

Ishwar Chand Jain v. High Court of Punjab and Haryana at Chandigarh and another (D. V. Sehgal, J.)

terms of rule 10(3) of the Rules. Formal orders in this regard shall now be issued by respondent No. 2 without further delay.

(52) As a result of the above decision, C.W.P. No. 3542 of 1985 has been rendered infructuous and is disposed of accordingly.

H.S.B.

Before J. V. Gupta, J.

URMILA DEVI,—Petitioner.

versus

HARI PARKASH,—Respondent.

Civil Revision No. 3163 of 1986.

January 21, 1987

*Hindu Marriage Act (XXV of 1955)—Section 24—Applications for grant of maintenance pendente lite filed by both husband and wife—Trial Court finding that neither party had sufficient means to support themselves—Court recording a finding that the husband being an able bodied person was capable of working—Said husband—Whether required to maintain his wife and liable to pay interim maintenance under Section 24 of the Act.*

*Held, that if a husband is an able-bodied person capable of working, then, he is supposed to maintain his wife and to pay the maintenance as required under Section 24 of the Hindu Marriage Act, 1955. It is for the purposes of fixing the amount under the said section that the applicant's own income and that of the respondent is to be taken into consideration. In the absence of any income as such of either party, the husband being an able-bodied person and capable of working can be considered as capable of maintaining his wife and required to maintain his wife and to pay interim maintenance under Section 24 of the Act.* (Para 6)

*Petition under Section 115 CPC from the order of the Court of Shri K. C. Dang, Additional District Judge, Karnal, dated 16th September, 1986 dismissing the applications with no orders as to costs.*

*Claim : Petition for dissolution of marriage by a decree of divorce under Section 13 of the Hindu Marriage Act.*

*Claim in Revision : For reversal of the order of the lower Court.*

*V. K. Bali, Advocate, for the petitioner.*

*J. C. Verma, Advocate, for the respondent.*

## JUDGMENT.

This order will also dispose of Civil Revision Petition No. 54 of 1987, as both these revision petitions have arisen out of the same order passed by the Additional District Judge, Karnal, on the applications filed by both the parties under section 24 of the Hindu Marriage Act, (hereinafter called the Act).

2. Hari Parkash Bansal, respondent, filed the petition for dissolution of marriage by a decree of divorce under section 13 of the Act, against his wife Urmila Devi, the petitioner, on the ground of cruelty. During the pendency of the said petition, both the parties filed applications under section 24 of the Act, for the grant of maintenance *pendente lite* and expenses of litigation on the allegations that they had no independent and sufficient means to maintain each other. While the husband alleged that his wife was earning more than Rs. 500 per month by doing tailoring work, the wife countered to say that her husband had an income of Rs. 3,000 per mensem from the *kiryana* shop apart from the interest income of Rs. 1,000. It may be stated that the marriage between the parties had taken place on December 8, 1984, and the petition for divorce was filed in February, 1986. The wife moved the application under section 24 of the Act on April 24, 1986 whereas the husband filed the application as a counterblast on June 4, 1986. The learned Additional District Judge came to the conclusion that neither the husband nor the wife was proved to have any independent and sufficient income to support himself or herself or the other spouse. In view of the said finding, it was held that none of them was entitled to the grant of the maintenance *pending lite* or the costs of litigation from the other. The wife filed Civil Revision Petition No. 3165 of 1986 whereas the husband filed Civil Revision Petition No. 54 of 1987, against the impugned order.

3. The learned counsel for the petitioner wife submitted that it had been wrongly held by the Court below that the husband had no sufficient income of his own whereas from the evidence produced by the wife, it had been proved that he was running *kiryana* shop and was earning Rs. 3,000 per month therefrom. However, since on the appreciation of the entire evidence, it has been found by the learned Additional District Judge that none of the parties was proved to have independent and sufficient income as to support each other, that being a finding of fact could not be interfered with in the exercise of the revisional jurisdiction.

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4. Faced with this situation, the learned counsel for the petitioner wife contended that even if it be assumed that the husband had no income of his own, even then, he being an able-bodied person and being capable of working even as an ordinary labourer or otherwise, was liable to pay the maintenance to her. In support of the contention, the learned counsel relied upon *Gurmail Singh v. Bhuchari*, (1); *Ranjit Kaur v. Jagdev Singh*, (2) 1986(1) and *Paramjit Kaur v. Jagdish Singh*. Judgments taking a contrary view were cited by the learned counsel for the respondent husband in *Dev Raj v. Harjit Kaur*, (4), and *Shrimati Lila Devi v. Tarlok Chand*, (5).

5. The view taken in *Shrimati Lila Devi's case* (supra) by the learned single judge, was considered by the Division Bench of this Court in *Gurmail Singh's case* (supra), and it was observed that *Shrimati Lila Devi's case* was decided on the facts of that case and that no proposition of law as such was laid down by the learned Single Judge. The question referred by the learned Single Judge to a larger Bench and decided by the Division Bench in *Gurmail Singh's case* (supra) was:

“Whether an able-bodied person capable of working even as an ordinary labourer or one who works on his father's or any other relation's farm or any other kind of establishment can be considered as capable of maintaining his wife and thus being made to pay interim maintenance to her when she happens to be living separately from him for the reasons mentioned in a given matrimonial dispute between them.”

While dealing with the said proposition, it was observed therein by the Division Bench :—

“It cannot be laid down as a rule of law that if a person is working with his father, he has no income. In that context, it may be a relevant consideration that a person is an able bodied one and is capable of working even as an

(1) 1980 Curr. L.J. 193.

(2) 1986(1) H.L.R. 83.

(3) 1985(1) H.L.R. 204.

(4) 1981 H.L.R. 416.

(5) 1978 P.L.R. 744.

ordinary labourer or otherwise. It cannot be argued on behalf of the husband — petitioner in this case that simply because he is working with his father, he has no independent income and it is itself sufficient to deprive his wife to claim maintenance under section 24.”

Similar view was taken in *Ranjit Kaur's case* (supra), wherein the learned Single Judge held,—

“As regards the maintenance *pendente lite*, I am of the view that the wife is entitled at least to Rs. 100 per month and Rs. 300 for litigation expenses. Even if the income of the husband was considered equal to the minimum wages which an able bodied person can earn Rs. 100 per month as maintenance *pendente lite* would be very nominal.”

Following the Division Bench judgment of this Court in *Gurmail Singh's case* (supra), again it was held in *Paramjit Kaur's case* (supra), as follows :

“The respondent (the husband) is an able bodied person and is working as a tailor with his father. He is a skilled person and it can safely be assumed that he must be earning round about Rs. 1,000 a month.”

6. Thus, if a person is an able-bodied person capable of working, then, he is supposed to maintain his wife and to pay the maintenance as required under section 24. It is for the purposes of fixing the amount under section 24 that the applicant's own income and that of the respondent is to be taken into consideration. In the absence of any income as such of either party, the husband being an able-bodied person and capable of working can be considered as capable of maintaining his wife and, thus, liable to pay the interim maintenance under section 24 of the Act.

7. In this view of the matter, taking the income of the husband equal to the minimum wages which an able-bodied person can earn, a sum of Rs. 100 per month will be the maintenance *pendente lite* and Rs. 500 as the litigation expenses which the wife will be entitled from the husband under section 24 of the Act, from the date of her application.

8. Consequently, Civil Revision Petition No. 3163 of 1986 is allowed whereas Civil Revision Petition No. 54 of 1987 is dismissed with no order as to costs.

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H.S.B.