

2nd August,
2021
(AK)
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C.O. 2521 of 2018
IA No: CAN 2 of 2021

Dipankar Das
Vs.
Smt. Bina Das

(Via video conference)

Mr. Sounak Bhattacharya
Mr. Sounak Mandal
...For the Petitioner.
Mr. Sovan Mukherjee
...For the Opposite Party.

Learned counsel for the petitioner-husband contends that the trial court acted patently without jurisdiction in granting alimony at the rate of Rs.7,000/- per month, despite looking into the evidence, which reveals that the husband is a hawker and earns around Rs.2,000/- every month. It also transpires from the evidence that the husband has his ailing parents to look after.

Learned counsel contends that in view of the income of Rs.2,000/- being unrebutted by the wife by any cogent evidence, the amount of alimony granted was exorbitant.

Learned counsel for the opposite party-wife, on the other hand, contends that the wife was granted a paltry amount of Rupees Nine Hundred per month under

Section 125 of the Criminal Procedure Code which is also not being regularly paid.

It is further contended that since the husband made a wild allegation regarding the opposite party/wife having income, the said fact is not relevant for assessing the appropriate quantum of alimony to be paid.

Since both the parties suppressed their income, particularly the husband, the court was compelled to resort to conjecture and surmise and, thus, used its judicial discretion in accordance with law. As such, it is contended that the impugned order ought to be sustained.

Learned counsel appearing for the petitioner-husband controverts the said submissions of the opposite party and denies the allegation that he has not been paying maintenance regularly under Section 125 of the Criminal Procedure Code.

Be that as it may, it is evident from the impugned order that the court below failed to take into account the effect of Section 106 of the Indian Evidence Act, which casts the burden and initial onus on the party having special knowledge of a fact to prove the same.

Since the opposite party/wife had special knowledge regarding her income, if any, the premise on which the trial court proceeded, being that the husband failed to prove the wife's income, is not tenable in the eye of law.

That apart, in the present case, the oral evidence of both the parties were before the court and it was specifically pleaded and proved by the husband that he is a hawker, which position has not been disbelieved by the court as such.

The income of the husband, as per his oral evidence, is Rs. 2,000/- per month. It is obvious that a person, who hawks goods on the streets, cannot be expected to produce a salary slip or an income tax return.

Moreover, the scope of Section 24 of the Hindu Marriage Act is subtly different from the considerations for grant of alimony under similar Sections of different other statutes, inasmuch as Section 24 of the Hindu Marriage Act grants liberty to either of the spouses to seek alimony. As such, the grounds envisaged in Section 24 are equally applicable to both spouses.

In the present case, the trial court resorted fully on conjecture and surmise by placing reliance on vague yardsticks such as “*scorching price level of the country*” and “*complex blend of factors*”, which are as vague as can be, by overlooking the evidence before it.

Hence, in view of the specific oral proof of the husband that he earns about Rs. 2,000/- per month, taking into balance the needs of the opposite party/wife in the current days of rising prices, Rs.2,000/- per month would be a fair quantum of alimony to be paid by the petitioner to the opposite party. The husband, in fact, has

already been paying such monthly sum pursuant to an interim order of this court.

Accordingly, C.O. 2521 of 2018 along with CAN 2 of 2021 are disposed of by modifying the impugned order to the effect that the petitioner-husband shall pay Rs.2,000/- per month to the petitioner as monthly alimony with effect from the date of the impugned order.

It is further clarified that the amount paid by the husband under Section 24 of the Hindu Marriage Act shall be adjusted with that granted under Section 125 of the Code of Criminal Procedure and the petitioner/husband shall pay the higher of the two amounts each month.

Such payments shall follow the mode as directed by the trial court in the impugned order, that is, within the tenth day of the current month when it falls due. The first of such payments shall commence from September, 2021.

All arrears, adjusting the amount already paid to the husband in terms of the interim order of this court and/or the order of the criminal court shall be paid by the petitioner/husband to the opposite party/wife within a fortnight from date.

It is expected that in view of the proceeding being a matrimonial suit, the trial court shall expedite the hearing of the suit as soon as its roster permits.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)