

(2011) 06 UK CK 0007

Uttarakhand High Court

Case No: First Appeal No. 41 of 2010

Mandakini Shah

APPELLANT

Vs

Subrat Singh Dharamwal

RESPONDENT

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**Date of Decision:** June 23, 2011**Acts Referred:**

- Family Courts Act, 1984 - Section 19, 4
- Hindu Marriage Act, 1955 - Section 13
- Penal Code, 1860 (IPC) - Section 498A, 506

**Citation:** (2011) 3 DMC 806**Hon'ble Judges:** Sudhanshu Dhulia, J; Prafulla C. Pant, J**Bench:** Division Bench**Advocate:** Pradeep Hairiya, for the Appellant; None, for the Respondent**Final Decision:** Allowed

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**Judgement**

Prafulla C. Pant, J.

This appeal, preferred u/s 19 of the Family Courts Act, 1984, is directed against the judgment and order dated 30th of April, 2010, passed by Judge, Family Court, Nainital, in Suit No. 21 of 2006, and Civil Misc. Case No. 7 of 2007, whereby said Court has dismissed the petition filed by the wife u/s 13 of the Hindu Marriage Act, 1955. The Trial Court has further dismissed the application moved u/s 27 of said Act.

2. Heard learned Counsel for the appellant and perused the lower Court record. No one turned up on behalf of the respondent Subrat Singh Dharamwal, even after there being sufficient service on him.

3. Brief facts of the case are that appellant Mandakini Shah got married to respondent Subrat Singh Dharamwal on 2.12.2002, at Delhi, following Hindu rites. Their marriage was registered at Gurgaon on 12th of March, 2003. A son was born out of the wedlock on 2.3.2006 at Haldwani (parental place of the appellant). It

appears that thereafter, relations between the parties to matrimony soured. The appellant appears to have got lodged first information report, registered as Crime No. 1233 of 2006, relating to offences punishable under Sections 498-A and 506 of I.P.C., against her husband. She also filed a petition for divorce u/s 13 of the Hindu Marriage Act, before the Judge, Family Court, Nainital, which was registered as Suit No. 21 of 2006. In said petition she pleaded that she was subjected to cruelty and harassment by her husband for non-fulfilment of demand of dowry. She has further pleaded that she was earning Rs. 1,40,000 per month as Air Hostess, and her husband used to snatch her earnings. It is also pleaded by the wife that she was ousted by her husband from his house and she was obstructed from extending her Visa for her stay at Dubai, and she was forced to come back to India to her parental place.

4. Respondent Subrat Singh Dharamwal initially contested the petition before the Trial Court and filed his written statement, in which he admitted his marriage with the appellant, and did not dispute the birth of the child. However, he denied allegations of cruelty for non-fulfilment of demand of dowry.

5. On the basis of the pleadings of the parties, the Trial Court framed following three issues:

(i) Whether, the respondent treated the petitioner with cruelty?

(ii) Whether, the petitioner is entitled to the decree of divorce on the ground of cruelty meted out to her at the hands of the respondent?

(iii) To what relief, if any, the petitioner is entitled?

6. Both appellant Mandakini Shah and respondent Subrat Singh Dharamwal led their evidence by filing affidavits, and by getting themselves cross-examined. In support of P.W. 1 Mandakini Shah, P.W. 2 Surendra Shah was also examined. On the other hand, to support D.W. 1 Subrat Singh Dharamwal, D.W. 2 Pooran Singh Dharamwal was also examined. In the documentary evidence copies of the first information report relating to dowry harassment case and the charge-sheet relating thereto was also filed. The Trial Court considered the evidence on record, and dismissed the petition u/s 13 of the Hindu Marriage Act, on the ground that it had no jurisdiction to try the suit.

7. It is pertinent to mention here that there was no issue framed by the Trial Court relating to territorial jurisdiction of the suit. Anyway, if the Trial Court has no territorial jurisdiction, it can very well dismiss the suit on that ground provided it had actually no jurisdiction. Perusal of the impugned order passed by the Trial Court shows that the Trial Court has discussed the provisions of Section 19 of the Hindu Marriage Act, 1955, as it existed before amendment in the year 2003. The Trial Court has erred in law in holding that the Family Court at Nainital has no jurisdiction on the ground that the marriage was solemnized in Delhi, and registered in Gurgaon.

Trial Court only took note of the fact that respondent did not reside within the territorial limits of jurisdiction of the family Court at Nainital. The said point was relevant, but what the Trial Court escaped is the amendment brought in Hindu Marriage Act, 1955, vide Act No. 50 of 2003. By Section 4 of Act No. 50 of 2003, following Clause was inserted in Section 19 of the Hindu Marriage Act, 1955

(iii-a). In case the wife is petitioner, where she is residing on the date of presentation of the petition, or

The aforesaid provision added in Section 19 of the Hindu Marriage Act, 1955, clearly shows that the wife was entitled to maintain the petition before Judge, Family Court, Nainital, as she was living in Haldwani, within the territorial limits of District Nainital. As such, the finding given by the Trial Court on the point of territorial jurisdiction is liable to be set aside. As far as the ground of divorce is concerned, from the statement of P.W. 1 Mandakini Shah it is proved on the record that she was subjected to cruelty by her husband. The factum of cruelty gets further corroboration from the statement of P.W. 2 Major General (Retd.) Surendra Shah. Having weighed the testimony of D.W. 1 Subrat Singh Dharamwal, D.W. 2 Pooran Singh Dharamwal vis-a-vis the statements of the two witnesses examined on behalf of the petitioner/appellant, we do not find any reason to disbelieve the evidence adduced by the appellant and her father that the appellant was subjected to cruelty at the hands of her husband. As such, in our opinion, she is entitled to the decree of divorce on the ground of cruelty. Accordingly, Issue No. (i) and Issue No. (ii) are decided in her favour, and on the basis of the findings of issue Nos. (i) and (ii) she is entitled to the decree of divorce, and issue No. (iii) also deserves to be decided, accordingly.

8. As far as application u/s 27 of the Hindu Marriage Act, 1955 (registered as Civil Misc. Case No. 7 of 2007) is concerned, it appears that the parties have not led their evidence, nor the Trial Court has given any finding on merits on said application.

9. Therefore, for the reasons as discussed above, this appeal is allowed. The impugned judgment and order dated 30th of April 2010, passed by Judge, Family Court, Nainital, in Suit No. 21 of 2006, is set aside. The petition u/s 13 of the Hindu Marriage Act, 1955, moved by the petitioner/appellant before the Trial Court is allowed. The marriage between the parties to matrimony namely Mandakini Shah and Subrat Singh Dharamwal is hereby dissolved by decree of divorce.

10. However, as to the order passed in Civil Misc. Case No. 7 of 2007, u/s 27 of the Hindu Marriage Act, 1955, though the impugned order is set aside, the matter is remanded back to the Trial Court to decide said application afresh on merits, after giving opportunity to the parties concerned. No order as to costs.