

CMM-136-2017
IN FAO-8-2017

PARAMJIT SINGH VS ANURADHA

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Present: Mr. Deepak Sabharwal, Advocate
for the non-applicant/appellant/respondent.

Mr. I.S. Saggu, Advocate
for the applicant/respondent/wife.

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This application has been moved by the applicant/respondent/wife under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA') for grant of maintenance *pendente lite* in an appeal preferred by the non-applicant/appellant/husband challenging the order of dismissal of his petition under Section 13 of the HMA by the District Judge (Family Court), S.B.S. Nagar.

It has been stated by the applicant/respondent/wife that the marriage between the parties was solemnized as per Sikh religious rites on 08.05.1999. A male child, namely, Ishan was born out of the wedlock on 24.07.2000. The applicant/respondent/wife was thrown out of the matrimonial home by the non-applicant/appellant-husband and his family members leaving her with no option but to file a criminal case under Sections 406 and 498-A of the Indian Penal Code against them. In the said criminal case, non-applicant/appellant/husband stands convicted, against which, appeal preferred by him stands dismissed by the Additional District Judge and the criminal revision against the said dismissal is pending in this Court. The applicant/respondent/wife has no source of income and is getting maintenance at the rate of ₹ 4,000/- per month for herself and her minor son

Ishan, who is studying in 10+2 class, in the proceedings under Section 125 of the Code of Criminal Procedure (for brevity 'Cr.P.C.'), which has also not been paid since July, 2017. Assertion has been made that the non-applicant/appellant/husband is running a chemist shop at Hoshiarpur Road, Dasuya and has an income of ₹ 60,000/- per month apart from the agricultural income. He has no other liability except to maintain himself, the applicant/respondent/wife and their school going child. At present, she having no source of income being house-wife is totally dependent upon her brothers. The maintenance *pendente lite* at the rate of ₹ 30,000/- per month and ₹ 50,000/- as litigation and travelling expenses, to attend the proceedings in this Court, has been claimed.

Reply to the application under Section 24 of the HMA has been filed in Court today by the non-applicant/appellant/husband, which is taken on record. The facts regarding marriage between the parties and birth of a male child as also that he is studying, have not been disputed. It has been stated that the applicant/respondent/wife is B.Sc., L.L.B. and enrolled as a practising advocate with decent earning. It is asserted that the maintenance amount stands paid till October, 2017. The assertion with regard to the income of ₹ 60,000/- per month in addition to agricultural income has been denied. It has been asserted that he is working in a medical store with a monthly salary of ₹ 10,000/- per month. He has already paid an amount of ₹ 20,000/- as litigation expenses as ordered by this Court at the time of issuance of notice and since the applicant/respondent/wife is earning handsomely, she is capable of meeting the litigation and travelling expenses.

We have heard the counsel for the parties and with their assistance have gone through the pleadings.

The fact that the minor child Ishan is studying in 10+2 class, who was born out of the wedlock and is living with the applicant/respondent /wife and also the fact that the non-applicant/appellant/husband has to pay a sum of ₹ 4,000/- per month as maintenance for his wife and minor son as ordered by the Competent Court in the proceedings under Section 125 of the Code of Criminal Procedure have not been disputed.

The assertions made by the applicant/respondent/wife that the non-applicant/appellant/husband is running a chemist shop at Hoshiarpur Road, Dasuya, with an income of ₹ 60,000/- per month and in addition, is having agricultural income, have not been specifically denied. What has been asserted is that he is working in the said chemist shop and getting ₹ 10,000/- per month as salary but nothing has been placed on record to substantiate this assertion. The ownership of the said chemist shop has also not been disclosed. Further, it is not stated that he does not have any agricultural income or that he does not have any agricultural property.

This clearly indicates that the non-applicant/appellant/husband is not disclosing his correct income but is making an effort to hide his total income and the sources thereof to run away from the liability to maintain his wife and minor son. Even if the income of the non-applicant/appellant/husband is taken to be ₹ 40,000/- per month and keeping in view the normal expenses of a studying child of 10+2 class and other expenses relating to the education apart from the normal maintenance cost such as food, clothing and shelter, the applicant/respondent/wife would not be

entitled to maintenance *pendente lite* less than ₹ 10,000/- per month from the date of application i.e. September 2017 as also the litigation expenses of ₹ 40,000/-. The sum of ₹ 4,000/- per month awarded in the proceedings under Section 125 of the Code of Criminal Procedure, would be deductible from the amount of maintenance *pendente lite* and similarly, ₹ 20,000/- already paid as interim litigation expenses would be adjusted in the amount of litigation expenses.

In case, ₹ 4,000/- as awarded in the proceedings under Section 125 of the Code of Criminal Procedure has already been paid to the applicant/respondent/wife by the non-applicant/appellant/husband, the same shall be adjusted in the arrears of maintenance *pendente lite*, which has to be calculated from the date of the application i.e. September, 2017.

The application is allowed accordingly.

(M.M.S. BEDI)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

11th December, 2017

Harish