

Madhya Pradesh High Court

Prakash Chandra vs Rajkumari @ Jyoti on 9 September, 2002

Equivalent citations: I (2003) DMC 556

Author: A Gohil

Bench: A Gohil

JUDGMENT A.K. Gohil, J.

1. This appeal, Under Section 28 of the Hindu Marriage Act, 1955 (for short "the Act")/ is directed against the order dated 14.10.1993 passed by First Additional District Judge, Khargone in Civil Suit No. 5-A/1984, whereby it allowed the application of the respondent which was filed Under Section 25 of the Act for grant of permanent alimony and maintenance.

2. The brief facts of the case are that the appellant/husband filed divorce petition on 7.3.1984 against the respondent/wife Under Section 13 of the Act. The appellant/husband did not prosecute the same and ultimately the application for divorce was dismissed and thereafter the Trial Court considered the application of the respondent/wife Under Section 25 of the Act for grant of permanent alimony and maintenance and by the impugned order dated 14.10.1993 allowed the same and directed the appellant/husband to pay a sum of Rs. 500.00 per month to the respondent /wife as a permanent alimony and for maintenance w.e.f. 7.3.1984 being the date of presentation of main petition for divorce till whole life, against which the appellant/husband has filed this appeal challenging the impugned order.

3. I have heard Mr. D.M. Shah, learned Counsel for appellant/husband; Mr. T.M. Panjwani, learned Counsel for respondent/wife; perused the impugned order and record of the case.

4. The submission of Mr. D.M. Shah, learned Counsel for appellant/husband was that the Trial Court had no jurisdiction to grant the amount of permanent alimony w.e.f. 7.3.1984 for the whole life @ Rs. 500.00 per month as the petition was treated to be dismissed by order dated 7.10.1993. The appellant/husband was not taking any interest in prosecuting the said petition and, therefore, it was directed to be treated as dismissed and the Trial Court has not granted any decree and under the provisions of Section 25 of the Act unless a decree is passed for grant of divorce or for any other relief as provided in the Act, a decree for permanent alimony and maintenance cannot be granted. He further submitted that the order of dismissal is not included in the expression "any decree" and passing of an order of dismissal of petition cannot be regarded as the passing of decree within the meaning of this section and he cited number of decisions on the point.

5. In reply Mr. T.M. Panjwani, learned Counsel for respondent/wife supported the impugned order passed by the Trial Court.

6. It is true that Under Section 25 of the Act permanent alimony and maintenance can only be granted at the time of passing of any decree and this word "at the time of passing of any decree or at any time subsequent thereto" has been interpreted by the various High Courts that the expression "any decree" does not include an order of dismissal and it has been consistently held that the passing of an order of dismissal of a petition cannot be regarded as the passing of a decree within

the meaning of this section.

7. The object of Section 24 of the Act is to provide maintenance pendente lite to a party. Under Section 24 of the Act the Court can grant maintenance and expenses of the proceedings to the wife or the husband during pendente lite of proceedings/petition, but Section 25 of the Act makes provision for grant of permanent alimony and maintenance for future after decree. The word appearing in Section 25 of the Act "at any time of passing any decree" have been interpreted by the various High Courts to the extent where decree, either for divorce or for restitution of conjugal rights or judicial separation if passed/ then application for permanent alimony can be allowed and a decree for dismissal of the petition has not been regarded as passing of a decree within the meaning of this section. The expression "any decree" does not include an order of dismissal.

8. The Supreme Court in the case of Chand Dhawan v. Jawaharlal Dhawan, II (1993) DMC 110 (SC), 1994 MPLJ1, has held as under:

"Under the Hindu Marriage Act, 1955 the claim of a Hindu wife to permanent alimony or maintenance is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity or divorce, with or without her consent. When her marital status is to be affected or disrupted, the Court does so by passing a decree for or against her. On or at the time of the happening of that event, the Court being seisin of the matter, invokes its ancillary or incidental power to grant permanent alimony. The Court also retains the jurisdiction as subsequent stages to fulfil this incidental or ancillary obligation when moved by an application on that behalf by a party entitled to relief. The Court further retains the power to change or alter the order in view of the changed circumstances. The whole exercise is without the ambit of a diseased or a broken marriage. In order to avoid conflict of perceptions the Legislature while codifying the Hindu Marriage Act preserved the right of permanent maintenance in favour of the husband or wife, as the case may be, dependent on the Court passing a decree of the kind as envisaged Under Sections 9 to 14 of the Act. Without the marital status being affected or disrupted by the Matrimonial Court under the Hindu Marriage Act, the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act, 1956 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955, though part of the same socio-legal scheme revolutionizing the law applicable to Hindus."

Various High Courts have also held as under:

High Court of Gujarat in the case of Kadia Harilal Purshottam v. Kadia Lilavati Gokaldas, AIR 1961 Gujarat 202, has held as under:

"The words "at the time of passing any decree or at any time subsequent thereto" in Section 25 mean at the time of passing any decree of the kind referred to in earlier provisions of the Act and not at that time of dismissing the petition for any of the reliefs provided in those sections or any time subsequent thereto. The expression "any decree" does not include an order of dismissal. The passing

of an order of dismissal of a petition cannot be regarded as the passing of a decree within the meaning. of this section.

The Judge is not, therefore, entitled to pass any order for permanent alimony in favour of the wife when the petition made by the husband for restitution of conjugal rights had been dismissed."

High Court of Bombay in the case of Shantaram Gopalshet Narkar v. Hirabai w/o Shantaram Gopalshet Narkar and Anr., AIR 1962 Bombay 27, has held as under:

"In order to confer jurisdiction upon the Court to proceed Under Section 25(1), there must be a decree as contemplated under the Hindu Marriage Act and one of such decrees can be Under Section 10(1)(b). Where the application by the husband Under Section 10(1)(b) is allowed to be withdrawn, there is no decree passed in favour of the husband and if there is no decree the Court has no jurisdiction to pass any order directing the husband to pay maintenance to the wife and the children Under Section 25(1)."

High Court of Calcutta in the case of Minarani Majumdar v. Dasarath. Majumdar, AIR 1963 Calcutta 428, has held as under:

"An order dismissing a petition by husband for divorce Under Section 13 is not a decree within Section 25.

The power of any Court exercising jurisdiction under the Act to pass an order for maintenance arises "at the time of passing any decree or any time subsequent thereto". In the context of Section 25, the expression "any decree" means any of the decrees referred to in the earlier provision of the Act, i.e., any decree for restitution of conjugal rights, or of judicial separation, or of nullity of marriage, or of divorce passed Under Sections 9 to 14 of the Act. When the main petition (in this case, for divorce by the husband) is dismissed and no substantive relief is granted Under Sections 9 to 14, there is no passing of a 'decree' as contemplated by Section 25 and the jurisdiction to make an order for maintenance under the section does not arise."

High Court of Orissa in the case of Akasam Chinna Babu v. Akasam Parbati and Anr., AIR 1967 Orissa 163, has held as under:

"The words "any decree" occurring in Section 25(1) contemplates any of the decrees passed Under Sections 9 to 13 of the Act and it was only in the event of any such decree being passed that the Court will have jurisdiction to order payment of permanent alimony in favour of husband or wife as the case may be. In other words, the contention is that when the suit of the plaintiff was dismissed it is not open to the Court to pass an order of alimony in favour of the wife. There appears to be some force in this contention. Under Sections 9 to 14 of the Act, the Court could pass substantive decree granting any of the reliefs provided thereunder. Section 25(1) of the Act entitles the Court to pass any order for permanent alimony. The question is whether the Court is entitled to pass such order while dismissing the petition. The language of Section 25 is plain enough to indicate that the Court is not entitled to pass such an order while dismissing the petition. The words "at the time of passing

any decree" do not include the case of a dismissal. The passing of an order of dismissal cannot be regarded as "the passing of a decree. Several decisions have also been cited in support of such a view."

High Court of Punjab and Haryana in the case of Gurcharan Kaur v. Ram Chand, AIR 1979 P&H 206, has held as under:

"As regards the claim of alimony Under Section 25 of the Act, the plain reading of the section envisages a situation arising after the dissolution of marriage. It was clearly held in Durga Das v. Smt. Tara Rani, AIR 1971 Punj. and Har. 141 (FB), cited by learned Counsel for Gurcharan Kaur that an alimony application Under Section 25(1) of the Hindu Marriage Act can be made after grant of a divorce decree."

High Court of Rajasthan in the case of Darshan Singh v. Mst. Daso, AIR 1980 Raj. 102, has held as under:

"The expression "passing any decree" in Section 25 means decree granting relief of the nature stated in Sections 9 to 13 of the Act. Therefore, when the petition by the husband Under Section 9 for restitution of conjugal rights is dismissed and the relief of restitution of conjugal rights has not been granted award of maintenance to wife Under Section 25 is without jurisdiction.

The expression "passing any decree" in Section 25 means granting any relief of the nature stated in Sections 9 to 13 while the expression "decree made" under the Act in Section 28 means decree granting or refusing relief. It cannot be the intention of the Legislature to attach finality to orders of dismissal of petitions Under Sections 9 to 13."

High Court of Madhya Pradesh in the case of Jitbandhan v. Gulab Devi, 1983 MPLJ 3, has held as under:

"The words "at the time of passing any decree or at any time subsequent thereto" in Section 25 of the Hindu Marriage Act, 1955 contemplate that the jurisdiction Under Section 25 can be exercised only when the main petition is allowed and a decree as contemplated by Sections 9 to 13 is passed by the Court. Hence where the application for a decree of divorce made by the husband is dismissed the Court has no jurisdiction Under Section 25 to pass an order for permanent alimony and maintenance in favour of the wife."

High Court of Delhi in the case of Smt. Sushama v. Sh. Satish Chander, AIR 1984 Delhi 1, has held as under:

"Permanent alimony and maintenance Under Section 25 can only be 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 Civil P.C. The passing of the "decree" in Section 25 means the passing of the decree of divorce/ restitution of conjugal rights or judicial separation and that 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 Section 25 can only be exercised when the Court is faced with the problem of settling 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 Sections 9, 10, 11 and 13 and not in other cases.

Sections 23, 26 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."

High Court of Allahabad in the case of Vinod Chandra Sharma v. Smt. Rajesh Pathak, AIR 1988 Allahabad 150, has held as under:

"When an application for divorce is dismissed 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 Section 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 Sections 10, 11 and 13 of the Act. Read with Sections 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 surely not when the application is dismissed."

9. From the aforesaid discussions as has been held by the various High Courts and the law laid down including Apex Court, it is clear that the matrimonial Court, a Court B of special jurisdiction Under Section 25 of the Act is not meant to pronounce upon a claim of maintenance without having to go into the exercise of passing a decree. From the aforesaid discussions it is also clear that the order of dismissal of a petition cannot be regarded as passing of a decree within the meaning of Section 25 of the Act and the expression "any decree" does not include an order of dismissal. Therefore, when an application is treated to be dismissed, the Court either in the petition or subsequently on an application cannot pass an order for grant of permanent alimony or maintenance to the spouse. More so it appears that the law on this point is now well settled and this is very clear from the pronouncement of the Apex Court in the case of Chand Dhaioan (supra). Therefore, in this case the impugned order dated 14.10.1993 passed by the Trial Court, by which the Court has granted the amount of permanent alimony and maintenance, cannot be sustained under the law and is liable to be set aside.

10. Accordingly this appeal is partly allowed and the impugned order is set aside.

11. It is also clear from the order-sheet dated 7.10.1993 that the application of the respondent/wife Under Section 24 of the Act was pending since very beginning as LA. No. 1 in the main petition, but it was dismissed on 15.4.1996 as was not pressed and the case was also closed, thereafter First

Appeal No. 57 of 1986 was filed in the High Court and the order was set aside and the case was remanded for rehearing on 15.12.1996 thereafter again the application remained pending and no order could be passed. It was again dismissed on 7.10.1993, as the appellant/husband was not taking any interest in the case. From this order-sheet dated 7.10.1993 it appears that the Trial Court has closed the case of the appellant as he was not interested in prosecuting the same and treated it as it is not pending and thereafter dismissed the application Under Section 24 of the Act on the ground that the case is not pending but after the remand order by the High Court dated 15.12.1996 the respondent/wife cannot be treated at fault for not considering her application Under Section 24 and since the Trial Court passed the order only on 7.10.1993 after treating the divorce petition as closed and has not decided the application on merits, whereas the respondent/wife was entitled for pendente lite maintenance w.e.f. 7.3.1984 from the date of the filing of the divorce petition till 7.10.1993. In fact the Trial Court has wrongly dismissed the application Under Section 24 of the Act on 7.10.1993 without deciding it on merits on the ground that the petition has come to an end and holding that she was not entitled for any pendente lite maintenance as the main petition is being treated as closed and it was directed that the application Under Section 25 of the Act shall be considered. Therefore/ looking to the aforesaid peculiar facts of the case though the respondent/wife is not entitled for permanent alimony Under Section 25 of the Act as has been held above but certainly she is entitled for pendente lite maintenance @ Rs. 500/- per month w.e.f. 7.3.1984 till 7.10.1993 and also for expenses of litigation which remained pending for a period of 10 years in the Court of Additional District Judge, Khargone (W.N.). Admittedly respondent/ wife was residing at Khandwa which is at the distance of about 50 kms. from Khargone. Therefore, looking to the facts, the amount of expenses can be quantified to Rs. 5,000.00. The appellant/husband is directed to pay the aforesaid amount of pendente lite maintenance and expenses within a period of two months to the respondent/wife. In the circumstances of the case, parties are directed to bear their own costs. A decree be drawn up accordingly. Record be returned.