

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT  
JABALPUR**

<b>Case No.</b>	<b>M.P. No.629/2018 &amp; M.P. No.914/2018</b>
<b>Parties Name</b>	<i>Sandeep Jain</i> vs. <i>Mrs. Nivedita Jain</i>  &  <i>Nivedita Jain</i> vs. <i>Sandeep Jain</i>
<b>Date of Judgment</b>	<b>09/03/18</b>
<b>Bench Constituted</b>	Single Bench
<b>Judgment delivered by</b>	<b>Justice Sujoy Paul</b>
<b>Whether approved for reporting</b>	Yes
<b>Name of counsels for parties</b>	<b>Husband:</b> Mr. Rajesh Nema, Advocate. <b>Wife:</b> Mr. Kunal Thakre, Advocate.
<b>Law laid down</b>	<p style="text-align: center;"><i>Section 24 of the Hindu Marriage Act-</i></p> <p>1. In determining the amount of maintenance income/financial position of the wife's parents or other relations is immaterial.</p> <p>2. Merely because the wife is well qualified, no presumption can be drawn that:- (i) she is in a position to maintain herself. (ii) she is out of employment on her own volition (iii) If she is not in a job it is due to her inaction</p> <p>3. No set formula can be laid for fixing the amount of maintenance. It depends on the facts &amp; circumstances of each case.</p> <p style="text-align: center;">The Court has to consider status of parties, respective needs, capacity of husband while fixing amount of maintenance.</p> <p>4. The date from which maintenance (Under Section 24 of Hindu Marriage Act) should be granted by the Court depends on the discretion of the Court.</p>
<b>Significant paragraph numbers</b>	<b>8,9,10,11</b>

**(Order)**  
**09.03.2018**

These petitions are filed under Article 227 of the Constitution of India to assail the common order dated 21.12.2017, whereby the application (I.A. No.3) preferred by the wife under Section 24 of the Hindu Marriage Act, 1955 was decided by the Court below. The parties are at loggerheads on the validity of this order. The husband contends that the Court below has erred in granting Rs.25,000/- per month as maintenance to the wife, whereas she was not entitle to get any amount in view of her qualification and background. The wife is aggrieved by the said order and contended that on account of the fact that she has no source of livelihood, the Court below should have granted her larger amount in the head of maintenance. It is prayed that 1/3rd salary of husband should be granted to the wife as maintenance and this amount should be given from the date of application preferred under Section 24 of the Hindu Marriage Act, 1955.

2. Mr. Rajesh Nema, learned counsel for the husband submits that the wife lodged a police complaint against the husband. In the said application she claimed Rs.10,000/- per month and, therefore, she is entitled to get aforesaid amount only. The Court below has erred in granting her an amount of Rs.25,000/-. He placed reliance on **AIR 1979 (Alld) 29 [Preeti Archana Sharma vs Ravind Kumar Sharma]** to bolster his submission that Section 24 of the Hindu Marriage Act does not stipulate anything about the status to be maintained by either of the parties. The question of status is not relevant while deciding the application under Section 24 of the Act. The only purpose behind insertion under Section 24 of the Act is to avoid starvation or destitution during the proceedings before the competent authority.

3. *Per-contra*, Mr. Kunal Thakre, learned counsel for the wife placed reliance on the application (Page No.48) and urged that a plain reading of this application shows that it was filed when wife was residing with the husband at Chennai. At that point of time, she had shelter and other protection and, therefore, small amount (Rs.10,000/-) was claimed. However, later on, she has come to her matrimonial house at Bhopal wheres she has no source of livelihood. She has to

take care of her small daughter who is aged about six years and in that case, wife is entitled to get 1/3rd of the salary of the husband. The salary slip, income tax return of husband is not in dispute. Husband earns Rs.1,85,000/- per month. Thus, Court below should have enhanced this amount and should have granted the amount from the date of submission of wife's application under Section 24 of the Act. Reliance is placed on **2006 (4) MPLJ 302** [*Manju Raghuvanshi vs. Dilip Singh Raghuvanshi*].

4. Mr. Nema in his rejoinder submissions contended that wife is a highly qualified person. As per various judgments mentioned in the impugned order, such qualified person who on her own volition decided to remain unemployed cannot get the benefit of maintenance. Lastly, Mr. Nema placed reliance on the income tax return of the parents of the wife to submit that the wife has sufficient protection and, therefore, no amount is due to her under the head of maintenance.

5. No other point has been pressed by parties.

6. I have heard the parties at length and perused the record.

7. The court below in the impugned order has given categorical finding about the earning of the husband. The court found that the husband is working as Project Manager in a private company and getting Rs.22.00 lacs per year. The monthly income of husband was assessed as Rs.1,85,000/-. The finding of court below is based on Income-tax Return, etc. The learned counsel for the husband did not dispute/attack this finding during his course of argument. His bone of contention was that in view of judgment of Allahabad High Court in the case of Preeti Archana Sharma(supra), the wife does not have any right to get a huge sum of amount on the principle that one cannot live like a Lord and other like a maid. The another contention of husband was that since wife is highly educated and remained out of employment on her own volition, she is not entitled to get the benefit of Section 24.

8. The aforesaid question is no more *res integra*. In 2003 (10) SCC 228 (*Amarjit Kaur vs. Harbhajan Singh and another*), the Apex Court opined that the relevant statutory consideration being only that either of the parties, who was

the petitioner in the application under Section 24 of the Act, has no independent income sufficient for her or his support, for the grant of interim maintenance. Once that is ascertained, maintenance has to be granted and the discretion thereafter left with the court, is only with reference to reasonableness of the amount that could be awarded and not to impose any condition, which has self-defeating consequence. The court below in the impugned order placed reliance on the judgment of Supreme Court reported in 2014 (3) JLJ 404 (***Suneeta Kachwaha and others vs. Anil Kachwaha***) wherein it was held that merely because the appellant-wife is a qualified post-graduate, it would not be sufficient to hold that she is in a position to maintain herself. This is matter of common knowledge that even highly educated persons are struggling to get an appointment. Thus, there is no legal presumption that if a person is adequately qualified and is not in employment, he/she is out of employment on his/her own volition. Putting it differently, no presumption can be drawn that every qualified person will get a suitable job and if he is not in a job, it his/her inaction because of which he/she is not in the job. In this view of the matter, I am unable to hold that the wife was not entitled to get the benefit of Section 24 of the Act.

9. The next question is relating to quantum of financial benefits and the date from which it is to be granted. The Apex Court way back in 1997 (7) SCC 7 (***Jasbir Kaur Sehgal(Smt.) vs. District Judge, Dehradun and others***) opined that no set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. 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. A plain reading of this judgment shows that no straight jacket formula can be laid down for the purpose of determining the amount payable under Section 24 of the Act.

10. As noticed in the present case, finding about husband's monthly income (Rs.1,85,000/-) is not called in question. This is also not in dispute that the wife has to take care of daughter who is aged about six years. In the case of ***Jasbir Kaur Sehgal*** (supra), it was held that the amount of maintenance should be an adequate amount, which may give reasonable comfort to the wife by taking into account her status and mode of life lived by her when she was living with her husband. If amount in question is examined on the anvil of this principle, it appears that the Court below has decided it on a lower side. The amount of Rs.25,000/- as maintenance amount is inadequate in the facts and circumstances of the present case. In ***1998 (2) MPLJ 329 (Munnibai vs. Jagdish)***, the Court opined that status of family to which wife belongs is relevant and not the income of wife's parents or other relations. Thus, the documents relating to income of wife's parents are of no assistance to the husband. The Apex Court in ***2017 SCC Online SC 314 (Manish Jain vs. Akansha Jain)*** poignantly held that it is no answer to claim of maintenance that wife is educated and could support herself. It is further held that the financial position of the wife's parents is immaterial. The Court must take into consideration the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her. The 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. In this view of the matter, I deem it proper to enhance of grant of maintenance to Rs.35,000/- per month in place of Rs.25,000/- per month granted by the Court below. To this extent, the impugned order dated 21-12-2017 shall stand modify.

11. The ancillary question is from which date the wife is entitled to get this claim. By placing reliance on the judgment of this Court in ***Manju Raghuvanshi*** (supra), the counsel for the wife contended that it must be granted from the date of application. This point was considered by the Supreme Court in the case ***Jasbir Kaur Sehgal*** (supra). After considering the judgment of ***Jasbir Kaur Sehgal*** (supra), this Court opined that the petitioner therein is entitled to get maintenance with effect from the date when the application was filed claiming maintenance. As held in ***Jasbir Kaur Sehgal*** (supra), it is the discretion of the

Court as to from which date maintenance under Section 24 of the Act should be granted. The discretion of the Court would depend upon multiple circumstances, which are to be kept in view. This could be the time taken to serve the respondent in the petition, the date of filing of application under Section 24 of the Act, the conduct of the parties in the proceedings, averments of application and the reply thereto and tendency of husband and wife in relation to disclosure of income. The Court below has not assigned any reason for not granting the benefit from the date the application was preferred. Learned counsel for the husband also could not point out any circumstance which may become a valid reason to deprive the wife from the fruits of benefits from the date of application. Thus, I deem it proper to hold that the amount of maintenance i.e. Rs.35,000/- per month shall be payable to the wife from the date application under Section 24 was preferred by her.

12. As per foregoing analysis, the impugned order dated 21-12-2017 stands modified. The wife shall get Rs.35,000/- per month from the date of filing of application. The petitions are disposed of. No cost.

**(Sujoy Paul)**  
**Judge**

*s@if/YS/mohsin*

**IN THE HIGH COURT OF MADHYA PRADESH JABALPUR,  
PRINCIPAL SEAT AT JABALPUR**

**M.P. No.629/2018**

***Sandeep Jain***

**vs.**

***Mrs. Nivedita Jain***

**&**

**M.P. No. 914/2018**

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**vs.**

***Sandeep Jain***

Order posted for: **09.03.2018**

**(SUJOY PAUL)  
JUDGE**