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Court of Sessions. It shall proceed with the trial at the earliest opportunity.

Since the eye-witnesses have not supported the case and Bahal Singh had been on bail throughout after his discharge, I do not consider it necessary to commit him to jail at this stage. Apart from the fact that he has been committed for trial on a capital offence, there is nothing to justify the cancellation of his bail. I accordingly dismiss Criminal Miscellaneous No. 1187 of 1963. If, however, an attempt is made to interfere with prosecution witnesses or to prolong the case, it shall be open to the learned Sessions Judge to consider the question of cancellation of Bahal Singh's bail.

K.S.K.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

SURJIT KAUR,—*Appellant.*

versus

PARAGAT SINGH,—*Respondent.*

First Appeal From Order 88/M of 1962.

1964

Jan, 3rd.

Hindu Marriage Act (XXV of 1955)—S. 25—Wife whose marriage with her guilty spouse dissolved and remaining unmarried—Whether entitled to grant of permanent alimony as a matter of right.

Held, that a plain construction of the three sub-sections of section 25 of the Hindu Marriage Act, 1955, leads to the conclusion that the court is bound in the first instance to make an order for permanent alimony to a wife who has been granted a divorce against her guilty spouse, so long as she remains unmarried. The right to this alimony under sub-section (1) seems absolute as it is stated that the court

has to make an order that the husband "shall" pay to the applicant wife such sum as is relatable to the circumstances mentioned therein. All that is essential under this sub-section is that the applicant should remain unmarried when the prayer for permanent alimony is made. The only circumstance which a Court can consider in fixing a figure for alimony is the financial circumstances of the parties concerned. The conduct of the parties in any event is to be taken into consideration in fixing the quantum of maintenance and certainly cannot be set up to support a denial of the claim for permanent alimony altogether. If there is any change of circumstances in either party, this is a matter for modification, variation or rescission of the order made under sub-section (1) which it is imperative for the court in the first instance to make. If the Court finds that the wife has become unchaste after the grant of permanent alimony, the order of such grant may be rescinded altogether under sub-section (1).

First appeal from the order of Shri Om Parkash Saini, Sub-Judge 1st Class, Ludhiana, dated the 19th April, 1962 dismissing the petition.

K. S. THAPAR, ADVOCATE, for the Appellant.

S. L. GUPTA, ADVOCATE, *for the Respondent.*

JUDGMENT

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—The question arising for determination in this appeal whether a wife whose marriage having been dissolved with her guilty spouse and not having remarried is entitled as a matter of right to the grant of permanent alimony irrespective of other considerations, is one both of interest and importance.

The appellant-wife had been married to the respondent Pargat Singh and they resided together for about twenty years. Though a number of children were born of this marriage, none is surviving. The appellant, on the allegation that her husband had contracted a second marriage with her own sister, made

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an application for dissolution of marriage under section 13 of the Hindu Marriage Act and a decree for divorce was passed in her favour and against the respondent husband on 4th of December, 1959. The appellant moved the present application for the grant of permanent alimony of Rs. 2,500 per annum against her husband on 27th of April, 1961. This petition has been dismissed on the ground that the wife having chosen to live in adultery with Desa Singh, a brother of the respondent-husband, has forfeited her claim for alimony. The wife feeling aggrieved has come in appeal to this Court.

Mr. Thapar, the learned counsel for the appellant-wife, has convassed the proposition that the right of a wife to obtain permanent alimony is absolute so long as she does not contract a remarriage and especially when she is not the guilty spouse. If that were not so, a wife, who on her own motion has been granted divorce against her delinquent husband, might be forced to resort to a life of immorality or of unchastity to ensure her livelihood. Her conduct has to be taken into consideration after the divorce has been granted only to vary, modify or cancel the grant of permanent alimony to which she is absolutely entitled on her application or even as an ancillary relief after the grant of the decree for dissolution of marriage.

The language of sub-section (1) of section 25 of the Hindu Marriage Act seems to support the contention raised on behalf of the appellant. Under this provision:—

"Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequently thereto, an application made to it for the purpose by

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> either the wife or the husband, as the case may be, order that the respondent *shall, while the applicant remains unmarried,* 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 and the conduct of the parties, 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".

Sub-section (2) makes a provision for variation, modification or rescission of the order made under sub-section (1) when 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). The conditions which have weighed with the learned Judge justify a Court only under sub-section (3) of section 25 to rescind the order which has been passed under sub-section (1). In the words of sub-section (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 shall rescind the order."

On a plain construction of the three sub-sections of section 25, it has been contended by Mr. Thapar that the Court is bound in the first instance to make an order for permanent alimony to a wife who has

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been granted a divorce against her guilty spouse, so long as she remains unmarried. The right to this alimony under sub-section (1) seems absolute as it is stated that the court has to make an order that the husband "shall" pay to the applicant wife such sum as it relatable to the circumstances mentioned therein. All that is essential under this sub-section is that the applicant should remain unmarried when the prayyer for permanent alimony is made. It is not suggested that in the present case the wife has remarried and the only circumstance which a Court can consider in fixing a figure for alimony is the financial circumstances of the parties concerned. Reference is no doubt made in fixing the quantum of maintenance to the conduct of the parties but it is contended on behalf of the wife that it was the conduct of the husband in this case which had been blame-worthy and as a result of it the decree for dissolution of marriage was granted. The conduct of the parties in any event is to be taken into consideration in fixing the quantum of maintenance and certainly cannot be set up to support a denial of the claim for permanent alimony altogether. If there is any change of circumstances in either party, this is a matter for modification, variation or rescission of the order made under sub-section (1) which it is imperative for the court in the first instance to make. If the Court finds that the wife has become unchaste after the grant of permanent alimony the order of such grant may be rescinded altogether under sub-section (1).

Though the wife moved her application for the grant of permanent alimony a little more than a year after the passage of the decree for dissolution of marriage the delay is not a ground to put her out of Court altogether. The Court, in my opinion, has been governed by considerations which are not relevant in rejecting the application of the wife under the provisions of sub-section (1) of section 25, The Court

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was called upon only to fix the amount of maintenance once it had found that the wife who had been an innocent party during the divorce proceedings and had remained unmarried at the time when the alimony was asked for. In this view of the matter, it is not legitimate to take into account, as has been done by the learned Subordinate Judge, that the appellant had been living with Desa Singh in village Kiri Afghana. According to Mr. Thapar, the respondent husband who is a landlord, got this fictitious entry made to evade his responsibility for payment of permanent alimony. The entry on which reliance has been placed shows that the appellant and Desa Singh were shown as husband and wife in the Voters List. It has not been found by the Judge that this is a conclusive circumstance to support the remarriage of the appellant with Desa Singh. Indeed, this is not the plea which had been raised to negative the claim of the wife. The relevant issue was put in this form:—

> "Whether the petitioner is living the life of unchastity, and as such, is not entitled to claim any maintenance?"

It was never pleaded that the wife had remarried and on that ground had disentitled herself for the grant of permanent alimony.

Reliance has been placed on behalf of the respondent on a Division Bench authority of the Calcutta High Court of Guha and Banerjee JJ., in *Sachindra Nath Biswas* v. *Shrimati Banamala Biswas and another* (1), where it was held that:—

> "In the exercise of judicial discretion expressly vested in Courts of law under section 25(1) of the Hindu Marriage Act, a Judge

(1) A.I.R. 1960 Cal. 575

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should, unless there be very special grounds, leave a wife, divorced on the ground of proved unchastity or adultery, to the resources of her immorality and deny her the lawful means of support, by passing a decree for maintenance in her favour".

Manifestly, the *ratio decidendi* of this authority is not applicable to the facts of the present case. In the *Biswas's case* (1) mentioned above, the Court was faced with a situation where a wife who had been divorced on ground of her own unchastity and adultery had asked for permanent alimony under sub-section (1) of section 25. As has been repeated so often, the wife in the instant case, herself moved for dissolution of marriage on ground of her husband's adultery and was thus an innocent party in divorce proceedings.

The law of England pertaining to permanent alimony is contained in Part II of Volume 12 of the Halsbury's Laws of England (Lord Simonds edition) relating to divorce. It is said at page 428 that the wife may obtain an order for permanent alimony even if the decree has been made against her. Permanent maintenance is the provision which the Court directs the husband or, in certain circumstances, the wife to make after a decree of divorce or nullity of marriage (page 430). It is interesting to observe that a divorced wife who remarries may nevertheless apply for maintenance against her former husband, though the remarriage and the possible increase in her fortune consequent on it is a factor to be considered when considering the amount." (See paragraph 970 at page 431). It seems that an order for the grant of permanent alimony must be made and it can only be varied, discharged or temporarily suspended subsequently (page 433).

I am, therefore, of the view that the contentions raised by the learned counsel for the appellant are well founded and this appeal must accordingly be allowed. The proceedings are remanded to the trial Court for determination of the quantum of permanent alimony under sub-section (1) of section 25. The parties have been directed to appear before the trial Court on 20th January, 1964.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

ASA NAND,—*Appellant.*

versus

MADHO SINGH AND ANOTHER,—*Respondents*

Second Appeal from order No. 35 of 1963

1964

Jan. 3rd.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 51—Holding of a landlord acquired by allotment from the Custodian of Evacuee Property—Whether exempt from the provisions of the Act.

Held, that section 51 of the Pepsu Tenancy and Agricultural Lands Act, 1955 excludes only those lands from the applicability of the Act which are either owned or vested in the State or the Central Government. In fact clause (h) of sub-section (1) of section 51 mentions specifically that the exception is made only in respect of land vested in the Central Government and not transferred to an allottee either on permanent or quasi-permanent basis. The suit land has admittedly been allotted to the plaintiff and this indeed is the foundation of his claim. Such land according to the statute itself does not vest