. Lila Jaiswal reported in (1986) 2 Cur CC 991 (992): (AIR 1987 Cal 230 at p. 231) :-- 'It is also true that Section 24, in terms, provides pendente lite maintenance for the spouse only and not for the children of marriage. But Section 26 invests the Court with full jurisdiction to pass, from time to time, such interim orders for maintenance of minor children as the Court may deem just and proper. It should also be noted that while Section 24 requires for its operation an application from the spouse concerned, the provision of Section 26, so far it relates to interim maintenance, may be invoked even without any application in writing and a formal application in writing is necessary under Section 26 only for awarding maintenance and other reliefs after the decree. The learned Judge, therefore, had perfect jurisdiction to grant pendente lite maintenance to the minor child even without a formal application and, therefore, his granting such interim maintenance even when moved by an application labelled as one under Section 24 only cannot be branded as without jurisdiction or to involve any jurisdictional question even though Section 24 does not provide for maintenance for children.'

6. In view of this the judgments of this Court reported in 1980 J & K LR 176 : (AIR1981 J & K 5) and 1983 Kash LJ 49 : (AIR1982 J & K 95) are clearly

distinguishable and it cannot be said that the children as general rule are not entitled to the grant of maintenance under the provisions of Hindu Marriage Act. The Court exercising powers under the Hindu Marriage Act has the powers to grant appropriate relief in the form of maintenance for the children of the parties as well.

7. In the instant case the petitioner wife had demanded litigation expenses, maintenance for herself and for her two minor children. On appreciation of the evidence led in the case the trial Court came to the conclusion that she was entitled to the payment of Rs. 150/- as litigation expenses and Rs. 200/- as maintenance pendente lite for herself and her two children living with and dependent upon her. In exercise of my revisional powers I cannot disturb the finding of fact arrived at by the trial Court regarding the liability of the petitioner for paying the maintenance to his wife and children.

8. For the reasons stated hereinabove I do not find any force in this revision petition which is hereby dismissed but under the circumstances no order as to costs. Stay granted by this Court on 31-7-1985 shall stand vacated and C.M.R No. 192 of 1985 disposed of.