

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.4283 of 2024

(In the matter of application under Article 227 of the Constitution of India).

Bhupendra Singh Notey* ... *Petitioner

-versus-

Gagandeep Kaur* ... *Opposite Party

For Petitioner* : *Mr. S.Sharma, Advocate

For Opposite Party* : *Mr. A.Routray, Advocate

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING :30.01.2025

DATE OF JUDGMENT:04.03.2025

G. Satapathy, J.

1. This writ petition by the petitioner-husband is directed against the impugned order dated 20.01.2024 passed by learned Judge, Family Court, Rourkela in I.A. No.48-A of 2022 arising out of C.P. No.115 of 2018 directing the petitioner-husband to pay a sum of Rs.15,000/- per month to the OP-wife and her daughter as *pedentelite* maintenance w.e.f. 22.04.2017 and a sum of Rs.10,000/- towards litigation



expenses to them in an application U/S. 24 of the Hindu Marriage Act (In short "the Act").

2. In the course of hearing, Mr. Subham Sharma, learned counsel appearing for the petitioner-husband, however, has empathetically submitted that the OP-wife is guilty of protracting litigation for ulterior motive by filing different applications, but fact remains that the petitioner-husband has in the meanwhile resigned from his service for the trauma inflicted by the OP-wife and, thereby, he being income-less is unable to pay such a high amount of *pendentelite* maintenance to the OP-wife. Mr. Sharma has further submitted that there is no express provision in Section 24 of the Act to provide maintenance to the children, but the learned trial Court has taken into consideration the maintenance of the child and granted such an exorbitant amount to the OP-wife. It is also submitted by Mr. Sharma that the OP-wife has given prevaricating statements with regard to income of the petitioner-husband in different proceedings under DV Act & Hindu



Marriage Act and, therefore, the claim for *pendentelite* maintenance by the OP-wife having been allowed by the learned trial Court granting exorbitant amount, this Court in exercise of power under Articles 226 & 227 of the Constitution of India may kindly reduce the quantum of *pendentelite* maintenance to Rs.5,000/- by taking into consideration the unemployment of the petitioner-husband & income and qualification of the OP-wife.

3. On the contrary, Mr. Achyutananda Routray, learned counsel appearing for the OP-wife by taking this Court through the relevant portion of the counter affidavit has submitted that the petitioner-husband is not only a qualified person, but also an Electrical Engineer by profession with 32 years of experience in a reputed organization and he thereby may be directed to pay the *pendentelite* maintenance of Rs.50,000/- per month because the wife and daughter of the petitioner are also entitled to live commensurate to the standard of living of the petitioner. Further, Mr.



Routray by referring to the decision in ***Parvin Kumar Jain vs. Anju Jain; (2024) SCC Online SC 3678*** has submitted that not only the wife, but also the minor children are entitled to the *pendentelite* maintenance U/S.24 of the Act and even though the children have not been explicitly referred to therein in Section 24 of the Act, but the minor children being dependents to their parents for maintenance and Section 26 of the Act provides for the maintenance of children, it would not be advisable to read application U/S. 24 of the Act in isolation to these factors while granting *pendentlite* maintenance to the spouse and children. Mr. Routray accordingly has prayed to dismiss the writ petition.

4. After having considered the rival submissions upon going through the materials placed on record, since the relationship between the parties is not in dispute and they being in litigating terms, the application of the wife for *pendentelite* maintenance and litigation expenses in a proceeding of this nature has to be considered in the light of provision of Sec. 24



of the Act which provides for grant of *pendentelite* maintenance and litigation expenses to either of the spouses. It is an admitted fact that more particularly the minor children of the litigating spouses for grant of relief under the Act has not been explicitly referred to in Sec.24 of the Act, but such minor children can be considered implicitly within the sweep of Sec. 24 of the Act inasmuch as the litigating spouses claiming for *pendentelite* maintenance and litigation expenses being in-charge of the custody and maintenance of minor children who depend solely on him/her have not only the onerous responsibility to bring up such children by providing proper education, but also have they the duty to see their children in the main stream of the society. The objective behind Sec.24 of the Act is intended to provide support to the spouse having no independent income sufficient for his/her support and the necessary expenses of the proceeding, but the support for his/her requirement also implicitly includes the need of their children for bringing up and providing proper education



to stand in the society. Further, Sec.26 of the Act also provides the Court to pass such interim order for making provision for the maintenance and education of minor children consistently with their wishes and such order can also be passed in pending proceeding in terms of the proviso to Sec.26 of the Act.

5. In view of the aforesaid narration of facts and provisions of law together with the law laid down by the Apex Court in ***Parvin Kumar*** (supra), this Court rejects the argument/plea of the petitioner that Sec.24 of the Act does not mean to provide maintenance to the children while awarding *pendentelite* maintenance to the wife. In this case, the wife and husband being in litigating terms in a matrimonial proceeding and admittedly the daughter of the party being in custody of OP-wife, it is now further to be seen whether the order passed by the learned trial Court granting *pendentelite* maintenance and litigation expenses to the OP-wife is just and proper or liable to be interfered with.



6. It is undisputed that the present OP is the wife of the petitioner who has brought a proceeding in the year 2016 before the learned Family Court at Jabalpur U/S. 11 read with Section 12 of the Act for a decree of nullity of marriage and/or dissolution marriage U/S. 13(1)(i-a) of the Act which was registered in CS No. 928-A of 2016, but the OP-wife moved the said Court U/S. 24 of the Act for grant of *pendentelite* maintenance and litigation expenses to her and her son, however, the aforesaid proceeding was transferred to learned Judge, Family Court, Rourkela with the intervention of the Apex Court in transfer petition (Civil) No. 16 of 2018 and the wife in her disclosure affidavit of assets and liabilities has admitted to be working as a teacher in a private school and earning net Rs.23,334/- per month. On the contrary, the petitioner-husband has taken the plea that right now he is unemployed and jobless and does not have any source of income, but in his disclosure affidavit, he has stated that he is unemployed w.e.f. 01.03.2023



and had taken personal loan of Rs.3 lakhs from brother and Rs.1 lakh from sister, but at the same time, it is stated in the disclosure statement that his qualification is BE Power Electronics and his monthly expenses Rs.5,000/- per month and his father is a pensioner and he also pays Rs.26,000/- approximately towards medical insurance.

7. Be that as it may, it is the experience that spouses in a matrimonial proceeding does not disclose the true income and thereby, the Apex Court has to step in and come with the celebrated judgment in ***Rajnish Vrs. Neha and another; (2021) 2 SCC 324;*** wherein comprehensive guidelines have been issued to file disclosure affidavit, but even thereafter the spouses are taking one or other plea to avoid to disclose their real income. Remaining unemployed is one thing and sitting idle having qualification and prospect to earn is other thing and if a husband being well qualified sufficient enough to earn sits idle only to shift the burden on the wife and expects 'dole' by remaining



entangled in litigation should not only be deprecated, but also be discouraged inasmuch as law never helps indolent, so also idles and does not intend to create an army of self made lazy idles. A person who is well qualified and was also in job earlier, but remains idle by quitting the job without any logic only to shift or avoiding the responsibility of maintenance of the wife cannot be appreciated in a civilized society. Law will definitely come to the rescue of such person who after making sincere efforts has failed in their pursuit to earn to maintain himself or herself together with his/her family members. Many a time, the attitude of the spouses is most important and when such instinct of such spouse is only to fight and frustrate the efforts of others is quite deplorable. In other words, spouses having high qualification, but desirous to remain idle and not making any efforts for the purpose of finding out the source of livelihood should be discouraged. True it is that even if the husband claims to have no source of income, but his ability to earn given his education



and qualification is to be taken into account as held in paragraph-26 of the judgment of the Apex Court in ***Kiran Jyot Maini vrs. Anish Pramod Patel; (2024) SCC Online SC 1724***; wherein the Apex Court has held as under:-.

*"26. Furthermore, the financial capacity of the husband is a critical factor in determining permanent alimony. The Court shall examine the husband's actual income, reasonable expenses for his own maintenance, and any dependents he is legally obligated to support. His liabilities and financial commitments are also to be considered to ensure a balanced and fair maintenance award. The court must consider the husband's standard of living and the impact of inflation and high living costs. **Even if the husband claims to have no source of income, his ability to earn, given his education and qualifications, is to be taken into account.** The courts shall ensure that **the relief granted is fair, reasonable, and consistent with the standard of living to which the aggrieved party was accustomed.** The court's approach should be to balance all relevant factors to avoid maintenance amounts that are either excessively high or unduly low, ensuring that the dependent spouse can live with reasonable comfort post-separation."*

8. In order to have an equitable determination of financial support required to the wife



and dependent child, it can be said that maintenance should be determined after considering the status and life style of the parties, and their reasonable needs, educational qualification of the wife, so also her earning capacity as well as the financial standing and obligation of the husband shall be taken into consideration to address the rising cost of living and inflation to ensure a standard living that is proportionate to the husband's financial capacity and commensurate to the standard of his living and the standard of living of the wife and children were accustomed to prior to separation. However, there cannot be any straight jacket formula for fixing the amount, but the quantum of maintenance must be subjective to each case and his dependent on various circumstance and factors and such factors may be the income of both the parties; their conduct during subsistence of the marriage; their individual social and financial status; their personal expense; their individual capacities and duties to maintain their dependents; the quality of life enjoyed by the wife during the



subsistence of marriage and such other similar factors. At the same time, it is not only equitable, but also obligatory for a father to provide for his children, especially when he has means and capacity to earn, the quality of life in the standard of his own social standing. It is also useful to refer to the principle as culled out by Apex Court in ***Rajnesh (supra)***, wherein the Apex Court at paragraphs 91 & 92 has held as under:-

"91. The living expenses of the child would include **expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support.** Albeit, it should be a reasonable amount to be awarded for extracurricular/ coaching classes, and not an overly extravagant amount which may be claimed.

92. Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties."

9. On a consideration of the principles settled by the Apex Court and applying the factors of the present case pragmatically to the provision of Sec. 24



of the Act, it appears that the proceeding between the parties is pending since 2016, but although the husband claims to be unemployed and not having independent income, but has filed application seeking custody of the child by showing him to have served at renowned organization at senior post and sufficient means. The husband, however, has not disputed his qualification, but has taken a plea of "joblessness". At the cost of repetition, this Court with annoyance needs it to emphasize that spouses having high qualification taking plea of unemployment with no income without any sincere efforts needs to be condemned. In the backdrop of standard of living and the social standing of the husband together with his qualification and past employment in reputed organization and balancing the same with his own requirement vis-à-vis the requirement of OP-wife and the daughter of the party on the admitted income of the OP-wife, this Court considers that the learned trial Court has not committed any illegality in awarding Rs.15,000/- per



month to be paid by the petitioner-husband to OP-wife for the maintenance of OP-wife and the daughter which by any standard cannot be considered to be unreasonable. Further, the grant of Rs.10,000/- as litigation expenses to the OP-wife cannot be termed as arbitrary or excessive. In view of the aforesaid discussions and conspectus of facts, this Court considers that the writ petition by the petitioner-husband merits no consideration.

10. In the result, the writ petition stands dismissed on contest, but in the circumstance, there is no order as to cost.

(G. Satapathy)
Judge

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Orissa High Court, Cuttack,
Dated the 19th day of March, 2025/Kishore