

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

First Appeal No. 36 of 2010

Smt. Jaishree

W/o Sri Arjun Singh

Presently R/o C/o Lt. Commander (Retd.) Sri Kamal Singh Chauhan

Kothi No. 6 / 4, Canal Road, Jakhan,

Dehradun, District Dehradun.

... . Appellant

Versus

Sri Arjun Singh

S/o Sri Puran Singh

Presently R/o 71 / 40 Chaudhary Bihari Lal Marg District Dehradun.

Permanently R/o Village Syaluka Revadi, Post Gundiyat, Village & Tehsil Purola, District Uttarkashi.

... . Respondent

Mr. Ramji Srivastava, Advocate, present for the appellant. Mr. Sandeep Tandon, Advocate, present for the respondent.

Coram : Hon'ble Prafulla C. Pant, J. Hon'ble V. K. Bist, J.

Hon. Prafulla C. Pant, J. (Oral)

This appeal, preferred under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955, is directed against the judgment and order dated 07.06.2010, passed by Principal Judge, Family Court, Dehradun, in Suit No. 2

488 of 2006, whereby said court has allowed the petition under Section 13 of the Hindu Marriage Act, 1955, moved by the respondent (husband), and granted the decree of divorce.

2) Heard learned counsel for the parties and perused the lower court record.

3) Brief facts of the case are that appellant Jaishree got married to respondent Arjun Singh on 20th of June 2005, following Hindu rites, at Dehradun. Out of the wedlock a female child was born on 27.03.2006. The respondent is a teacher. He filed a petition under Section 13 of the Hindu Marriage Act, 1955, alleging that the appellant treated him with cruelty. It is pleaded in the petition that the appellant (wife) left respondent's house after 20 days of marriage and did not join the company of her husband, even after being persuaded time and again. It is also pleaded in the petition that the respondent kept on going to the parental house of the appellant to persuade her to come to his house, but on one pretext or the other, she avoided it and humiliated him. It is also pleaded that she made unreasonable demands and put unreasonable conditions to come back to her

husband's house, and the respondent made efforts even to fulfill those demands and the conditions, but to no avail. As to the specific incident of cruelty it is stated in the petition that on 06.10.2006, the appellant along with her sisters and other relatives, including her 3

father, came to the house of the respondent. They took whatever belongings (of the appellant) were left in the house of the respondent, and appellant assaulted the respondent with CHAPPALS. It is also pleaded that the respondent got himself medically examined and also filed criminal complaint in the matter. With these pleadings, the respondent sought decree of divorce.

4) The appellant filed her written statement before the trial court and admitted that she was married to the respondent, and female child was born out of the wedlock. However, she denied other allegations made in the petition that she treated the respondent with cruelty. In the additional pleas she made counter allegations of cruelty against her husband, and stated that she was ousted forcibly by her husband from his house. It is also stated by her that her father had given ` 5,00,000/- to the respondent to buy land for himself. It is also pleaded by her that she is ready and willing to live with her husband.

5) On the basis of the pleadings of the parties, the trial court framed following issues:

- i) Whether, the marriage between the parties is liable to be dissolved by a decree of divorce on the ground of cruelty, alleged in the petition?
- ii) To what relief, if any, the petitioner is entitled?

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6) In support of his case respondent (husband) got himself examined as P.W. 1, and also got examined P.W. 2 Sharmila Khanduri (landlady), and P.W. 3 Sandeep Tomar (who accompanied the respondent to the house of the appellant). The appellant (wife) and respondent got examined herself as D.W. 1, and thereafter his father D.W. 2 Lt. Commander Kamal Singh Chauhan. The parties also filed documentary evidence in support of their cases. After discussing the evidence, the trial court found that the husband has proved his case for divorce on the ground of cruelty, and allowed the petition under Section 13 of the Hindu Marriage Act, 1955. Aggrieved by said judgment and order this appeal is filed by the wife.

7) Admittedly, respondent Arjun Singh got married to appellant Jaishree on 20th of June 2005, at Dehradun. It is also not disputed that a female child born on 27.03.2006, out of the wedlock. The only dispute in this case is whether, the allegations of cruelty are proved on the record, or not, to entitle the husband decree of divorce.

8) P.W. 1 Arjun Singh has filed an affidavit before the trial court in support of his case corroborating all the pleas taken in the petition for divorce. He was subjected to lengthy cross-examination, but nothing has come out in his cross- examination, which creates doubt in his testimony. He has specifically stated as to how he went time and again to his wife's place to call her, and for one 5

reason or the other, he was humiliated. As to the incident on 15.05.2006, he (P.W. 1) states that he went with Sandeep Tomar (P.W. 3) to the house of his wife, but his wife and her father misbehaved with him, and threatened him that he would be implicated in litigation. P.W. 1 Arjun Singh has further stated that he filed an application under Section 9 of the Hindu Marriage Act, 1955, but when on 30th of September 2006, appellant expressed her desire to join his company, he withdrew the petition. However, his happiness was short lived, and the appellant did not honour the promise made by her. Relating to the incident of 06.10.2006, P.W. 1 Arjun Singh has stated that the appellant along with her sisters Alka, Neetu and some others came to his house took all belongings of the appellant. In the evening, on the same day, it is stated by this witness that the appellant came along with some 15 relatives and gave him beating with CHAPPALS. It is also stated by P.W. 1 Arjun Singh that he got himself medically examined, and also file criminal complaint before the Judicial

Magistrate. In support of this incident of cruelty, the respondent (husband) not only filed the copy of the medical report and copy of the criminal complaint, but also got examined P.W. 2 Sharmila Khanduri (landlady).

9) P.W. 2 Sharmila Khanduri has corroborated the incident dated 06.10.2006, and stated that Jaishree (appellant) assaulted Arjun Singh with CHAPPALS. She has also stated that abuses were hurled at him by the appellant and her relatives.

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10) P.W. 3 Sandeep Tomar has corroborated the incident of 15.05.2006, when he accompanied the respondent to the house of the appellant.

11) On behalf of the appellant in her statement she has corroborated the plea taken in the written statement, but her statement when read with her cross-examination does not shake the testimony of the witnesses examined on behalf of the respondent, relating to the act cruelty committed by the appellant. She has admitted in her cross-examination that she filed a case under Protection of Women from Domestic Violence Act, in which her allegations were found untrue, and her petition was dismissed. She has also admitted that in said case the finding was given by the court that it was the husband who was treated with cruelty not the wife. The statement of D.W. 2 Lt. Commander Kamal Singh Chauhan (Retd.) also does not shake the oral evidence adduced on behalf of the respondent (husband), which is supported by the documentary evidence on record. He has admitted that the respondent did file a criminal complaint relating to MAARPEET allegedly committed against him.

12) Having gone through the entire evidence on record afresh, we do not find any illegality in the finding recorded by the trial court that the respondent has proved the allegation that he was treated with cruelty by his wife. As such, we are of the view that the trial court has committed no error of law in decreeing the suit for divorce.

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13) However, we feel it necessary to direct the respondent (husband) to pay a reasonable sum of alimony to the appellant, to do complete justice between the parties. Admittedly, the respondent is a teacher and his monthly income is ` 11,000/- per month. Considering the economic status of the parties, and facts and circumstances of the case, we think it just and proper to direct the respondent to pay a lump sum one time alimony of ` 4,00,000/- (rupees four lakh only) to pay to the appellant.

14) Accordingly, this appeal is disposed of affirming the decree of divorce granted by the trial court dissolving the marriage of the parties to the suit with the further direction that the respondent Arjun Singh (husband) shall pay ` 4,00,000/- (rupees four lakh only) as one time lump sum alimony to appellant Jaishree, within a period of three months from today. No order as to costs.

(V.K. Bist, J.) (Prafulla C. Pant, J.)

Dt. March 17, 2011.

H. Negi