

Equivalent citations: I (1996) DMC 598

Bench: N Singh

Smt. Chandan Agarwal vs Mukesh Kumar Agarwal on 18/1/1996

## JUDGMENT

N.P. Singh, J.

1. This appeal by the appellant/defendant under Section 28 of the Hindu Marriage act is directed against the judgment and decree dated 15.12.1994 passed by the District Judge, Satna in Civil Suit No. 3-A/94 dissolving the marriage between the parties.

2. The respondent/husband filed the instant civil suit against the appellant/ wife under Section 13 of the Hindu Marriage Act for dissolution of marriage by a decree of divorce on the ground of cruelty.

3. The marriage between the parties was solemnised on 20.5.1989 according to the customary Hindu rites. After the marriage, the appellant was brought to her matrimonial home at Jabalpur, but she was reluctant to live in the joint family of the respondent which consisted of his brother and his wife and two children.

4. The respondent shifted to a rented house according to the wishes of the appellant, but there also the appellant could not create congenial atmosphere of a happy married life. Neither she cared to cater to the needs of the respondent/ husband no did she fulfill her matrimonial obligations. On this refusal, of the respondent to shift his business to Chhatarpur, behaviour of the appellant because hostile to the respondent.

5. On 6.6.1990, the appellant returned back to Jabalpur, from her parents home, accompanied by her father, brother and other relatives and she lodged a report against the respondent, for an offence under Section 498A I.P.C. implicating his elder brother, his wife and their children. The respondent was detained at Lordganj Police Station, before being released on bail and his brother and other family members had to obtain anticipatory bail. The respondent and his family members were, ultimately prosecuted in Criminal Case No. 170/91, on the charge under Section 498A I.P.C., in the Court of Judicial Magistrate, First Class Jabalpur, but they were discharged, for want of any material in the charge report.

6. Against the order of discharge the appellant preferred Criminal Revision No. 9/92 before the 2nd Addl. Sessions Judge, Jabalpur, who reversed the order of discharge of the respondent and his family members passed by the Judicial Magistrate. The respondent preferred Criminal Revision 11/93, before this Court. This Court allowed the revision of the respondent and affirmed the order of discharge passed by the Judicial Magistrate.

7. On 12.11.1990 appellant obtained an ex-parte order of maintenance allowance of Rs.500/-per month under Section 125 of the Cr.P.C. from the Court of Chief Judicial Magistrate Chhatarpur.

8. On 16.4.1990, the respondent filed Civil Suit No. 114-A/90 under Section 10 of the Hindu Marriage Act, 1955 against the appellant, for judicial separation, in the Court of 4th Addl. District Judge, Jabalpur which was subsequently withdrawn by the respondent. Thereafter the respondent filed the instant civil suit, under Section 13 of the Hindu Marriage Act for dissolution of marriage by decree of divorce.

9. The stand of the appellant/wife was that was not welcomed at her matrimonial home. She was tortured by the respondent/husband and his family members for not bringing Maruti car and a V.C.R. in dowry.

10. On 9.3.1990 the respondent took the appellant to the house of her maternal uncle on a false pretext where the respondent dropped her and thereafter respondent never cared to take her back to his home.

11. The learned District Judge, on consideration of the evidence, decreed the suit.

12. Shri N.P. Dubey, Counsel for the appellant has contended that the appellant was subjected to cruelty by the respondent/husband for not bringing the Maruti car in dowry. The respondent has ruined the life of the appellant who holds a master degree in science.

13. On perusal of the evidence, it is evident that there is clear admission of the appellant that the marriage between the parties was never consummated because the respondent was not able to perform his matrimonial obligations on account of his physical incapacity. He was an impotent and he always suffered from complex for that reason.

14. The evidence led by the appellant that she was subjected to torture and driven from matrimonial home for not bringing Maruti car, in dowry cannot be accepted. The respondent who is himself a bullion merchant is not expected to have made a demand of Maruti Car and V.C.R. from the father of the appellant, whose financial position is not better than the respondent.

15. It is evident from the letters Exs. P. 2 & P. 3 written by the appellant to her mother that that she suspected the respondent to be physically weak to perform his matrimonial obligations.

16. The apprehension of the appellant that the respondent is physically weak to fulfill the matrimonial obligations and physical desire stands vanished by the 2nd marriage contracted by the respondent, after passing the decree in the suit.

17. The lodging of a false criminal case by the wife against her husband and his family members leading to the arrest of the husband and harassment to his family members and refusal by the wife to fulfill the sexual desire of her husband and matrimonial obligations defaming the husband to be impotent amounts cruelty to the husband and the second marriage deserves to be dissolved under Section 13 of the Hindu Marriage Act.

18. The Judgment under appeal is well considered.

19. For the reasons mentioned aforesaid, I do not find any reason to interfere with the findings of the learned District Judge. There is no merit in the appeal. Accordingly, it is dismissed but without costs.

20. The respondent, however is directed to pay Rs. Thirty Thousand to the appellant in lump sum as permanent alimony.