

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 03.04.2018****Delivered on 09.04.2018****First Appeal (Misc.) No. 207 of 2017**

- Kalanath Gandharva S/o Dashrath Gandharva aged about 59 years R/o Kotma Colliery, Bhalumada, Mohalla Sundary Nagar, Police Station - Jamul District - Anuppur, Madhya Pradesh

----Appellant**Versus**

- Smt. Rukhmani Bai W/o Kalanath Gandharva aged about 54 years, R/o Behind of Quarter No. 10-A, Jhopada, Street No. 30, Sector-04 , Bhilai, Tahsil and District Durg, Chhattisgarh

---- Respondent

For Appellant	:	Shri Nasimuddin Ansari, Advocate
For Respondent	:	Shri Jitendra Gupta, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT**Per Sharad Kumar Gupta, Judge**

1. In this appeal, challenge is levied to the judgment dated 22.07.2017 of the First Additional Principal Judge, Family Court, Durg in Civil Suit No. 181-A/2015 (Annexure A-1) whereby and whereunder he ordered the appellant to pay allowance for maintenance Rs. 10,000/- per month to the respondent from the date of judgment adjusting therein the allowance for maintenance i.e. Rs. 5000/- per month payable to the respondent under Section 125 of the Cr.P.C.

2. This is admitted by the appellant that the respondent is his legally wedded wife, she had filed an application under Section 125 of the Cr.P.C. against him wherein on 09.06.1988 the aforesaid order for grant of the

allowance for maintenance was passed, he was an employee of the South Eastern Coalfields Limited and retired from Jamuna-Kotma Collieries, Anuppur on 14.02.2015, now he is getting pension Rs. 13,497/- per month.

3. In brief, the respondent's case regarding application filed by her under Section 25(1) of the Hindu Marriage Act, 1955 (in brevity 'the Act, 1955') is that the appellant has received a sum of Rs. 1,00,00,000/- (Rupees One Crore only) from provident fund, family pension, gratuity, insurance and other retiral benefits. Thus, she is entitled to get Rs. 50,00,000/- (Rupees Fifty Lakhs only) as permanent alimony.

4. In brief, the appellant's case regarding the aforesaid application is that the respondent is living in her maternal house on her own wish, thus, the aforesaid application may be rejected.

5. The Trial Court pronounced the judgment and decree on 22.07.2017 passing the decree of judicial separation against the appellant and also the impugned order.

6. Shri Nasimuddin Ansari, learned counsel for the appellant strenuously argued that the allowance for maintenance awarded is on higher side. He is a retired person. He has no other source of income. He is already paying Rs. 5000/- per month to the respondent in compliance of the order passed under Section 125 of the Cr.P.C. Thus, the impugned order either be set aside or be modified in the interest of justice.

7. Shri Jitendra Gupta, learned counsel for the respondent on the other hand supported the impugned judgment and decree arguing that it is just, proper and based on sound judicial principles. Thus, the appeal may be dismissed.

8. Points for determination:-

There are following points for determination in this case :-

1. Whether the respondent is entitled to get the allowance for maintenance at the rate Rs. 10,000/- per month for her maintenance and support for living from the appellant ?
2. Relief and costs.

Point for determination No. 1- Findings with reasons:-

9. The Trial Court did not frame issue regarding the allowance for maintenance for the respondent though it ought to have been done by the Trial Court. The evidence available on record shows that the appellant and the respondent have adduced evidence regarding the allowance for maintenance. The evidence available on record is sufficient to enable this Court to pronounce the judgment. Non-framing of additional issue regarding the allowance for maintenance does not cause any prejudice to either of the parties. Thus, looking to the provisions of Order 41 Rule 24 of the Civil Procedure Code, 1908, this Court finds that it may pronounce the judgment in this appeal.

10. It would be pertinent to mention the provisions of Section 25 of the Act, 1955 which reads as under :-

“25. Permanent alimony and maintenance – (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-section(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 re-married 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 intercourse 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].”

11. The appellant has stated in his cross-examination that he has received 19-20 lakhs after retirement.

12. In **Shankerappa v. Sushilabai** [AIR 1984 Karnataka 112] Hon'ble Division Bench of the High Court of Karnataka has held that the conduct indicated by silence must be assessed with all other relevant circumstances. In the instant case the defendant did not reply to suit notice which asserted that the plaintiff was lawfully wedded wife of defendant and proceeded to narrate subsequent events in their married life, etc. Having regard to normal course of human conduct and reaction in such a situation, this was case in which a reply could be said to be properly expected from defendant. His silence does amount to a piece of conduct susceptible of an adverse inference against defendant and to afford some, though not a decisive, corroboration of plaintiff's case.

13. The appellant has stated in his cross-examination that the respondent had given notice to produce document but he did not produce any document. Thus, looking to the aforesaid judicial precedent laid down by the Hon'ble

Division Bench of the High Court of Karnataka in **Shankerappa (supra)**, this Court finds that the aforesaid circumstance is sufficient to draw adverse inference against the appellant regarding the actual amount which he has received after the retirement.

14. The appellant had not proved any document before the Trial Court that he is allegedly suffering from any such disease due to which he is unable to do physical work.

15. Looking to the above mentioned facts and circumstances, this Court finds that the appellant has sufficient means.

16. There is no such material on record on the strength of which it could be said that the respondent allegedly does work from which she earns such a handsome amount which is sufficient for her maintenance. There is no such evidence which indicates that she has such movable or immovable property in her name from which she earns such a handsome amount, which is sufficient for her maintenance. Thus, this Court finds that the respondent is unable to maintain herself.

17. Now, we consider the conduct of both the parties.

18. In the case in hand, the Trial Court has given the finding that the appellant had deserted the respondent since long back. The appellant has not challenged this finding.

19. This is not the appellant's case that the respondent was unchaste.

20. In the case in hand, there is no material, on the strength of which it could be said that conduct of the respondent is so bad that this Court shall not pass an order for the allowance for maintenance in favour of the respondent.

21. From day by day experience, we know that the price index is on higher side. Price of cereals and other items of daily need are increasing, thereby,

the cost of living is also increasing. Moreover, it would be significant to mention that near about 29 years have passed from the order under Section 125 Cr.P.C. In the meantime the cost of living has increased manifold.

22. In **Mrs. Veena Kalia v. Dr. Jatinder Nath Kalia and Another** [AIR 1996 Delhi 54] Hon'ble High Court of Delhi has held in para-22, relevant portion is reproduced below:-

“22. The Court can also take judicial notice of the cost of living and also the inflation. The maintenance can be fixed with reference to the cost of living as of today and future rise in the cost of living on approximate basis. It is not that the wife has to come to the Court again and again with increase in cost of living. The maintenance can be linked to the inflation.....”

23. Looking to the above mentioned facts and circumstances, material placed on record, concerned admitted facts and the aforesaid judicial precedent in **Mrs. Veena Kalia (supra)**, this Court finds that Rs. 10,000/- per month is just, sufficient and reasonable amount, it could not be said to be excessive for the maintenance and support of the respondent. Thus, this Court finds that the respondent is entitled to get the allowance for maintenance at the rate of Rs. 10,000/- (Rupees Ten Thousand only) per month for her maintenance and support for living from the appellant in which the allowance for maintenance at the rate Rs. 5000/- (Rupees Five Thousand only) per month under Section 125 Cr.P.C. payable to her would be adjusted. Thus, this Court decides point for determination No.1 accordingly.

Point for determination No. 2- Findings with reasons:

24. After appreciation of the evidence discussed herebefore, this Court finds that the Trial Court has not committed any illegality or gross irregularity while passing the impugned order. Thus, this Court affirms the impugned order.

25. Thus, the appeal being *sans substratum*, deserves to be and is hereby dismissed.

26. No order as to costs.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE