

ALLAHABAD HIGH COURT

Vinod Chandra Sharma

Vs.

Smt. Rajesh Pathak

First appeal from Order No. 154 of 1984 Aligarh dated 19.1.1984

(V.P. Mathur, J.)

25.02.1987

JUDGMENT

V.P. Mathur, J.

1. This First Appeal From Order, passed by Mr. R.S. Tripathi, the then Vth Additional District Judge, on 19.1.1984, in Misc. Case No. 39 of 1983, is directed against an order granting permanent alimony under Section 25 of the Hindu Marriage Act, 1955 to the respondent.
2. Briefly stated, the proceedings for a decree of divorce were going on in the Court below between the parties at the instance of the husband Vinod Chandra Sharma. The learned Additional District Judge dismissed the petition for divorce on 19.1.1984 and by the present impugned order of the same date he passed the order granting Rs. 350/- per month as permanent alimony in favor of the wife and against the husband. It is contended that this order is patently illegal and cannot be allowed to stand.
3. I have heard the learned counsel on both the sides. Permanent alimony and maintenance under Section 25 of the Hindu Marriage Act can only be granted if divorce is granted but not during the subsistence of the marriage. The word 'decree' is used in matrimonial cases in a special sense different from that in which it is used in the Civil Procedure Code. The use of the word 'decree' in Section 25 of the Hindu Marriage Act means the passing of the decree of divorce, restitution of conjugal rights or judicial separation and not the passing

of a decree through which the petition itself is dismissed because if the petition fails then no decree is passed. In other words, in such cases decree is denied to the appellant. Obviously, alimony cannot, therefore, be granted in a case where a decree for divorce is refused because in such a case the marriage will subsist.

4. The power to grant alimony, contained in Section 25 of the Hindu Marriage Act, has to be exercised when the Court is called upon to settle the mutual rights of the parties after the marital ties have snapped by determination or variation by the passing of the decree of a type mentioned in Sections 10, 11 and 13 of the Act, read with Section 23, 26 and 27 of the Act, a decree can be assumed to have been passed when an application is dismissed.

5. A Division Bench of the High Court at Delhi was also of the same view in the matter of *Smt. Susham v. Shri Satish Chander*,¹ The learned counsel for the respondent concedes the legal position.

6. As such the appeal is allowed and the impugned order dated 19.1.1984, passed by Mr. R.S. Tripathi, Vth Additional District Judge, Aligarh, granting alimony at the rate of Rs. 350/- per month to the respondent against the appellant is set aside. The parties shall bear their own costs in the special circumstances of the case.

Appeal allowed.

Cases Referred.

1. AIR 1984 Del 1