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ALLAHABAD HIGH COURT

PRADEEP KUMAR SINGH BAGHEL , J. and VIJAY LAKSHMI , J.

FIRST APPEAL - 455 of 2018 **D/- 26 - 10 - 2018**

Lalta Prasad Kushwaha v. Jayanti Kushwaha

Criminal P.C. (2 of 1974), S.125 - Maintenance - Petition by husband - Husband in employment of Central Government - Husband in obligation to provide sufficient amount for study and maintenance of his daughter - No evidence to demonstrate that wife has independent income for running coaching institute as alleged by him in his objections - Amount of maintenance awarded to wife reasonable - Husband, liable to pay maintenance.

R. P. Tiwari for Petitioner; Rakesh Kumar Pandey for Respondent.

Judgement

ORDER :- The appellant is a husband. He has preferred this appeal under Section 19 of the Family Court Act, 1984 dissatisfied with the order dated 22.5.2018 passed by the Principal Judge, Family Court Jhansi, awarding a sum of Rs. 8,000/- towards interim maintenance and Rs. 10,000/- towards litigation expenses.

Lalta Prasad Kushwaha - the appellant was married with the sole respondent Smt. Jayanti Kushwaha on 18.1.2004 according to Hindu rites and customs. Due to marital discord he instituted a divorce petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short, 'the Act, 1955'). A daughter was born in their wedlock who is living with wife. At the time of marriage, the appellant was unemployed. Later, he got employment at Hoshangabad, Madhya Pradesh in a Company.

The respondent, wife was living with appellant's mother at home and there was no male member in the family to look after them as all other male members are in employment at different places. It is stated that his wife started making wild allegations against him and she deserted him and also took their daughter Km. Harshika. The respondent-wife has also filed an application for restitution of conjugal rights, which has been registered as Case No. 482 of 2014. On the said ground he has sought the dissolution of his marriage.

In the said proceedings the wife - sole respondent moved an application under Section 24 for her interim maintenance of Rs. 30,000/- per month. In her application she has averred that she does not have any independent income to meet the expenses of the litigation and for her sustenance. It is stated that the husband is in the employment at Hoshangabad where he earns Rs. 30,000/- per month. She has sought Rs. 15,000/- as interim maintenance.

The appellant filed an objection to the said application. In his objection the husband has taken a stand on the merits of the case and has alleged that on 6.3.2016 she has taken the daughter Km. Harshika along with her without his or family members consent. It is alleged that wife is running a coaching

centre and is earning Rs. 12,000/- per month. It is stated that his younger brother is employed in Hyderabad and his father is also an employee in BHEL, Khailar. In respect of his income he has stated that his total income is about Rs. 20,000/-.

The Family Court after considering the material on record has granted Rs. 8,000/- interim maintenance to the sole respondent - the wife and Rs. 2,000/- per month to the minor daughter Harshika. In addition to above, total Rs. 5,000/- have been awarded for litigation expenses. The court has held that the husband has claimed that his salary is only Rs. 19418/- per month but has not filed his pay slip. It has also been recorded that husband has not filed any evidence in support of his statement that the wife is running a coaching institute and is earning Rs. 12,000/- per month.

We have heard learned counsel for the appellant and Sri Rakesh Kumar Pandey, learned Advocate who has put in appearance on behalf of sole respondent - wife.

Learned counsel for the appellant submits that the pay slip of February, 2018 was filed but it has not been considered hence an interim maintenance for Rs. 10,000/- is highly excessive and arbitrary. He further submits that the sole respondent has deserted the appellant hence she is not entitled for any amount towards interim maintenance and litigation expenses. Lastly, he urged that the findings of the Family Court that the appellant is drawing sufficient salary is based on surmises and conjectures.

We have considered the submissions of learned counsel for the parties and perused the record.

Concededly, the appellant is in employment of Central Government, and his father and brother are also employed. As regards the salary of the appellant, along with stay application he has filed his pay slip. In paragraph-16 of the interim application in the appeal it is admitted that his total salary Rs. 24,885/-. Admittedly, his brother and father are also in service. Hence, in our view the amount of Rs. 8,000/- and Rs. 2,000/- for the daughter is not unreasonable amount. The appellant being a father, it is his obligation to provide sufficient amount for the study and maintenance of his daughter. The appellant has not filed any document to demonstrate the financial position of the sole respondent. Hence, in our view the amount of Rs. 10,000/- having regard to the background of the appellant's family, is a reasonable amount.

It is trite that it is a personal obligation of a husband to maintain his wife under the Hindu Law. Her right for maintenance is also recognized and protected by other Statute also. Section 18 of the Hindu Adoption and Maintenance Act, 1956 casts an obligation upon husband to maintain the wife. She is entitled to seek maintenance with her estranged husband. Under Section 24 of the Hindu Marriage Act wide discretion has been conferred on the court while considering the application of wife for interim maintenance. The Section itself provides the guideline, the court has to give due regard to husband's income as well as the income of wife for determination of reasonable sum for interim maintenance. Section 24 does not enjoin elaborate exercise by the court since the life of the order is limited till disposal of the main proceeding.

In the case of B.P. Achala Anand v. S. Appi Reddy and another, (2005) 3 SCC 313, the Supreme Court considered the object of maintenance under the Hindu Law. The Court has quoted with approval the judgment of Madras High Court of the year 1925. Paragraph-23 of the judgment in B.P. Achala Anand (supra) reads as under:

""23. It has been held in India that right to maintenance arises out of the status as a wife and not by way of a contract or otherwise. In *Sri Raja Bommadevara Raja Lakshmi Devi Amma Garu v. Sri Raja B. Naganna Naidu Bahadur Zamindar Garu* AIR 1925 Mad 757 Spencer, Officiating C.J., stated : (AIR p. 757):

"The obligation of a husband to maintain his wife is one arising out of the status of marriage. It is a liability created by the Hindu law, in respect of the jural relations of a Hindu family. When there is no contract between the parties to a marriage, as among Hindus, a suit for maintenance is not a suit based upon contract, but it is a suit arising out of a civil relation resembling that of a contract, which is specially provided for in Article 128 of the Limitation Act.""

In the case of *Neeta Rakesh Jain v. Rakesh Jeetmal Jain*, (2010) 12 SCC 242, the Supreme Court was considering the intendment of Section 24 of the Hindu Marriage Act, 1955. The Court has ruled thus:

"9. Section 24 thus provides that in any proceeding under the Act, the spouse who has no independent income sufficient for her or his support may apply to the court to direct the respondent to pay the monthly maintenance as the court may think reasonable, regard being had to the petitioner's own income and the income of the respondent. The very language in which the section is couched indicates that wide discretion has been conferred on the court in the matter of an order for interim maintenance. Although the discretion conferred on the court is wide, the section provides the guideline inasmuch as while fixing the interim maintenance the court has to give due regard to the income of the respondent and the petitioner's own income.

10. In other words, in the matter of making an order for interim maintenance, the discretion of the court must be guided by the criterion provided in the section, namely, the means of the parties and also after taking into account incidental and other relevant factors like social status; the background from which both the parties come from and the economical dependence of the petitioner. Since an order for interim maintenance by its very nature is temporary, a detailed and elaborate exercise by the court may not be necessary, but, at the same time, the court has got to take all the relevant factors into account and arrive at a proper amount having regard to the factors which are mentioned in the statute."

Recently the Supreme Court in the case of *Manish Jain v. Akansha Jain*, (2017) 15 SCC 801 has held that financial position of wife's parents and her education is inconsequential if she is not independent. Relevant paragraphs of the judgment reads thus:

"12. The Court exercises a wide discretion in the matter of granting alimony pendente lite but the discretion is judicial and neither arbitrary nor capricious. It is to be guided on sound principles of matrimonial law and to be exercised within the ambit of the provisions of the Act and having regard to the object of the Act. The Court would not be in a position to judge the merits of the rival contentions of the parties when deciding an application for interim alimony and would not allow its discretion to be fettered by the nature of the allegations made by them and would not examine the merits of the case. Section 24 of the HM Act lays down that in arriving at the quantum of interim maintenance to be paid by one spouse to another, the Court must have regard to the appellant's own income and the income of the respondent.

13. At the time of filing application under Section 24 of the HM Act in December, 2007, the respondentwife was doing her internship in fashion designing in J.D. Institute of Fashion Technology and just completed the course and was not employed at that time. Only in the month of May, 2008, she

became a trainee and joined FNL Magazine of Images Group as Junior Fashion Stylist and was earning an approximate/stipend income of Rs.21,315/ per month and due to recession, the same is said to have been reduced to Rs.16,315/ for three months, that is, July, August and September in the year 2009. It is stated that thereafter the respondent wife has become jobless and associated with Cosmopolitan Magazine and according to the respondent wife, she was working as a Stylist and is paid nominal amount of Rs.4,500/ per shoot and the said amount is inclusive of expenses like travelling etc. On a perusal of the judgment of the High Court and also the affidavit of the respondent wife, it is clear that the respondent wife has no permanent source of employment and no permanent source of income.

14. The appellant husband is stated to be a partner in the firms of his family business. It is also stated that the appellant husband and his family own several valuable properties and has flourishing business. Insofar as the properties/income of appellant husband is concerned, the High Court has made the following observations: (Akanksha Jain case, (2014 SCC OnLine Del 790, Para 3839):

"38. From the pleading of the respondent before other courts, it has come on record that the respondent's family is having successful and flourishing business of electrical and non-ferrous metals for the last 22 years. They are successful in their business. His mother belongs to a family of journalists and lawyers....

39. From the material placed on record by the petitioner, prima facie it appears to the Court that even the respondent has not made full disclosure about his income and correct status of the family in the affidavits filed by him. The statements made by him are contrary to the statement made in the bail application. Prima facie, it appears to the Court that the respondent is hiding his income by trying to show himself as a pauper, however, the documents placed on record speak differently. At the same time the family members have a reasonably flourishing business and many properties as admitted by him. It has now become a matter of routine that as and when an application for maintenance is filed, the non-applicant becomes poor displaying that he is not residing with the family members if they have a good business and movable and immovable properties in order to avoid payment of maintenance. Courts cannot under these circumstances close their eyes when tricks are being played in a clever manner."

15. Section 24 of the HM Act empowers the court in any proceeding under the Act, if 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 any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the applicant and the respondent. Heading of Section 24 of the Act is "Maintenance pendente lite and expenses of proceedings". The Section, however, does not use the word "maintenance"; but the word "support" can be interpreted to mean as Section 24 is intended to provide for maintenance pendente lite.

16. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any

independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the court.

17. In the present case, at the time of claiming maintenance pendente lite when the respondent wife had no sufficient income capable of supporting herself, the High Court was justified in ordering maintenance. However, in our view, the maintenance amount of Rs.60,000/ ordered by the High Court (in addition to Rs.10,000/ paid under the proceedings of the D.V. Act) appears to be on the higher side and in the interest of justice, the same is reduced to Rs.25,000/ per month. The maintenance pendente lite of Rs.25,000/ is to be paid to the respondent wife by the appellant husband (in addition to Rs.10,000/ paid under the proceedings of the D.V. Act)."

As noticed by us, the husband has not filed any evidence to demonstrate that the wife has an independent income for running the coaching institute as alleged by him in his objections. Admittedly, all the male members of the family of husband are earning members. Although there is nothing on the record to indicate the salary of father and younger brother of the appellant but according to the pleadings of the appellant all of them are doing service hence an amount of Rs. 10,000/-, which includes Rs. 2,000/- maintenance to daughter having due regard to the background of the family of the appellant, is a reasonable amount. In present days, a sum of Rs. 2,000/- for raising a girl child cannot be said to be on higher side.

We do not find any ground to interfere in the impugned order of the Family court. For all the reasons recorded above, we find the appeal lacks merit and is liable to be dismissed.

The appeal stands dismissed accordingly.

No order as to costs.