

(2004) 02 MP CK 0019

Madhya Pradesh High Court

Case No: First Appeal No. 450 of 2000

Vivek

APPELLANT

Vs

Vanita

RESPONDENT

Date of Decision: Feb. 3, 2004

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13(1)

Citation: (2004) 2 DMC 362

Hon'ble Judges: A.K. Awasthy, J

Bench: Single Bench

Advocate: R.N. Gupta, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

A.K. Awasthy, J.

Appellant/petitioner has filed this appeal u/s 28 of the Hindu Marriage Act against the judgment and decree dated 28.4.2000 in Hindu Marriage Case No, 38/99 passed by the learned IXth Additional District Judge. Indore, dismissing the petition filed for divorce on the ground of cruelty and desertion.

2. Admitted facts of the case are that the marriage in-between the appellant and the respondent was performed on 20.5.1987 at Indore according to the Hindu rites and customs and they have two sons Jaisingh and Achalsingh from the wedlock and that Jaisingh is living with the appellant and Achalsingh is residing with the respondent. It is also common ground that the respondent/defendant is living separately from her husband since February '96. That the appellant/ petitioner has filed a Case (No. 228/96) against the respondent/defendant for restitution of conjugal rights and the defendant has refused to live with the petitioner and, thereafter, the appellant/petitioner has withdrawn the case. It is also the common ground that the defendant has made a report in the Police Station, Juni, Indore against the petitioner u/s 498A of the I.P.C. and the Police has filed charge-sheet before the Additional

Chief Judicial Magistrate, Indore and the case is registered as 2988/96.

3. The case of the petitioner is that the defendant is indulging in the political activities and contesting the election without the permission of her husband and in spite of the repeated requests by the petitioner to look after the family and not to indulge in the political activities the defendant has refused to listen the advice of the petitioner that the defendant has contested the election of the Municipal Corporation in 1994 and she used to live outside the house even in the night hours and, thereafter, on 6.2.1996 she has left the matrimonial house with her younger son Achalsingh and, thereafter, she refused to resume the relations even after repeated requests by the petitioner and even on filing of the petition for restitution of conjugal rights. The petitioner has prayed for dissolution of the marriage on the ground of desertion and cruelty.

4. The case of the defendant is that the petitioner is in habit of consuming liquor and beating her and he usually abuses and insult her. That the petitioner tortured her for fulfilling his demand of dowry and as such the report was lodged by the defendant against" the petitioner in the Police Station. It is further alleged by the defendant that the petitioner is in habit of levelling false and baseless charges relating to her character and illicit relations. That the petitioner is not having sufficient source of income and on account of her activities it is not possible to live with him. The defendant has denied that she has deserted her husband and it is pleaded by her that the petition for divorce be dismissed.

5. The learned Trial Court after framing the issues has examined petitioner Vivek (P.W. 1), Ashok (P.W. 2), Jaisingh (P.W. 3) and from the opposite side defendant Vanita (D.W. 1) and Vikramsingh (D.W. 2). The learned Trial Court has held that the allegations of cruelty are not serious in nature and the defendant has not deserted her husband and as such the appellant/petitioner is not entitled for dissolution of marriage by a decree of divorce.

6. Learned Counsel for the appellant has assailed the impugned decree on the ground that in spite of the admission by the defendant that she does not want to live with her husband. The learned Trial Court has erred in holding that the defendant has not deserted the petitioner and that in spite of the fact that the defendant has lodged false and baseless report of cruelty on account of dowry against the petitioner. The learned Trial Court has further erred in holding that the defendant has not committed matrimonial offence of mental cruelty against the petitioner, It is submitted by the appellant that the appeal be allowed and the decree of dissolution of marriage be passed on the ground of cruelty and desertion.

7. Vivek (P.W. 1) has stated that his wife is in habit of living away from his house from morning till evening and she is contesting election in spite of the protest by the petitioner that she should not indulge in politics on the expenses of the welfare of the children. Vivek (P.W. 1) has further stated that his wife is in habit of picking up

quarrels unnecessarily and she has levelled false allegations against him about demand of dowry and the baseless report made by her with the Police has caused tension and harassment to the petitioner till the Police has filed charge-sheet in the Court. Vivek (P.W. 1) has further stated that he has filed the case in the Court to bring his wife back, but she refused to come back to live with the petitioner.

8. This fact is not in dispute that the defendant has lodged report against her husband after 8 years of her marriage that her husband has demanded dowry from her and the petitioner has physically assaulted her to fulfil his need of dowry. The defendant has not led any evidence to substantiate the allegation that she was beaten by her husband for demand of dowry. Smt. Vanita (D.W. 1) has admitted in para 10 of her cross-examination that she has not lodged report against her husband about her beating or she has gone to the hospital for treatment of her injuries caused on account of beating by her husband. Vanita (D.W. 1) has further admitted that she has not made any complaint to his relations or to the neighbours about the physical assault by her husband. The defendant is a public spirited lady and normally the lady contesting election and taking active part in the politics will tolerate meekly such an assault by her husband. The defendant has not examined any neighbour or any witness who has seen the petitioner beating the defendant or demanding dowry from her. There is nothing on record to show that the report lodged by the defendant after lapses of 8 years that the petitioner used to demand dowry from her as some grain of truth. The act of making false report by the defendant against her husband in the Police Station that her husband has demanded dowry from her and beaten her and, thereafter, filing of the criminal case in the Court of A.C.J.M. will certainly cause harassment, embarrassment and mental torture to the husband.

9. The defendant is not living with her husband from 1996 and it is clear from para 9 of her cross-examination that she has refused to live with her husband in the petition filed by her husband for restitution of conjugal rights. Defendant Vanita (D.W. 1) has admitted in para 12 of her cross-examination that she never went to meet her son Vivek either in his school or at the house of the petitioner. The defendant has not made any attempt to resume the relationship with her husband after 1996. The fact that the defendant has lodged the false report against her husband and the fact that she is living without any rhyme or reason away from his husband for the last 8 years and that she has refused to live with her husband go to prove that the defendant has deserted her husband and the cumulative effect of her act and conduct goes to establish that she is responsible for causing mental cruelty to her husband.

10. In aforesaid circumstances the statement of son of the defendant Jaisingh (P.W. 3) and Vivek (P.W. 1) that the defendant is in habit of passing time with other persons is an important circumstance which throws light as to why she is living away from her husband from last many years without any rhyme or reason. The

respondent has not turned up during the appeal in spite of the fact that various adjournments were granted in this case at the time of final arguments by the Court. Consequently, it is proved that the respondent/defendant has left the company of her husband for more than 2 years without any rhyme or reason with the sole intention of snapping the matrimonial relations in view of the animus deserendi in separate living on the ground of cruelty and desertion for the divorce.

11. In the result, the appeal is allowed. The marriage in-between the appellant and the respondent is hereby dissolved on the ground of desertion and cruelty. The parties to bear their own costs of the appeal.