

IN THE HIGH COURT OF MADHYA

PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 9th OF JULY, 2024

MISC. PETITION No. 4385 of 2023

(SUVEECHI CHAUDHARY

Vs

DR. AMBUJ CHAUDHARY AND OTHERS)

Appearance:

(SHRI MANU MAHESHWARI, LEARNED COUNSEL FOR THE PETITIONER)

(SHRI VIVEK DALAL, LEARNED COUNSEL FOR THE RESPONDENT [R-1].

ORDER

This miscellaneous petition has been filed by the petitioner under Article 227 of the Constitution of India being aggrieved by the order dated 19.07.2023 passed by 3rd Additional Principal Judge, Family Court, Indore in RCSM No.151/2021 by which the trial court has rejected the application filed by the petitioner under section 24 of the Hindu Marriage Act.

2. Brief facts of the case are that petitioner and respondent no.1 are husband and wife and their marriage was solemnized on 26.11.1992 as per Hindu rituals and customs. Petitioner and respondent were blessed with a daughter on 8.10.1993 out of their wedlock who is working aboard after completion of her education.

3. Respondent No.1 filed a divorce petition under section 13-1(9i-a) of the Hindu Marriage Act for dissolution of marriage on the ground of cruelty and adultery against the petitioner.

4. During the pendency of the divorce petition petitioner/wife filed an application under section 24 of the Hindu Marriage Act seeking grant of maintenance pendente lite and litigation expenses and pleaded that respondent/husband is having status as Director, Cardiac Surgery at Fortis Mohali and has got multiple source of income besides professional fee. Out of sheer vendetta and vengeance he has initiated litigation before Chandigarh courts fully knowing that respondent is at present at Indore having no source of income. Being daughter of an eminent politician, wife of an eminent surgeon and a social entrepreneur she is accustomed to a particular way of living from which she has been deprived by the petitioner now. Respondent/wife is having no mode of transport. She has to depend upon the taxis. She requires befitting residential accommodation i.e. shelter as at present she is availing the facilities of PG. She has no source of income.

5. On the other hand, respondent earns Rs.9 lakhs per month. Hence, prayed that maintenance of Rs.5 lakhs per month i.e. at least half of the professional charges which are being credited every month in the bank account of the petitioner to enable the applicant to live with honor, dignity and grace according to her social status and parental family member circle and to meet with all the necessities of the life and pursue her social services, be granted besides litigation expenses to the extent of Rs.10 lakhs as only hopping flight is available from Indore to Delhi and Delhi to Chandigarh and the fair

is not less than Rs.20,000/- to 25,000/- to and fro as this vexatious litigation has been thrust upon applicant wife and she has to commute from Gurgaon and Madhya Pradesh. Besides availing the facilities of hopping flight from Indore to Delhi and Delhi to Chandigarh, one has to stay overnight at Delhi and the cost of the hotel for the stay also varies approximately between Rs.5000 and Rs.10,000/- per day.

6. Respondent/husband filed the reply before the trial court and submitted that the petitioner is an earning lady and gets Rs.60,000/- per month and having property worth Rs.1 crore and having share valued at Rs.76 lakhs and she is living in adultery. So she is not entitled to get any interim maintenance.

7. After hearing counsel for both parties, trial Court has rejected the application filed by the petitioner on the ground that the petitioner has her own income and file income tax return and also investing huge amount of money in shares and she is getting huge returns as well which sufficient for her maintenance and she is residing at Jhira Bagh palace at Dhar. She has sufficient means of living.

8. Being aggrieved by the impugned order, petitioner has filed this petition on the ground that impugned order passed by the trial court appears to be totally misplaced in nature and without consideration of the relevant material as the petitioner being daughter of a renowned politician and wife of renowned Director of Fortis Hospital, Mohali is used to a certain standard of living which should have been taken into consideration by the trial court. He further submits that at the time of deciding the interim maintenance

application under section 24 of the Hindu Marriage Act merit of the case should not have been taken into consideration. So trial court has committed error in seeing the merit of the case and she is living in adultery. He further submits that trial court has failed to take into consideration and appreciate that the petitioner is not employed anywhere. So prayed for setting aside the impugned order and pass an order for interim maintenance of Rs.5 lakhs per month from the date of application along with expenses of the proceedings.

9. On the other hand, learned counsel for the respondent/husband has supported the impugned order and submitted that the petitioner has sufficient source of earning and filed the income tax return. According to the income tax return she earns Rs.60,000/- per month and she has invested Rs.76 lakhs in shares and having property valued Rs.1 crore. So prayed for dismissing the petitioner.

10. After hearing counsel for both parties and perusal of the record it is undisputed that the petitioner and respondent no.1 are legally wedded husband and wife. It is also undisputed that the respondent no.1 filed a divorce petition against the petitioner and they are living separately before filing the divorce petition.

11. It is settled law that at the time of deciding application u/s 24 of the Hindu Marriage Act merit of the case is not seen. The only point for consideration at the time of deciding the interim maintenance application is whether petitioner/wife is having source of earnings. In the case of **Jasbir Kaur Sehgal vs. District Judge, Dehradun and others – (1997) 7 SCC 7** the apex Court has held that at the time of deciding the interim maintenance the court has to consider the status of the parties, their respective needs, the capacity

of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time the amount so fixed cannot be excessive or extortionate.

12. In **Rajesh vs. Neha and another –Criminal Appeal No.730 of 2020 (arising out of SLP (Cri.) No.9503 of 2018)** the apex Court has held as under:

(c) Where wife is earning some income

The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance on this issue in the following judgments.

In *Shailja & Anr. v Khobbanna*, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. Sustenance does not mean, and cannot be allowed to mean mere survival.

In *Sunita Kachwaha & Ors. v Anil Kachwaha*⁴² the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

The Bombay High Court in *Sanjay Damodar Kale v Kalyani Sanjay Kale*⁴³ while relying upon the judgment in *Sunita Kachwaha* (supra), held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and

cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in *Chander Prakash Bodhraj v Shila Rani Chander Prakash*. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.

This Court in *Shamima Farooqui v Shahid Khan*⁴⁵ cited the judgment in *Chander Prakash* (supra) with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.

13. In the case of **Smt. Dipti Aggarwal vs. Sri Ashish Chandra – 2017 SCC OnLine Cal 8835**, the High Court of Calcutta has held as under:

20. Therefore, in terms of the status of the parties, high qualifications and taking note of having no employment of the petitioner at this stage and also taking the affluent salary of her husband he being a pilot of the Air India Airlines, an amount of ₹70,000 as claimed towards maintenance pendente lite and ₹50,000 towards litigation costs as sought for was neither unreasonable nor high or excessive. Such claim cannot be defeated in view of opposition made by her husband mentioning some assets and bank account numbers allegedly of the wife. From reply to the affidavit-in-opposition the petitioner also controverted by submitting that she alone was not beneficiary of those assets, and those bank accounts were not within her control. In view of the guidelines available from the case of *Manish Jain* (supra) the just, reasonable and proportional maintenance pendente lite cannot be denied to lend support during pendency of the suit.

14. On the other hand, learned counsel for the respondent has relied upon para-7 of the decision in the case of **Mamta Jaiswal vs. Rajesh Jaiswal – 2000 SCC OnLine MP 580** which reads as under:

7. In view of this, the question arises, as to in what way [Section 24](#) of the Act has to be interpreted: Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure ? Whether such

spouse should be permitted to get pendente lite alimony at higher rate from other spouse in such condition ? According to me, [Section 24](#) has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself Or herself inspite of sincere efforts made by him or herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendente lite alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversory by implementing the provisions of law suitable to their purpose. In the present case Mamta Jaiswal is a well qualified woman possessing qualification like M.Sc. M.C. M.Ed. Till 1994 she was serving in Gulamnabi Azad Education College. It impliedly means that she was possessing sufficient experience. How such a lady can remain without service ? It really puts a bug question which is to be answered by Mamta Jaiswal with sufficient cogent and believable evidence by proving that in spite of sufficient efforts made by her, she was not able to get service and, therefore, she is unable to support herself. A lady who is fighting matrimonial petition filed for divorce, cannot be permitted to sit idle and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. [Section 24](#) is not meant for creating an army of such idle persons who would be sitting idle waiting for a 'dole' to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her. The case may be vice versa also. If a husband well qualified, sufficient enough to earn, sit idle and puts his burden on the wife and waits for a 'dole' to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolents as well idles so also does not want an army of self made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, atleast, has to make sincere efforts in that direction. If this criteria is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversory who happens to be a spouse, once dear but far away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony, and would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself That cannot be treated to be aim, goal of [Section 24](#). It is indirectly against

healthiness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient effort are unable to support and maintain themselves and are required to fight out the litigation jeopardising their hard earned income by toiling working hours.

15. Counsel for the respondent submits that in the present case petitioner has source of earning and she has filed income tax returns according to which she earns Rs.60,000/- per month, therefore, she has no right to get maintenance pendente lite. He has also relied upon para-11 of the decision in the case of **Anju and others vs. Rinku Dahiya – 2023 SCC OnLine Del 6529** which reads as under:

11. We observe that in the present case, where both the spouses are equally qualified and are earning equally, interim maintenance cannot be granted to the wife under [Section 24](#) of the Act. The object of [Section 24](#) of the Act is to ensure that during the matrimonial proceedings under HMA either party should not be handicapped and suffer any financial disability to litigate only because of paucity of source of income. The provision for interim/pendent lite maintenance has been made only to help either spouse to sail through the litigation expenses and also to ensure that they are able to live comfortably. The proceedings under [Section 24](#) of the Act are not intended to equalize the income of both the spouses or to give an interim maintenance which is commensurate to maintain a similar life style as the other spouse as has been observed by this Court in the case of [K.N. vs. R.G MAT](#). APP.(FC) 93/2018 decided on 12.02.2019.

16. After perusal of the record and affidavit filed by both the parties it is undisputed that husband/respondent earns Rs.9 lakhs per month. It is also undisputed that the petitioner earns nearly Rs.60,000/- per month as per her ITR. So considering the documents of income of both the parties, in the considered opinion of this Court, the trial court has committed error in not giving any amount of interim maintenance to the petitioner. Therefore, it is

directed that the respondent/husband shall pay a sum of Rs.1,00,000/- per month as interim maintenance from the date of application to the petitioner. The petitioner is also entitled to get Rs.50,000/- as litigation expenses.

17. In the result, the petition stands allowed as aforesaid.

(HIRDESH)
JUDGE

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