

REVISIONAL CIVIL

Before D. K. Mahajan and Bhopinder Singh Dhillon, JJ.

PURAN SINGH AND OTHERS,—Petitioners.

versus.

HAR KAUR AND ANOTHER,—Respondents.

**Civil Revision No. 844 of 1969**

May 21, 1970.

*Hindu Adoption and Maintenance Act (LXXVIII of 1956)—Section 18—Wife's suit for maintenance under—Marital status not denied by the husband—Interim relief of maintenance to the wife during the pendency of the suit—Whether can be granted.*

Held, that where the wife brings a suit against her husband for maintenance under section 18 of Hindu Adoption and Maintenance Act, 1956, and the husband does not dispute the marital status, the wife can be granted interim relief of maintenance during the pendency of the suit. It also stands to reason that where the marital status is admitted, it is the duty of the husband to maintain the wife no matter even if she is not prepared to live with him or perform the conjugal duties. It is another matter if she has become unchaste or has remarried. In that event there is no duty on the husband to maintain her. Moreover, where the marital status is disputed or the right to get maintenance is otherwise barred by law, no interim maintenance can be granted till the dispute as to status or as to the bar to receive maintenance is settled. (Para 1).

*Petition under section 115, Civil Procedure Code, for revision of the order of Shri Charan Singh Tiwana, District Judge, Sangrur, dated 11th August, 1969, affirming that of Shri P. Lall, Sub-Judge IIInd Class, Sangrur, dated 14th March, 1969, ordering Rs. 50 as interim maintenance, allowance per month from 14th March, 1969 till the pendency of this suit be paid to Har Kaur plaintiff by defendants.*

SATYA PARKASH GOYAL, ADVOCATE, for the petitioners.

AMAR NATH MITTAL, ADVOCATE, for the respondents.

JUDGMENT

The judgment of this Court was delivered by :—

D. K. MAHAJAN, J.—This petition for revision was admitted to a Division Bench by the learned Chief Justice. It seems that the

attention of the learned Chief Justice was drawn to an alleged conflict between certain decisions of Madras, Mysore and Orissa High Courts on one side and the Calcutta High Court on the other side. A close examination of these decisions discloses that in fact there is no conflict. The controversy is very narrow. In a suit filed by the wife for maintenance, an interim maintenance of Rs. 50 per mensem was granted to her by the trial Court. The objection to this grant is that the order granting interim maintenance is without jurisdiction and, therefore, bad. The view taken by the Madras High Court, Mysore High Court and Orissa High Court is that where the marital status is disputed or the right to get maintenance is otherwise barred by law, no interim maintenance can be granted till the dispute as to status or as to the bar to receive maintenance is settled. This view finds support from the decisions in *Mohamed Abdul Rahman v. Tejunnissa Begum and another* (1), *Muniammal v. P. M. Ranganatha Nayagar and another* (2), *Mulimani Sanna Basavarajappa v. Basavannappa* (3), *K. Venkataratnam v. Kakinda Kamala* (4). In all these cases the marital status was disputed. In fact these decisions were considered by the Calcutta High Court in *Smt. Gouri Gupta Chaudhury v. Tarani Gupta Chaudhuri* (5), and this decision was affirmed in Letters Patent Appeal which decision is reported as *Tarni Gupta Chowdhury v. Smt. Gouri Gupta Chowdhury* (6), and it was explained therein that in a case where there is no dispute as to the marital status or there is no bar to the wife receiving maintenance in law, an interim order granting maintenance in a suit for maintenance can be passed and it will not suffer from want of jurisdiction, for in that event it will not be deciding the substantive question. There is another decision of the Calcutta High Court taking the same view in *Nemai Chand Jain v. Smt. Lila Jain* (7). As already observed, if these decisions are read together there would appear to be no conflict between the views of the Calcutta High Court and those of the other High Courts. It also stands to reason that where the marital status is admitted, it is the duty of the husband to maintain the wife no matter even if she is not prepared to live with him or perform the conjugal duties.

(1) A.I.R. 1953 Mad. 420.

(2) A.I.R. 1955 Mad. 571.

(3) A.I.R. 1959 Mys. 152.

(4) A.I.R. 1960 Orissa 157.

(5) A.I.R. 1968 Cal. 305.

(6) A.I.R. 1968 Cal. 567.

(7) A.I.R. 1968 Cal. 405.

Mohinder Singh Sawhney v. The State of Haryana, etc. (Gopal Singh, J.)

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It is another matter if she has become unchaste or has remarried. In that event there is no duty on the husband to maintain her. So far as the present case is concerned it is admitted that the petitioner and the respondent are married and no plea has been raised that the wife has become unchaste. In this situation it cannot be said that the order of the trial Court granting interim maintenance is without jurisdiction.

(2) For the reasons recorded above this petition fails and is dismissed with costs.

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N.K.S.

REVISIONAL CRIMINAL

Before Gopal Singh, J.

MOHINDER SINGH SAWHNEY,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

**Criminal Revision No. 923 of 1969.**

May 27, 1970.

*Code of Criminal Procedure (V of 1898)—Section 540—Prosecution in a hurt case on police report—Public Prosecutor conducting the case—Injured complainant—Whether has a locus standi to insist on producing an eye-witness other than those examined by the State.*

*Held*, that where accused persons are being proceeded against as a result of the police report put up on behalf of the State after the case was investigated by the police on the basis of first information report lodged by the injured complainant, and the case on behalf of the State is being conducted by Public Prosecutor, the complainant, although an injured person, cannot assert for and impose on the prosecution a witness of his own choice to appear as an eye-witness in addition to the eye-witnesses examined on behalf of the State. It is in the discretion of the prosecutor in charge of the case of the prosecution while representing the State to summon or not to summon a witness pointed out by an injured person or an aggrieved complainant. The complainant has no locus standi to make an application for a particular person being summoned as a witness.

(Para 5).

*Petition under section 439 of the Cr. P. Code for revision of the order of Siri Salig Ram Bakshi, Additipnal Sessions Judge, Ambala, dated 16th*