

THE HONBLE SRI JUSTICE RAMESH RANGANATHAN AND THE HONBLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.M.A.No. 1056 OF 2006

01-06-2015

K. Narasinga Rao.Petitioner

K. Neeraja @ Rajini . Respondent

Counsel for the petitioner: Sri J. Prabhakar

Counsel for respondent: Sri P.S. Rajasekhar

<GIST:

>HEAD NOTE:

? Citations:

- 1) AIR 2011 SC 2748 = (2011) 13 SCC 112
- 2) 1994 (3) ALT 332 (D.B.)
- 3) (1991) 4 SCC 312
- 4) (2005) 3 SCC 313
- 5) (2009) 1 SCC 398
- 6) (2005) 2 SCC 22
- 7) AIR 2012 SC 2586
- 8) (2013) 2 SCC 114
- 9) AIR 1978 AP 6 = 1977 (2) APLJ 103 (NRC)
- 10) AIR 2013 SC 2176
- 11) AIR 2005 SC 3297
- 12) AIR 1940 Madras 929
- 13) (1996) 4 SCC 479
- 14) AIR 1971 P & H 141

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN  
AND  
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.M.A.No. 1056 OF 2006

AND

C.M.A.M.P.No. 200 OF 2014

IN

C.M.A.No. 1056 OF 2006

COMMON ORDER: (per Honble Sri Justice Ramesh Ranganathan)

C.M.A. No.1056 of 2006 is filed by the appellant husband against the order passed by the Principal Senior Civil Judge, Warangal, in O.P. No.64 of 2004 dated 17.08.2006, dismissing his petition seeking dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955. The petition, in C.M.A. M.P. No.200 of 2014 in C.M.A. No.1056 of 2006, is filed by the petitioner-wife against the respondent-husband under Section 25 of the Hindu Marriage Act, 1955 (for short, 'the Act') for grant of Rs.25,00,000/- towards her permanent alimony and Rs.20,00,000/- to Kumari K. Navya, (the daughter of the petitioner and the respondent), towards her maintenance, education and marriage expenses.

The marriage between the petitioner and the respondent was performed as per Hindu rites on 22-02-1996 and they were blessed with a female child by name Kumari K. Navya who is now studying Engineering. However, for various reasons which do not necessitate elaboration, their marital ties broke down, and the respondent filed O.P.No. 64 of 2004 on the file of the Court of the Principal Senior Civil Judge, Warangal (for short, 'the trial Court'), to dissolve their marriage under Section 13 (1) (ia) of the Act on the ground of cruelty. The said petition was dismissed by the trial Court declining grant of divorce on the ground of cruelty. Aggrieved by the order passed by the trial Court dated 17-08-2006, the respondent preferred C.M.A.No. 1056 of 2006 before this Court.

During the pendency of the appeal, the petitioner filed an affidavit before this Court stating that she had no objection for grant of divorce as there was no possibility of their now living together after a long lapse of 17 years. She requested that she be granted permanent alimony creating adequate security for payment of the said amount. Sri J. Prabhakar, Learned Counsel for the petitioner, would submit that, in view of the long and excruciating legal battle between the petitioner and the respondent for the past more than 17 years, there is no possibility of their now living together. Since the petitioner has conveyed her no objection for the grant of a decree of divorce dissolving their marriage without admitting the acts of cruelty attributed to her, and as there is no possibility of their living together after a long separation of 17 years and a bitter legal battle for the past more than a decade, a decree of divorce is granted, and the marriage between the respondent and the petitioner is dissolved. C.M.A. No.1056 of 2006 is disposed of accordingly.

It is the petitioner's case, in C.M.A.M.P. No.200 of 2014 in C.M.A. No.1056 of 2006, that the respondent did not provide them with even the minimum sum required to meet their bare necessities; she is being paid Rs.3,500/- p.m. towards maintenance, that too only because of the orders passed in the maintenance case filed by her under Section 125 of the Code of Criminal Procedure (for short, 'Cr.P.C. '); the respondent has met the expenses for their daughter Kumari K. Navya only when a specific direction was issued by the Court; the respondent is a Commercial Tax Officer, drawing a monthly salary of Rs.60,000/- p.m; he acquired valuable movable and immovable properties including a house at Vanastalipuram; he also owns and possesses a 500 square yards site at Desaipet Village, Warangal District; he has been in service for the last 20 years and, with the income from his employment and on availing a loan from his General Provident Fund account, he acquired huge properties; not only does the respondent possess movable and immovable properties, he is also earning a substantial monthly salary as a Commercial Tax Officer; and he possesses sufficient means to maintain the petitioner and their daughter.

It is also the petitioner's case that she is not employed, she has no source of income even for bare sustenance; earlier she relied on her brother for her survival, but he died in the year 2007; thereafter some of her relatives have been extending a helping hand; her living condition is pathetic and the monthly maintenance of Rs.3,500/-, being paid by the respondent, is not even enough to pay for her rent; she did not seek enhancement of the monthly maintenance with the fond hope that her marital ties would be restored; and the respondent did not meet even the education expenses of their daughter till she completed her 10th class. The petitioner claims Rs.25,00,000/- towards permanent alimony for herself; and Rs.20,00,000/- for their daughter towards her education and marriage expenses without

prejudice to her rights; and prays that an order be passed granting her permanent alimony, and a fixed sum for the education and marriage expenses of their daughter.

The respondent filed his counter thereto, denying the petitioners allegations. It is his case that the amount claimed by the petitioner, towards permanent alimony of Rs.25,00,000/-, is highly excessive; she is not entitled to claim the said amount in the facts and circumstances of the present case; the amount claimed by her of Rs.20,00,000/-, towards the education and marriage expenses of their daughter, is not permissible under Section 25 of the Act; no amount need be paid by the respondent either to the petitioner or their daughter under Section 25 of the Act; he is not receiving Rs.60,000/- as monthly salary; his gross salary is only Rs.47,076/-; and he has not acquired any property, much less a house and a plot at Vanastalipuram and Desaipet village.

According to the respondent the conduct of the petitioner is not beyond reproach; due to her hostile and highly inimical attitude towards him, they have been living separately for the last 18 years; the reason for their living apart is solely on account of the petitioners behaviour; the petitioner is, therefore, disentitled from claiming permanent alimony under Section 25 of the Act; the petitioner addressed letters dated 15-07-1996 and 16-07-1996 levelling false and baseless allegations against him; she also threatened to commit suicide; she did not even attend the meetings held by the family members on 11-08-1996 and 02-02-1997; he and his family members were falsely implicated in a criminal case for the offence punishable under Section 498-A of the Indian Penal Code (for short, 'I.P.C. '); he was forced to obtain anticipatory bail and was, thereafter, forced to run around the police station; she made unfounded allegations that he had married a woman naxalite, and had tried to kill her which were later found to be false; she addressed letters to the Anti Corruption Bureau to take action against him; she also addressed letters to the Andhra Pradesh Public Service Commission questioning his selection as an Assistant Commercial Tax Officer; and her abominable conduct disentitles her being granted permanent alimony under Section 25 of the Act.

The respondent would further submit that the petitioner had filed maintenance case claiming maintenance for herself and their daughter; the matter came up before this Court in Criminal Revision Case No. 2138 of 2009, and was dismissed by order dated 07-11-2013; while matters stood thus, this Court had directed him to pay Rs.24,000/- towards the education expenses of his daughter for the year 2012-2013 and Rs.64,000/- for the year 2013-2014; he is paying the same as directed by this Court; and, while his gross salary is Rs.47,076/- p.m, his net salary is only Rs.19,166/- p.m as he is contributing Rs.10,000/- p.m. towards his Government Provident Fund account, Rs.12,500/- p.m. is being deducted towards the loan taken by him from the G.P.F. account, Rs.3,000/- p.m. is being deducted towards A.P.G.L.I, and Rs.1,400/- is being deducted, in addition to the regular contribution, towards discharge of the A.P.G.L.I. loan.

The respondent would also submit that, in order to meet the education expenses of his daughter as directed by this Court, for the medical expenses of his aged mother, and to pay the legal expenses, including fees to advocates in various Courts for the last 17 years, (after changing at least 5 advocates), he has incurred huge debts having borrowed money from private money lenders; he has only 5 years service left; his earnings, during his remaining service, may be only around Rs.8,00,000/- to Rs.9,00,000/-, subject to enhancement of expenditure; and, in such circumstances, the petitioner is not entitled to claim a huge sum of Rs.25,00,000/- towards permanent alimony, and Rs.20,00,000/- towards the education and marriage expenses of their daughter.

According to respondent, the petitioner is carrying on tailoring activity, but it is difficult for him to produce any evidence in proof thereof; on the other hand, he has become a pauper and is almost a bankrupt owing to the long years of litigation; he has been paying maintenance for the last 17 years as directed by the Court; for the first time, the petitioner filed C.M.A.M.P. No. 357 of 2012 and C.M.A.M.P. No. 651 of 2013, and both the applications were ordered directing him to pay Rs.24,000/- and 64,000/- respectively towards the education expenses of their daughter for the academic years

2012-13 and 2013-14; the evidence on record, both in the maintenance case and in the original petition, would establish her conduct for the past 17 years; while considering the question of grant of permanent alimony, this Court should take note of the status, income and conduct of the parties to the petition; and if the conduct of the petitioner is taken into consideration, applying the principles laid down in Vinny Parmvir Parmar v. Parmvir Parmar, she would be disentitled to claim any amount as permanent alimony. The respondent has also referred to certain admissions in the maintenance case, and other proceedings, to contend that the petitioners conduct is abominable and, therefore, she is disentitled for the grant of permanent alimony. He has placed before this Court a copy of his salary certificate dated 28-01-2014, and the annual property statement for the year 2010-2011 submitted by him to the department, and has prayed that the petition be dismissed.

Sri J. Prabhakar, Learned Counsel for the petitioner, would submit that the petitioner is penniless, and the amount being paid by the respondent towards her monthly maintenance, in terms of the orders passed in the maintenance case, is insufficient even to pay for her monthly rent; even if any amount is awarded towards permanent alimony, after taking into consideration all the relevant circumstances under Section 25 of the Act, it would be difficult for her to realize the amount awarded by this Court from the respondent; the respondents conduct, in avoiding payment, is evident even from the proceedings sheet of the appeal; it is clear therefrom that he has been reluctant even to pay for their daughter's education expenses; in case the amount is not appropriately secured, it would be difficult for the petitioner to even survive; and, therefore, this Court should create a charge or security over the G.P.F. amount and other retiral benefits payable to the respondent on his attaining the age superannuation or on his retirement. Learned Counsel would rely on State Bank of India v. S.B. Shah Ali (Died) for L.Rs ; Thota Sesharathamma v. Thota Manikyamma ; B.P. Achala Anand v. S. Appi Reddy ; and Rajesh Burman v. Mitul Chatterjee .

Sri B. Sree Rama Krishna, Learned counsel for the respondent, has filed his written submissions wherein he reiterated the contentions urged in the counter. He has drawn our attention to certain admissions made by the petitioner in different proceeding, and the letters addressed by her to the respondent, in support of his submission that her abominable conduct disentitles her being granted any permanent alimony, much less for Rs.25,00,000/-. Learned Counsel would submit that the conduct of the petitioner, throughout the past 17 years, and the various acts attributed to her and admitted by her in her evidence, are sufficient to deny her permanent alimony; though he is getting a meagre income of Rs.19,166/- as his net monthly salary, and he does not possess any immoveable property, he has been paying the petitioner maintenance, in the maintenance case, of Rs.3,500/- p.m besides bearing the education expenses of their daughter Navya; no charge can be created against his G.P.F. account and other retiral benefits as Section 100 of the Transfer of Property Act, 1882 (for brevity, 'the 1882 Act), permits creation of a charge only against immovable property; no charge can, therefore, be created against the respondents retiral benefits; and the petitioner is not entitled to claim Rs.20,00,000/- towards the education and marriage expenses of their daughter under Section 25 of the Act. He would place reliance on A. Jayachandra v. Aneel Kumar, to contend that the petition is liable to be dismissed.

In so far as the petitioners claim of Rs.20,00,000/-, towards the education and marriage expenses of their daughter is concerned, Sri B. Sree Rama Krishna, Learned Counsel for the respondent, while asserting in para No. 5 of his written arguments that the respondent is ready and willing to look after his daughter, and meet all her reasonable expenses towards her maintenance, education and marriage, would, however, contend that, in a petition filed under Section 25 of the Act, no amount can be granted towards the education and marriage expenses of children who have attained majority. Section 25 of the Act enables the Court to award permanent alimony only to the spouse, and not to the child/children. However, under Section 26 of the Act, the Court may pass an order for the maintenance and education of minor children by way of a decree, or by way of an interim order in case the proceedings, for obtaining such a decree, are still pending. The power conferred on the Court, under Section 26 of the

Act, can be exercised only to grant maintenance, and to provide for the educational expenses of a minor child. In the present case Kumari K. Navya, the daughter of the petitioner and the respondent, is undergoing her first year degree in Engineering, and does not appear to have completed 18 years of age as on date. Though the petition is filed under Section 25 of the Act, this Court has the power, under Section 26 of the Act, to direct the respondent to pay for her maintenance and education expenses till she attains majority. We consider it appropriate, therefore, to direct the respondent to meet the entire education expenses of Kumari K. Navya, and pay her Rs.7,500/- per month towards her maintenance till she attains majority. We make it clear that this order does not preclude Kumari K. Navya, the daughter of the petitioner and the respondent, from claiming maintenance, education and marriage expenses under the Hindu Adoption and Maintenance Act, 1956 (hereinafter called the 1956 Act) by instituting appropriate legal proceedings.

With regards her claim of permanent alimony of Rs.25,00,000/-, it is the petitioners case that she has no means to survive, let alone lead a life on par with the respondent who is working as a Commercial Tax Officer; the amount of Rs.3,500/- per month, being paid by him towards her maintenance, is insufficient even to meet the rent for her residence; she is penniless, and is unable to make both ends meet; and the respondent receives a huge salary as a C.T.O, besides possessing both movable and immovable properties. Her apprehension is that, in case the respondent retires from service, it would well nigh be impossible for her to realize the amount, if any, awarded towards permanent alimony and for the maintenance of their daughter. The petitioner requests this Court to create a charge over the G.P.F. and other retiral benefits of the respondent, which Sri B. Sree Rama Krishna, Learned Counsel for the respondent, would contend is impermissible as there is no provision in the Act for a charge to be created over the respondents retiral benefits.

Section 25 of the Act provides that any Court, exercising jurisdiction under the Act, may, at the time of passing any decree or at any time subsequent thereto, on an 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.

Section 25 of the Act enables the Court to direct the respondent to pay the applicant a gross sum for her maintenance and support. The term maintenance is defined, in Blacks Law Dictionary (6th Edn., pp. 953-54), as the furnishing by one person to another, for his or her support, of the means of living, or food, clothing, shelter, etc. particularly where the legal relation of the parties is such that one is bound to support the other, as between father and child, or husband and wife. Likewise the word support, as defined in the said dictionary (p. 1439), is that which furnishes a livelihood; a source or means of living; subsistence, sustenance, maintenance, or living. In a broad sense the term includes all such means of living as would enable one to live in the degree of comfort suitable and becoming to his/her station of life. It is said to include anything requisite to housing, feeding, clothing, health, proper recreation, vacation, travelling expense, or other proper cognate purposes; also, proper care, nursing, and medical attendance in sickness, and suitable burial at death. (Rajesh Burman5).

Section 25 of the Act confers a right on the spouse to claim maintenance or permanent alimony. The Section is incorporated to secure the interests of the alienated spouse, provide for her maintenance and to ensure that she continues to lead a life which, in the view of the Court, is just and proper. Permanent alimony is to be granted taking into consideration the social status, the conduct of the parties, the way of living of the spouse, and such other ancillary aspects. (Viswanath Agrawal v. Sarla Vishwanath Agrawal ). While granting permanent alimony, the Court is required to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort

considering her status and the mode of life she was used to when she lived with her husband. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. (U. Sree v. U. Srinivas ; Vinny Parmvir Parmar1).

Before deciding whether the petitioner is entitled for grant of permanent alimony and, if so, the amount payable to her in this regard, it is necessary for us to examine the contentions, urged on behalf of the respondent, that the petitioner is disentitled for grant of permanent alimony because of her abominable conduct such as her addressing letters threatening to commit suicide; giving false complaints against the respondent and his family members for the offence punishable under Section 498-A I.P.C; making them run around Courts and police stations; lodging a complaint with the Anti-Corruption Bureau for action being taken against him for his corrupt practices; addressing letters to the Andhra Pradesh Public Service Commission questioning his selection as an Assistant Commercial Tax Officer; and making unethical allegations of his having married a woman naxalite with whom he was alleged to have developed an illicit relationship while working as a Village Revenue Officer.

The conduct of the parties to the petition is one of the factors to be taken into consideration by the Court in determining whether or not permanent alimony should be granted. In N. Varalalakshmi Vs. N.V. Hanumantha Rao , a Division Bench of this Court held that, even after a decree of divorce, permanent alimony can be granted to the spouse who has applied for it unless the conduct of the spouse is abominable; and that mere desertion of the spouse would not amount to abominable conduct. It is only if the conduct of the petitioner is abominable, would this Court be required to consider whether, and to what extent, such conduct would have an effect on the grant of permanent alimony. The word abominable means odious, offensive. The conduct of both the parties before, during the pendency of proceedings, and after filing the present petition is relevant. The material on record does show that the petitioner has made serious allegations against her husband. She filed a criminal case against him for the offence punishable under Section 498-A I.P.C. She also threatened to commit suicide. While her conduct is not beyond reproach, is it such as to disentitle her from being granted permanent alimony?

Sri B. Sree Rama Krishna, Learned counsel for the respondent, has, in his written submissions, referred to the variance in depositions in O.P.No. 64 of 2004 and M.C.No. 8 of 2003. According to him, the petitioner specifically pleaded in O.P.No. 64 of 2004 that she was not educated, and had no source of income, but she deposed in the maintenance case that she studied till intermediate; the complaint dated 12-11-2002 made to Commissioner, Commercial Taxes, was in her handwriting in English, and she used to sign in English only. Her acquaintance with English, and her inconsistent statements of her knowledge of English, is wholly irrelevant to the question whether her conduct is so abominable as to disentitle her being granted permanent alimony.

Sri B. Sree Rama Krishna, Learned counsel for the respondent, has also drawn our attention to the examination in chief recorded in C.C.No. 217 of 2004 dated 03-08-2005; the finding of the appellate Court in Criminal Appeal No. 129 of 2009; and to the petitioners allegations regarding his second marriage with a woman naxalite etc., to submit that the petitioner had failed to establish the second marriage and other allegations made in the criminal complaint. Failure to prove the second marriage in criminal proceedings, where the standard of proof is far higher in degree, cannot form the basis for denial of alimony in matrimonial proceedings.

Sri B. Sree Rama Krishna, Learned Counsel for the respondent, has also relied upon several complaints filed by the petitioner before the respondents superiors making false allegations against him. These documents were not marked either before this court, or before the trial court, as additional evidence. As such this Court would not be justified in examining the allegations in these documents to decide whether or not the conduct of the petitioner is so abominable as to justify denial of permanent alimony. If these letters and complaints etc., are eschewed, the other sketchy material on record cannot form the basis for denying the petitioner her claim for maintenance. However, in O.P.No. 64 of

2004, the respondent produced certain letters to show that the petitioner had threatened to commit suicide. Such letters could well have been written in a fit of rage, or as an emotional outburst consequent upon the unexpected break down of marital ties. Factors which are relevant for grant of divorce on the ground of cruelty, may not justify denial of permanent alimony to the divorced wife. While the threat to commit suicide may well be a ground for grant of divorce, it cannot be held to be an abominable conduct disentitling the petitioner from claiming permanent alimony. It is difficult for us, therefore, to hold that the conduct of the petitioner is so abominable as to disentitle her from claiming permanent alimony.

In *U. Sree*<sup>8</sup>, the Supreme Court, despite several allegations being made against the wife regarding her abominable conduct like picking up quarrels and subjecting the respondent to cruelty etc, awarded permanent alimony of Rs.50,00,000/-, and directed the respondent-husband to deposit the said amount before the Family Court within a period of 4 months. In *Vishwanath*<sup>7</sup>, the Supreme Court, placing reliance on several of its earlier judgments, awarded permanent alimony of Rs.50,00,000/- to the wife despite granting a decree of divorce, on the ground of cruelty, in a petition filed by the husband attributing several acts of cruelty to her. Similarly, in *K. Srinivasa Rao v. D.A. Deepa*, the wife filed a complaint against the husband under Section 498-A of I.P.C., which ended in his acquittal. She had also complained to the department that action be taken against him. Such acts were accepted by the Supreme Court as acts of cruelty. Yet the Supreme Court awarded permanent alimony of Rs.15,00,000/- to the wife holding :-

"..While we are of the opinion that decree of divorce must be granted, we are alive to the plight of the Respondent-wife. The appellant-husband is working as an Assistant Registrar in the Andhra Pradesh High Court. He is getting a good salary. The Respondent-wife fought the litigation for more than 10 years. She appears to be entirely dependent on her parents and on her brother, therefore, her future must be secured by directing the Appellant-husband should be directed to pay a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to the Respondent-wife as and by way of permanent alimony. In the result, the impugned judgment is quashed and set aside. The marriage between the Appellant-husband-K.Srinivas Rao and the Respondent-wife-D.A.Deepa is dissolved by a decree of divorce. The Appellant-husband shall pay to the Respondent-wife permanent alimony in the sum of Rs.15,00,000/-, in three instalments. The first installment of Rs.5,00,000/- (Rupees Five Lakhs only) should be paid on 15/03/2013 and the remaining amount of Rs.10,00,000/- (Rupees Ten Lakhs only) should be paid in installments of Rs.5,00,000/- each after a gap of two months i.e. on 15/05/2013 and 15/07/2013 respectively. Each installment of Rs.5,00,000/- be paid by a demand draft drawn in favour of the Respondent-wife-D.A.Deepa"

The law declared in the aforesaid judgments of the Supreme Court is that, while filing of false criminal cases by the wife may be a ground to grant the husband divorce, it is not a ground to deny her permanent alimony. The facts in *K.Srinivasa Rao*<sup>10</sup> are almost identical to the facts of the present case, and the principles laid down therein would squarely apply to the facts of the present case for grant of permanent alimony. In *Durga Prasanna Tripathy v. Arundhati Tripathy*, the Supreme Court, despite holding that the respondent-wife had subjected the petitioner-husband to cruelty, she had deserted him without reasonable cause, the appellant husband was facing criminal prosecution and was out of job, the respondent wife was employed, and the Family Court had directed the appellant husband to pay the respondent-wife Rs.50,000/- as permanent alimony, granted her additional maintenance of Rs.1,00,000/- as permanent alimony taking into account her plight, and considering several other circumstances.

From the material on record, it is evident that the marriage between the respondent and the petitioner has irretrievably broken down, and there is no possibility of their living together. The respondent is, admittedly, working as a Commercial Tax Officer, while the petitioner is only a housewife

whose only source of livelihood is the maintenance granted to her, in the maintenance case, of Rs.3,500/- per month. Though he claims that the petitioner is doing tailoring work, the respondent has himself admitted, in his counter, that he is not able to produce any evidence to prove that she derives any income from tailoring. There is no evidence on record to establish that the petitioner is having any independent source of income for her survival, much less to lead a life of comfort on par with the respondent who is working as a C.T.O.

The respondent produced his salary certificate for the month of December, 2013, dated 28-01-2014, according to which he receives a gross salary of Rs.47,076/- per month. The respondent has, however, not filed any of his recent salary certificates to show his present gross and net salary. The respondent claims to have contributed, and to continue to contribute, a huge amount towards G.P.F. and A.P.G.L.I.; to have obtained a loan from G.P.F. and A.P.G.L.I. to meet his legal and other incidental expenses incurred by him in his long legal battle with the petitioner for the past 17 years. He claims that his having to repay the loans has resulted in his getting a meager monthly salary which is insufficient to meet his necessities, and he does not possess any property - either movable or immovable. He places reliance on the property statement submitted by him to the Government for the years 2011-2012 and 2012-2013. Sri J. Prabhakar, Learned Counsel for the petitioner, would submit that the respondents obligation to repay the GPF loan would come to an end by December, 2015 and, thereafter, there would be no deductions from his salary towards repayment of the GPF loan. If that be so, the respondent would be getting a far higher sum as his net salary.

No details have been furnished by the respondent of the reasons mentioned in the application submitted by him seeking GPF and APGLI loans, or regarding the manner of its utilization. His self serving assertion that he had to take the loans to meet his legal expenses is not supported by any documentary evidence of the amounts paid by him as legal fees, and to whom and when. In the absence of any evidence being produced in this regard, we see no reason to accept his submission of being deep in debt only because of his legal battle with the petitioner. That this self-serving statement of penury has been made, only to deny the petitioners claim for permanent alimony, cannot be ruled out. If the submission of Sri B. Sree Rama Krishna, Learned Counsel for the respondent, in his written submissions, that the respondent has become bankrupt because of heavy indebtedness on account of the litigation, is accepted, it would amount to misconduct under Rule 8 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964. Without understanding the implication of such an admission, this contention has been urged, evidently, to avoid payment of permanent alimony to the petitioner. Even otherwise, that is not a ground to deny payment of permanent alimony to a needy spouse.

It is not even the case of the respondent that the petitioner possesses either movable or immovable properties and, in any event, the respondent has not produced any documentary evidence in this regard. Likewise, the petitioner has also not produced any evidence to establish that the respondent owns and possesses a plot and a residential house at Desaipet village and Vanastalipuram respectively. The annual property statement, submitted by him to the Government, does support the respondents claim not to possess any immovable property of his own. The salary certificate produced by the respondent, for the month of December, 2013, represents his pre-revised scales of pay as a Commercial Tax Officer in the State of Telangana. The respondent has, conveniently, avoided producing the salary certificates for the recent months, as the pay scales of all employees in the State of Telangana have been recently revised in terms of the pay commission recommendations. We see no justification, therefore, in taking into consideration his monthly income as Rs.47,076/- on the basis on the salary certificate produced by him for the month of December, 2013. In so far as his contributions to G.P.F. and A.P.G.L.I. are concerned, they represent his savings. Except for the statutory payment towards income tax, this Court would not be justified in taking into account only his net salary, after deduction towards his savings, in fixing the quantum of permanent alimony.

This Court, while granting the respondent divorce, cannot ignore the plight of a single mother, and the travails she must have undergone in bringing up her daughter with little financial support from the respondent for the past seventeen years. While determining the question of permanent alimony payable to the petitioner, this Court must also take into account the maintenance awarded to her under Section 125 Cr.P.C. The present income of a senior C.T.O. in Telangana State, after revision of pay scales, would undoubtedly be more than Rs.60,000/- per month. On the other hand, the petitioner-wife has no independent source of income even for her bare survival, much less to lead the same standard of life which the respondent is leading. While the monthly income of the respondent would be around Rs.60,000/-, the petitioners only source of sustenance is the meagre monthly maintenance being paid to her by the respondent of Rs.3,500/- per month. Section 25 of the Act, which has been enacted only to ensure financial security of the spouse, is in addition to the provisions of Section 125 Cr.P.C. and maintenance under the 1956 Act, and is intended to provide speedy redressal of the petitioners claims of alimony or maintenance.

In fixing the quantum of permanent alimony, no straightjacket formula is prescribed under Section 25 of the Act, nor can any rule of mathematical exactitude be adopted (U.Sree8). The Court should take into consideration factors such as possession of property by either of the spouses, their independent source of income, their social status etc. In the instant case, the respondent is, admittedly, a Commercial Tax Officer working in the State of Telangana whereas the petitioner does not have any independent source of income even for her bare sustenance, and is living in penury. Her financial needs for her future, and during her remaining lifetime, must be secured. Taking into consideration all relevant factors, including the monthly salary of the respondent, the petitioner not having any independent source of income, and as the petitioner should be secured financially for her to lead the same standard of life as that of the respondent, we consider it appropriate to fix the permanent alimony, payable to the petitioner by the respondent, as Rs.15,00,000/-. The respondent shall pay the said amount in three equal half yearly instalments of Rs.5.00 lakhs each, the first of which shall be paid by 31st December, 2015, the second instalment of Rs.5.00 lakhs latest by 30.06.2016, and the third and final instalment of Rs.5.00 lakhs latest by 31.12.2016.

The only other aspects which remains to be considered is the manner in which this Court should secure payment of permanent alimony of Rs.15,00,000/-, by the respondent to the petitioner. As noted hereinabove, Sri J.Prabhakar, Learned Counsel for the petitioner, submitted that the respondent would retire shortly and, in case permanent alimony is granted and he does not pay the said amount while he is in service, it would not be possible for the petitioner to realize the amount unless a charge is created over his retiral benefits.

In Rajesh Burman<sup>5</sup>, the learned counsel for the appellant strenuously contended before the Supreme Court that both the courts had committed an error of law in granting medical reimbursement to the wife; the appellant husband was not responsible for the injuries sustained by the wife; it was a case of an accident - pure and simple - and the wife was to be blamed for it; no order could, therefore, have been passed by Courts directing the appellant husband to pay any amount to the wife; the parties were governed by the Special Marriages Act, 1954 (for short 1954 Act) which does not provide for payment of any such expenses; an application under Section 151 of the Code filed by the wife was, therefore, not maintainable; and the Court had no jurisdiction to entertain such an application or to make any order. Repelling these contentions, the Supreme Court held:-

..Having heard learned counsel for the parties, in our opinion, no interference is called for against the order passed by the trial court and modified by the High Court. So far as maintainability of application filed by the wife is concerned, we see no substance in the contention of the learned counsel for the husband that such an application is not tenable. Proceedings had been initiated in accordance with the provisions of the 1954 Act and matrimonial suit was pending. In the circumstances, in our view, it was open to the applicant wife who had initiated the proceedings for dissolution of marriage in a

competent court to institute such application. Even otherwise, looking to the scheme of the Act, it is clear that provisions of the Code would apply to courts exercising power under the Act. The preliminary objection raised by the learned counsel for the appellant as to the jurisdiction of the trial court has no substance and must be rejected.

It was also contended that the Act is a self-contained Code and hence while interpreting the provisions of the 1954 Act, interpretation of various provisions of the Hindu Marriage Act, 1955 or the Hindu Adoptions and Maintenance Act, 1956 cannot be blindly accepted nor can a case be decided on the basis of those decisions.

We are unable to uphold the contention (emphasis supplied).

Placing reliance on *Rajesh Burman*<sup>5</sup>, Sri J. Prabhakar, Learned Counsel for the petitioner, would submit that the provisions of the Civil Procedure Code can be applied by Courts while exercising power under the Hindu Marriage Act; in interpreting the provisions of the Hindu Marriage Act, the provisions of other enactments can be relied upon; Section 40 of the Parsi Marriage and Divorce Act, 1936 confers power on the Court to secure payment of permanent alimony, if necessary, by a charge on the movable and immovable property of the defendant; as the Supreme Court in *Rajesh Burman*<sup>5</sup> rejected the contention that the interpretation placed on the provisions of the Hindu Marriage Act or the Hindu Adoptions and Maintenance Act cannot be applied in interpreting the provisions of the Special Marriages Act, 1954, this Court should rely on Section 40 of the Parsi Marriage and Divorce Act, 1936 in interpreting Section 25 of the Hindu Marriage Act, 1955, and create a charge on the retiral benefits of the respondent, even though it is movable and not immovable property. Relying on *Venkatachalam v. Venkatrami* ; and *S.B. Shah Ali*<sup>2</sup>, Sri J. Prabhakar, Learned Counsel for the petitioner, would submit that creation of a charge on future crop to be produced, which is a moveable property, is recognised as permissible under Indian Law.

Divorce is the termination of matrimonial relationship, and brings to an end the status of a wife as such. On the status of a wife being terminated, by a decree for divorce under the Hindu Marriage Act, the rights of the divorced wife seem to be cribbed, confined and cabined by the provisions of the Hindu Marriage Act and to the rights available under Sections 25 and 27 of the Act. (*Kirtikant D. Vadodaria v. State of Gujarat* ). Section 25 of the Act confers power on the Court to secure payment of permanent alimony, if necessary, by a charge of the immovable property of the respondent. The said provision confers a discretion on the Court, and enables exercise of the power to create a charge on immovable properties if the Court considers it necessary to do so.

In the present case, the respondent did not provide any financial support either to the petitioner or to their daughter till he was called upon, by the Court below in the maintenance case, to do so. It is only because of the order of the Court below has he been paying Rs.3,500/- per month as maintenance to the petitioner. Prior to the academic year 2012-13, the respondent did not provide any financial assistance even towards the education expenses of their daughter. His complete indifference to the educational needs of their daughter is evident from the fact that it is only pursuant to the order of the Court did he pay Rs.24,000/- and Rs.64,000/-, for the educational expenses of their daughter, for the academic years 2012-13 and 2013-14 respectively.

The acrimony between the petitioner and the respondent, their long and arduous legal battle, and the fact that the respondent is due to retire from service shortly, are all factors which this Court must bear in mind in securing payment by the respondent of the permanent alimony granted by this Court to the petitioner. Suffice it to hold that the possibility of the respondent avoiding payment, except on compulsion, cannot be ruled out. We are satisfied, therefore, of the need to secure payment by him of the permanent alimony granted by this Court to the petitioner.

While Section 25 of the Act provides for creation of a charge on immovable property for securing payment of permanent alimony, the respondent denies having any immovable property and, despite alleging that he has a house and a plot at Vanasthalipuram and Desaipet, the petitioner has been unable

to produce any evidence in this regard. In the absence of any evidence in support of the petitioners plea, this Court must proceed on the premise that the respondent does not have any immovable property. Should this Court then fold its hands, and express its inability to come to the aid of a single mother who has been struggling for the past seventeen years not only to make both ends meet, but also to provide for the education of their daughter for the past several years? The answer can only be in the negative. It cannot be lost sight of that the law does not remain static, and does not operate in a vacuum. As social norms and values change, laws too have to be reinterpreted, and recast. Law is really a dynamic instrument fashioned by society for the purposes of achieving harmonious adjustment, human relations by elimination of social tensions and conflicts. Law does not stand still; it moves continuously. Once this is recognised, then the task of a judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time. Unusual fact situation, posing issues for resolution, is an opportunity for innovation. Law, as administered by Courts, then transforms into justice. (B.P.Achala Anand<sup>4</sup>). Article 15(3) of the Constitution requires the Court to endeavour to give full effect to the legislative and constitutional vision of socio-economic equality to women. (Thota Sesharathamma<sup>3</sup>). Bearing these principles in mind, the Court must interpret statutory provisions so as to provide succor to a hapless mother who has single handedly, and without support from the father of her child, brought her up and has successfully secured her admission in a B.Tech. course.

It is no doubt true that gratuity, provident fund and other retiral benefits, are not immovable property. Section 100 of the Transfer of Property Act, 1882 (for short, 'the 1882 Act) enables a charge to be created on the immovable property of one person by the act of parties, or by operation of law to secure the payment of money to another. Section 25 of the Act, which enables a charge to be created on immovable property, does not explicitly provide for a charge being created on movable property. Ordinarily conferment of power, by a specific statutory provision, is a pre-requisite for its exercise. However, exceptional circumstances may justify exercise of power in the absence of any statutory prohibition. In *Durga Das v. Tara Rani*, after noting that the learned single judge had secured the payment of permanent alimony, by a charge on the moveable and immovable properties of the appellant, a Division Bench of the Punjab and Haryana High Court held that such a charge is inadmissible in so far as the provident fund amount of the appellant is concerned, in view of Section 3 of the Provident Fund Act, 1925. The order of the learned single Judge was modified by the Division Bench holding that the charge created, on the movable and immovable property of the appellant, for securing the permanent alimony allowed to the respondent, would not include his provident fund amount. This modification by the Division Bench of the Punjab and Haryana High Court, of the order of the Learned Single Judge, was necessitated because of the statutory prohibition under Section 3 of the Provident Fund Act, 1925. In the absence of any prohibition in Section 25 of the Act, and as held by the Punjab and Haryana High Court in *Durga Das*<sup>14</sup>, we direct that the permanent alimony, payable by the respondent to the petitioner in terms of the order now passed by this Court, shall be secured by way of a charge over the retiral/terminal benefits of the respondent. The charge shall, however, be limited only to such of those retiral benefits for which there is no statutory prohibition for creation of a charge or attachment.

Both C.M.A. No.1056 of 2006, and C.M.A.M.P.No.200 of 2014 in C.M.A.No.1056 of 2006, are disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

---

RAMESH RANGANATHAN, J.

---

M. SATYANARAYANA MURTHY, J.

Date: 01.06.2015.