

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-M-22-2016

Date of Decision: 17.10.2019

Shivani Sood

...Appellant

Versus

Ashish Dhanda

...Respondent

**CORAM:- HON'BLE MR. JUSTICE RAJAN GUPTA.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. Akshay Kumar Jindal, Advocate for the appellant.

Mr. Sukant Gupta, Advocate for the respondent.

RAJAN GUPTA, J. (Oral)

Present appeal emanates from a order dated 16.10.2015 passed by Additional District Judge, Chandigarh, whereby application of the appellant under Section 25(2) of the Hindu Marriage Act, 1955 (for short “the Act”) for enhancement of permanent alimony has been dismissed, *inter alia*, on the ground that the same is not maintainable.

Brief factual matrix of the case is that parties got married on 21.1.1991 as per Hindu rites and ceremonies. Out of this wedlock, a female child, namely, Ridhi was born on 19.10.1993. She is presently living with the appellant. It appears that both the parties were residing abroad after marriage. In fact, the child was also born there. While the parties were abroad, differences developed between them. Husband Ashish Dhanda instituted a divorce proceeding in the court at Milton Keynes, United Kingdom. Divorce petition was contested by the wife. However, final

decree of divorce was granted on 20.12.1994. This divorce was accepted by the wife. The marriage between the parties unfortunately came to an end on 20.12.1994. It appears that the wife returned to India meanwhile. On reaching here, she lodged FIR No. 26 of 1994, under Sections 498-A, 406 of Indian Penal Code, Police Station, North, Chandigarh against the husband and his family. Pursuant to said FIR, investigation ensued. However, accused filed quashing petition before this Court. Same came up for hearing before a single Bench (Swantatar Kumar, J.) on 20.12.1995. Court was apprised that a compromise had been arrived at between the parties. Terms of the compromise were incorporated in the order itself. Same are reproduced hereunder as well:-

“The marriage between the parties has already been dissolved by a decree of divorce passed by the Court of Milton Keynes. A copy of the final decree of divorce, dated 20th December, 1994, has been placed on the Court-record. This divorce is accepted by the wife before this court and consequently there is no marriage subsisting between the parties since 20th of December, 1994, which is subject to the terms and conditions contained hereinafter:-

- i) That the husband and the petitioners in this case would pay and have agreed to pay a sum of ₹ 13.5 Lakhs to the wife on account of permanent alimony, return of Istri-dhan and in lieu of other claims she may have against her husband in this petition. Out of this sum, an amount of ₹ 6.5 lakhs shall be deposited by means of Fixed Deposit receipts in the name of minor child Miss Radhi who is presently with her mother.
- ii) The mother i.e. Ms. Shivani would be entitled to use the interest accrued on these F.D.Rs for the welfare and benefit of the minor and in the manner in which she

may deem it proper and appropriate but she will not have right to encash these FDRs, which will be encashable only upon Ridhi attained majority and desire to encash the said receipts. The F.D.Rs will be made in any of the Nationalized Bank at Chandigarh.

iii) The remaining Rupees Seven Lacs shall be given to the wife on account of settlement as full and final of all claims of the wife against the husband and the petitioners, if any.

iv) The above sum of ₹ 13.5 lakhs would be paid in the following manner:-

Rupees 10 lacs before departure from India to United Kingdom; remaining rupees 3.5 lacs would be paid maximum within a period of one year from the date of departure from India. However, the petitioners will be at liberty to pay the entire amount even before they leave India at their convenience.”

It was also stated therein:-

“It is agreed between the parties that upon this settlement being complied with, none of the parties will have any claim against each other. The wife Ms. Shivani will have no claim on any of the properties belonging to the petitioners or her husband in India or abroad anywhere. It is further agreed that both the parties will withdraw the complaints, if any made by them to any Department and they would be deemed to have been withdrawn by virtue of this settlement.”

As a result of aforesaid proceedings, the FIR against the accused was quashed vide order dated 19.3.1996.

Stand of learned counsel for the respondent is that thereafter all issues between the parties stood settled. Main case was disposed of as statement was made by Shivani Dhanda before the court that she would

withdraw the petition filed by her under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (for brevity “1956 Act”). Court has been apprised that said petition was withdrawn thereafter. In the year 2013, however, Shivani Sood instituted the instant application under Section 25(2) of the Act for enhancement of permanent alimony in view of the changed circumstances. Application was vehemently opposed by the respondent. Same was dismissed by the court of Additional District Judge, Chandigarh on 16.10.2015. Present appeal emanates from the said order.

Learned counsel for the appellant has reiterated that the statutory rights vested to the appellant under Section 25(2) of the Act cannot be taken away by any compromise. He has relied upon certain observations made in the judgment reported as **Smt. P. Archana @ Atchamamba v. Varada Siva Rama Krishna, 2008 (2) HLR 302 (AP)**. According to him, due to prolonged disease, the appellant is now bed ridden and needs enhanced maintenance in terms of Section 25(2) of the Act.

Prayer has been opposed by Mr. Gupta, learned counsel for the respondent. According to him, appellant had accepted the divorce proceedings before the foreign court as well as the terms of the compromise. In terms of the compromise, after a lapse of 20 years, she cannot invoke the provisions of Section 25(2) of the Act for enhancement of maintenance. He has also pointed out that the respondent is already paying an amount of ₹ 30,000/- per month as maintenance to his daughter.

We have heard rival contentions and given careful thought to the factual aspects as well as legal issues involved. We feel that the judgment in the case of **Smt. P. Archana @ Atchamamba's case (supra)** is not applicable to the facts of the instant case. There can be no dispute

with the proposition that Section 25(2) of the Act can be invoked in the changed circumstances. However, it cannot lose sight that in the instant case wife lodged an FIR against the husband and his family. When the accused sought quashing of the said FIR, a detailed compromise was entered into and was incorporated in the order itself. On the basis of the same, FIR was quashed. Even proceedings initiated by the wife at that time under the 1956 Act were withdrawn. Thus, the said judgment does not help the case of the appellant under any circumstances. Besides, during the course of hearing, we had put a query to learned counsel for the appellant about the applicability of foreign decree of divorce and consequences thereof. The question can easily be answered in light of law laid down by the Apex Court in **Y. Narasimha Rao and others v. Y. Venkata Lakshmi and another, 1991(3) SCC 451**. Para 20 thereof reads as under:-

“20. From the aforesaid discussion the following rule can be deduced for recognising foreign matrimonial judgment in this country. The jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of

the parties.”

It is evident that where a respondent submits to the jurisdiction and consents to the grant of relief, there is no scope for him/her to back out from the same. Even before this court, no such plea has been raised that the wife has not accepted the divorce granted way back in the year 1994 by Milton Keynes Court in United Kingdom. Even thereafter, all proceedings between the parties having attained finality in view of the order passed in CRM-M-18090-1995, we, thus, do not feel that the appellant is entitled to seek enhanced maintenance now in terms of Section 25(2) of the Act.

Dismissed.

(RAJAN GUPTA)
JUDGE

October 17, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No