Madras High Court
Ranganatham vs Shyamala on 5 November, 1988
Equivalent citations: AIR 1990 Mad 1
Bench: K Natarajan
ORDER

1. C.R.P. 1324 of 1986 converted into C.M.S.A. No. 8 of 1988:-- In view of the order passed in C.M.P. 12496 of 1988 this petition is converted into C.M.S.A. and disposed of accordingly. The only substantial question of law that arises in this appeal is whether the permanent alimony can be granted to wife u/S. 25 of the Hindu Marriage Act, even though the main petition for annulment of marriage u/S. 12 of the Act is dismissed.

2. According to the learned counsel for the appellant Mr. M. N. Padmanabhan that U/S. 25 of the Hindu Marriage Act, a permanent alimony can be granted only when on the petition filed by either of the spouses u/Ss. 9, 10, 11, 12 or 13 of the Act, a decree is passed and not in cases where the petition is dismissed. According to the learned counsel, only in cases where the marriage relationship comes to an end or altered, a permanent alimony can be granted and not in cases where the relationship of the marriage is subsisting and the remedy of the spouse is to proceed under the Hindu Adoption and Maintenance Act, 1956 for the relief of maintenance and not under the Hindu Marriage Act. In support of his contention, the learned counsel relied on various decisions reported in Shantaram Gopal Shet Narkar v. Hirabai ; Minarani Majumdar v. Dasarath Majumdar, ;

Shantaram Dinakar Karnik v. Malti Shantaram Karnik ; Akasam Chinna Basu v. Akasam Parbati (DB); Purshotam v. Devki ; Gurucharan Kuar v. Ramchand ; Darshan Singh v. Mst Daso ; Sushma v. Satishchandra ; and Vinod Chandra Sharma v. Rajesh Pathak . The ratio laid down in the above said decisions is to the effect that in the context of S. 25 of the Act, the expression 'passing any decree' means any of the decrees provided for u/Ss. 9 to 13 of the Act, and not the dismissal of a petition. But although technically speaking dismissal of a suit may be called a decree, such a decree is not contemplated u/S. 25 of the Act. The learned counsel appearing on either side frankly conceded that there is no judgment of this Court on this question. However, the learned counsel for the appellant submitted that there is one decision of this Court u/S. 37 of the Indian Divorce Act, reported in Devasahayam v. Devamony (1923) ILR 46 Mad 133 : (AIR 1923 Mad 211) wherein it was held as follows -

"It is not competent to the Court dismissing a husband's petition for dissolution of marriage, to award maintenance to the wife, u/S. 15 or 37 of the Indian Divorce Act. Though the wife might have filed an application for divorce or judicial separation on the husband's petition u/S. 15 of the Act, still in the absence of a decree for dissolution or judicial separation, no order for maintenance can be made under the Act,"

To appreciate the aforesaid decision, it is worthwhile to quote the provisions of S. 37 of the Indian Divorce Act, which runs thus -

"The High Court may, if it thinks fit, on any decree absolute declaring a marriage to be dissolved, or any decree of judicial separation obtained by the wife, and the District Judge may, if he thinks fit, on the confirmation of any decree of his declaring a marriage to be dissolved or any decree of judicial separation obtained by the wife, order that the husband shall, to.the satisfaction of the Court secure to the wife such gross sum of money or such annual sum of money for any term not exceeding her own life, as having regard to her fortune (if any) to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties. In every such case the court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable."

See. 25 of Hindu Marriage Act reads as follows -

"(1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant, as having regard to the respondent's own income and other property, if any, the income and other property; of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-sec. (1) it may at the instance of either party vary, modify or rescind any such order in such manner as the Court may deem just.

(3) If the Court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or if such party is the husband, that he has had sexual interecourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the Court may deem just."

This S. 25 of the Hindu Marriage Act is not identical to S. 37 of the Divorce Act, It is clear from S. 37 of the Indian Divorce Act, that only in a case where the Court on passing any decree absolute declaring a marriage to be dissolved, or any decree of judicial separation obtained by the wife and on its confirmation, make an order on the husband for payment to the wife, the monthly or weekly maintenance. But, this is not the case in so far as S. 25 of the Hindu Marriage Act is concerned. Hence, that section is not at all helpful in deciding the issue involved in this appeal. The very S. 37 itself contemplates passing of a decree, for, dissolution or a judicial separation for granting a permanent alimony to the wife. But S. 25 of the Hindu Marriage Act contemplates only passing of any decree and it does not further proceed to say a decree for either dissolution or nullity of marriage, restitution of conjugal rights, or judicial separation.

3. It is clear from the above two provisions that what is contemplated under S. 37 of the Divorce Act, 1869 is materially different from the language used by the Legislature under S. 25 of the Hindu Marriage Act, 1955, and that the decision rendered in Darshan Singh v. Mst. Daso , cannot afford any guidance in construing the language used by the Legislature in S. 25 of the Hindu Marriage Act, 1955. We are now concerned with the words "at the passing of any decree or at any time consequent thereto with regard to the grant of permanent alimony in favour of the defeated spouse". In this connection, it is worthwhile to refer to the various decisions relied on by the learned counsel for the appellant. In Akasam Chinna v. Parbati , a Division Bench of the said Court relying on the earlier decisions reported in Harilal Purushotham v. Lilavathi Gokaldas, Shanta-ram Gopalshet v. Hirabai, ; Shantaram Dinakar v. Malti Shantaram Karnik , Minarani v. Dasarath , held that the expression 'any decree' means passing of any of the decrees mentioned in Ss. 9 to 14 of the Act and it does not include an order of dismissal and further the passing of an order of dismissal is not the same thing as passing of a decree and that therefore it cannot be regarded as the passing of a decree and permanent alimony cannot be granted to a party while dismissing the petition under the Act. In the decision reported in Smt. Sushma v. Satish Chandra, a Division Bench of the said Court, while considering the earlier decisions held as follows -

"Hindu Marriage Act (25 of 1955) S. 25 --

Permanent alimony and maintenance --

When can be granted -- Words "passing any decree" in S. 25. -- Mean passing of decree of divorce, restitution of conjugal rights or judi cial separation -- Alimony and maintenance cannot therefore be granted as passing of decree dismissing divorce petition.

Permanent alimony and maintenance under S. 25 can only by granted in case divorce is granted and not if the marriage subsists. The word 'decree' is used in matrimonial cases in a special sense different from that in which it is used in C.P.C. The passing of the 'decree' in S. 25 means the passing of the decree of divorce, restitution of conjugal rights, or judicial separation and not the passing of a decree dismissing the petition. If the petition fails then no decree is passed, i.e., the decree is denied to the applicant. Alimony, cannot therefore, be granted in a case where a decree for divorce or other decree is refused because in such a case the marriage subsists.

The power to grant alimony contained in S. 25 can only be exercised when the court is faced with the problem of setting the mutual rights of the parties after the matrimonial ties have been determined or varied by the passing of the kind of decree mentioned in Ss. 9, 10, 11 and 13 of the Act and not in other cases.

Secs. 23 and 27 also show that a decree is passed only when application for divorce or other relief is granted and not when the application is dismissed."

The Division Bench has elaborately dealt with the reasoning in paras 5 to 8 and ultimately came to the conclusion that the word 'decree' in a specific sense is different from that in which it is used in the C.P.C. and that accounted for the reasons which have prompted the reference to the Bench for

proper consideration of the term 'decree' used in the context under S. 25 of the Act. The learned Judges have also considered the word 'decree' used in Ss. 26, 27 and 23 of the Act, in support of the said conclusion. As rightly observed by the learned Judges in the above mentioned case alimony on a permanent basis is maintenance given to an ex-spouse of the marriage by the other ex-spouse, and if a petition fails, then the marriage still subsists unaltered by the intervention of any decree. In that event, the normal rights of the parties are to be found in the legal system under which they are married (which have) to prevail. There is no question of alimony being granted in such cases, because the matrimonial rights of the parties are to be found in the legal system which operates, requiring one of the parties to support the other and if there is failure to do so, then the other partner can seek maintenance by recourse to the civil or criminal court. There is no question of granting alimony in such cases. It has to be maintenance simplicter as per S. 18 of the Hindu Adop-tions and Maintenance Act, Furthermore, sub-sec. (3) to S. 25 of the Act provides that alimony has to end on the re-marriage of the ex-spouse or proof of sexual relations with another partner or unchastity. These conditions clearly show that the matrimonial ties have to be determined before an order for alimony can be passed. In cases, where the dismissal of the petition is made there is no alteration or the variation of the rights of the matrimonial parties and the question of granting alimony does not arise. Under S. 23 of the Act, certain safeguards are provided for passing a decree for divorce or other relief and not for the dismissal of those petitions. Similarly, regarding the custody of the child under S. 26 of the Act and the disposal of the property u/S. 27 of the Act, reliefs are granted only in cases where the decrees for the relief u/Ss. 9 to 14 of the Act were granted.

4. As regards the contention that all the decrees made by the court in any proceeding under this Act be treated as the decrees of the court made in exercise of its original civil jurisdiction and every such appeal shall He to the Court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction of the said decree referred to u/ S.25 of the Act which includes the dismissal of the petition and as such the same meaning has to be attributed to the word 'decree' u/S. 25 of the Act. It is seen that the word 'passed' under S. 25 of the Act has not been made use of in S. 28 of the Act and on the other hand, the word 'made' alone has been used. The difference clearly reflects the intention of the Legislature in the sense of 'granting relief and 'making any decree'. The term 'making any decree' is used for or against any of them for the granting of any relief or refusing any relief. The word decree in its ordinary connotation may mean normal expression of the adjudication to determine the rights of the parties in any case. The definition of the word 'decree' given u/S. 2(2) C.P. Code may be applicable so far as may be to the expression 'decree under S. 25 of the Act. Sec. 21 of the Hindu Marriage Act makes the C.P.C. applicable for regulating the proceedings under the Act, subject to the provisions of the Hindu Marriage Act, and the rules of the High Court. In the decision reported in Darshan Singh v. Mst. Daso , it was observed as follows (at p. 107 of AIR) -

"Passing of any decree under S. 25 of the Act would mean decree granting relief of the nature stated in Ss. 9 to 13 of the Act and the expression 'decree' made under the provisions of the Act would mean decrees granting relief or refusing relief and it cannot be the intention of the Legislature to attach finality to the orders of the District Judge regarding the dismissal of the petitions u/Ss. 9 to 13 of the Act. Thus I hold that the present appeal against the dismissal of the petition under S. 9 of

the Act is maintainable and I further hold that as relief of restitution of conjugal rights has not been granted, award of maintenance under S. 25 of the Act was without jurisdiction."

In the decision reported in Vinod Chandra Sharma v. Rajesh Pathak it was held as follows -

"Where an application for divorce is dis-missed there is no decree passed. Obviously, alimony cannot therefore, be granted in a case where a decree for divorce is refused because in such a case the marriage will subsist. The power to grant alimony contained in S. 25 has to be exercised when the court is called upon to settle the mutual rights of the parties after the marital ties have snapped by determination or variation by the passing of the decree of a type mentioned in Ss. 10, 11, and 13 of the Act, read with Ss. 23, 26 and 27 of the Act, a decree can be assumed to have been passed when an application for divorce or similar other relief is granted but not when the application is merely dismissed."

In the above quoted case, reliance was also placed on the decision reported in Smt. Sushma v. Satischandra . The details of the said decision have been discussed in the earlier part of this judgment.

5. On going through the ratio laid down in the above decisions which is supported by convincing reasons, I am of the view that the words 'passing of any decree' have been properly interpreted. I am also in respectful agreement with the decisions rendered by the various High Courts that 'the passing of a decree' u/S. 25 of the Act means the passing of the decree of divorce, restitution of con-jugal rights or judicial separation and not the passing of a decree through which the petition itself is dismissed and therefore, it is clear that alimony cannot be granted in a case where a decree for divorce is refused. On the other hand, I do not find any merit in the submissions made by the learned counsel for the respondent-wife, Mr. R. S. Venkatachari, who drew my attention to the views expressed by the learned author, Mr. N. R. Raghava-chaiar in the text Book 'Hindu Law' (Principles and Precedents), 8th Edn. at page 77 wherein it was observed as follows -

"Words "at the time of passing any decree" may support the argument that it is only if the main petition is decreed that a maintenance order for life of the petitioner can be passed by the matrimonial court and not when the petition is dismissed (Purushotham v. Devaki, , Shantaramv. Malti, , Shantarm v. Hirabai, ; Kadia Harilal Purushotham v. Kadia Leela-vati Gopaldas, ; Minarani v. Dasrath, and as by the dismissal of the petition the parties are left in the position in which they were prior to the institution of the matrimonial proceeding under this Act the ordinary Court of the country has jurisdiction to entertain a suit for maintenance. There are two ways of considering this question. One construction is to hold that 'passing any decree' includes passing a decree of dismissal of the petition. In this view, the Court having jurisdiction for ordering permanent maintenance is the matrimonial Court under the Act. If, on the other hand, the expression 'passing any decree' should be construed as 'passing any decree allowing the petition' then the above contention would be plausible (Ramachandra Behera v. Snehalata Dei,. It appears, however, that the former construction is the preferable one. A decree may be a decree allowing the petition or a decree dismissing the petition. The words 'any decree' must take in both kinds of decrees. If the latter construction should be considered as the correct one, then the words will not say 'decree' but merely

'a decree'. See contra in Minarani v. Dasrath Majumdar, , Besides, there would be no meaning in allowing the parties to go to some other Court and start their battle once again after they had done it before the matrimonial Court which knows their respective strength and can be expected to do justice, especially when the Court is one of the superior Courts in the country being a District Court or its equivalent."

There is absolutely no case law to support this view. On the other hand, the learned Author himself had observed : the words 'at the time of passing any decree' may support the arguments that it is only if the main petition is decreed that order for alimony for life of the petitioner can be passed by the matrimonial Court and not when the petition is dismissed. The said view is proper and reasonable and the construction is also a plausible one, as in cases where no relief is granted, the remedies are provided by recourse to the civil or criminal Court under S. 18 of the Hindu Adoptions and Maintenance Act or S. 125, Cri.P.C., as the case may be. As has been observed, S. 21 of the Hindu Marriage Act is not at all helpful to decide the questions involved here, as the S. 21 of the Act relates to only regulating the proceedings under the Act as far as may be by the C.P.C., 1908, and that too subject to the other provisions contained in the Hindu Marriage Act, and the rules framed thereunder. I do not find any merit in the contentions of the learned counsel for the respondent, Mr. R.S. Venkatachari, that the preamble to the Hindu Marriage Act says that the Act is enacted only for the betterment of the wife and on the other hand, it is seen that the preamble relating to the Hindu Marriage Act lays down rules, viz., formation of marriage and solemnisation thereof and matrimonial reliefs etc. It is also not helpful to decide the interpretation of the words 'passing of any decree' and granting of relief of permanent alimony, in cases, where the relief is negatived. For the discussions already made, I have no hesitation in holding that the existence of any of the decrees referred to in Ss. 9 to 13 of the Act is a condition precedent to the exercise of the jurisdiction under S. 25(1) of the Act, and the granting the ancillary relief for permanent alimony and maintenance and not when the main petition was dismissed and no substantial relief was granted under Ss. 9 to 14 of the Act. Since there was no 'passing of decree' as contemplated under S. 25(1) of the Act, the jurisdiction to pass an order for maintenance under that section does not arise.

6. Further, the learned counsel for the respondent also relied on a decision reported in Nalini v. Velu, . That was a case u/ s. 24 of the Hindu Marriage Act, and that has nothing to do with the provisions of S. 25 of the Hindu Marriage Act. It was held in the above decision that 'arrears of maintenance allowable from the dates of service of summons of the main petition for restitution of conjugal right on the wife, notwithstanding the maintenance application was filed only at the appellate stage of the main proceedings. The learned counsel for the respondent also filed three petitions C.M.P. 13290 to 13292 of 1988 for awarding interim maintenance and the legal expenses, fees and other charges to the respondent. The respondent claimed interim maintenance at the rate of Rs. 500 per month. Both the Courts below on the basis of the materials available before them fixed the quantum of maintenance at Rs. 300 per month. The appellant also did not dispute the same. It is to be noted that even though the respondent is not entitled to the permanent alimony till her lifetime, in view of the findings already arrived at in this judgment, she is certainly entitled to claim maintenance till the termination of the proceedings in view of the provisions u/ss. 24 and 25 of the Act. Hence, I feel that it is just and proper to award the pendente lite maintenance till the disposal of the appeal, A.A.A.O. 38 of 1986 to the respondent, even though her claim for permanent

alimony till her lifetime is negatived.

7. In the result, C.M.S.A. 8 of 1989 (C.R.P. 1324 of 1986) is partly allowed and it is further ordered that the orders passed by the Court below in I.A. 79 of 1983 in H.M.O.P. 49 of 1982, which was confirmed by the District Court in C.M.A. 10 of 1984, are all set aside and instead, the appellant is directed to pay the respondent the pendente lite maintenance allowance at the rate of Rs. 300 per mensem till 1-11-1988 when A.A.A.O. 38 of 1986 is dismissed from the date of order of the Principal Subordinate Judge. However there will be no order as to costs.

At this stage learned counsel for the respondent prays for time for payment of arrears of maintenance. Three months' time is granted for payment of arrears.

8. Order accordingly.