

Poonam Devi Vs. Manoj Kumar Gupta

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Court : Jharkhand

Decided On : Jun-12-2017

Appellant : Poonam Devi

Respondent : Manoj Kumar Gupta

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI First Appeal No. 214 of 2013 ----- (Against the judgment and decree dated 21st August, 2013 passed by the learned Principal Judge, Family Court, Palamau at Daltonganj, in Matrimonial Case No. 26F of 2009) Poonam Devi . Appellant -Versus- Manoj Kumar Gupta Respondent ----- PRESENT HONBLE MR. JUSTICE H.C.MISHRA HON'BLE MR. JUSTICE RATNAKER BHENGRA ----- For the Appellant : : Mr. V.S. Prasad, Advocate For the Respondent: : Mr. Anurag Kashyap, Advocate ----- By Court:- Pursuant to the order dated 10th May, 2017, respondent Manoj Kumar Gupta has paid Rs. 6000/- to the appellant Poonam Devi in the Court. The appellant has also acknowledged the same in the ordersheet.

2. Heard learned counsel for the appellant and learned counsel for the respondent on the merits of this appeal, as the efforts of amicable settlement of the matrimonial dispute between the parties have failed.

3. The appellant is aggrieved by the Judgment and Decree dated 21st August, 2013, passed by the learned Principal Judge, Family Court, Palamau at Daltonganj, in Matrimonial Case No. 26F of 2009, whereby the suit filed by the

husband in the Court below, for dissolution of the marriage between the parties by a decree of divorce on the ground of desertion by wife, has been decreed by the Court below, giving the permanent alimony of only Rs. 1,51,000/- (One Lac fifty one thousand) to the appellant wife.

4. Aggrieved by the Judgment and Decree passed by the Court below, this appeal was filed in this Court after a delay of 87 days. As the delay had been sufficiently explained, by order dated 23.02.2015, passed in I.A. No. 5607 of 2014, the delay in filing the appeal was condoned.

5. When this matter was taken up, on the previous dates, both the parties were directed to be present in this Court for amicable settlement of the matrimonial dispute between them, but in spite of our efforts, the dispute could not be settled between the parties. We have also been informed that in the meantime, the 2 respondent husband had married another lady. Faced with this situation, and in an anxiety that the married life of the second wife of the respondent may not be ruined, in case the appeal succeeds on merits, we had also given an option by our order dated 26.4.2017, to the respondent husband for enhancement of the amount of onetime permanent alimony to be paid to the appellant wife, but in spite of two adjournments thereafter, we are informed by the learned counsel for the respondent husband that he is voluntarily not ready for any enhancement in the permanent alimony. Accordingly, we have heard both the parties on merits.

6. The impugned Judgment shows that the marriage between the parties is an admitted fact, which had taken place on 27.11.2004 according to Hindu rites and customs. According to the case of the respondent husband, the marriage between the parties was not even consummated, as from the very beginning of the marriage, the wife was against the marriage. It is stated in the plaint that on 29.10.2005, when the plaintiff husband was out of his home town, the wife left the matrimonial home and went to her parents' house along with her cloths, ornaments etc., and thereafter she did not come back to the matrimonial home in spite of the efforts taken by the plaintiff husband.

7. Upon notice, the respondent-wife (appellant herein) had appeared in the Court below and filed her written statement, in which she denied all the allegations.

According to her case, soon after the marriage, she was being subjected to cruelty and torture for demand of dowry and she was ultimately turned out of the matrimonial home. Thereafter, she also filed a criminal case against her husband at Aurangabad in the State of Bihar, i.e., at her parents' place. It was the specific case of the appellant wife in her written statement that the petitioner husband wanted to marry another lady, due to which she was being subjected to cruelty and torture and also for demand of dowry, and she was ultimately, turned out of her matrimonial home.

8. By the conduct of the respondent husband, who appears to have married another lady soon after the suit being decreed in his favour, we find that this allegation of the appellant in her written statement appears to be true. 39. The impugned Judgment shows that paragraph No. 7 of the written statement filed by the respondent-appellant wife, was meaningless and in the opinion of the Court below, the same had not been properly drafted. Be that as it may, on the basis of the pleadings of the parties, issues were framed by the Court below, including the issue relating to desertion of the husband by the wife.

10. The impugned Judgment shows that four witnesses were examined on behalf of the plaintiff husband in the Court below. Two of them, P.W.-1 Sanjay Kumar Gupta and P.W.-2 Anil Kumar Gupta, being the brothers of the plaintiff husband. P.W.-3 Vishal Kumar is the neighbour, and the plaintiff husband examined himself as P.W.-4. These witnesses have supported the case of the plaintiff in their evidence. However, the brother P.W.-1 Sanjay Kumar Gupta admitted in his cross-examination that both the parties had lived together as husband and wife for about 10 to 11 months. P.W.-4 Manoj Kumar Gupta, who is the husband himself, though has stated that there was no consummation of marriage between the parties but, he has stated that on 14.11.2005 he had gone to bring back his wife but, she refused to come back. This witness has also admitted that respondent wife had filed a criminal case against him for demand of dowry and for maintenance, in the Court at Aurangabad. He has also stated that he works in a Mobile Shop.

11. As against this, two witnesses were examined on behalf of the respondent wife, who are D.W.-1 Sharada Prasad, the father of respondent and D.W.-2

Poonam Devi, the respondent wife herself, and both of them have deposed that soon after the marriage, she was being subjected to cruelty and torture for demand of dowry and she was ousted from her matrimonial home. D.W.-2 Poonam Devi, the respondent wife, has also stated that she wants to live with her husband. She has also admitted that she had been living separately from her husband for about 6 to 7 years.

12. The Court below, while discussing the evidence and materials on record, stated that the statement made in paragraph No. 7 of the written statement is meaningless and has stated that paragraph No. 7 if taken as a whole, it can be said that the respondent has admitted that she had deserted the plaintiff since 29.10.2005. The Court has also held that since the respondent wife 4 had admitted that she was living separately since 6 to 7 years, from her husband, it gets established that the respondent wife had deserted her husband.

13. We fail to appreciate the reasoning given by the Court below about its finding on the issue of desertion. The Court below has completely overlooked the evidence brought on record by the respondent wife, that she was being subjected to cruelty and torture for demand of dowry soon after the marriage and she was ousted from the matrimonial home for which she had also filed a criminal case at her parents' place, against her husband and in-laws. Simply because one paragraph of the written statement did not make any meaning, we fail to understand as to how, ignoring the entire evidence of the respondent wife, the Court below has stated that the respondent wife had admitted that she had deserted her husband. We are of the considered view that the finding given by the Court below is absolutely perverse and against the evidence on record, and the impugned Judgment and Decree passed by the Court below, cannot be sustained in the eyes of law on this ground alone.

14. However, we are conscious of the fact that the appellant has married another lady and there was also a delay of 87 days in filing this appeal, which was condoned by this Court, as the delay had been sufficiently explained. We are of the considered view that since the appellant has married another lady, and there was also a delay of 87 days in filing this appeal, there should be an effort to save

the second marriage of the respondent husband, so that the marriage of the second wife of the respondent husband may not be jeopardised for no fault on her part. It was for this reason, that we had given the option to the respondent husband to enhance the permanent alimony to the appellant wife, but the respondent did not agree for the same.

15. It has come in the evidence of the plaintiff husband that he is working in a Mobile Shop. In course of arguments learned counsel for the appellant-wife has submitted that the husband was not working in the Mobile Shop rather, the Mobile Shop is his family business. This fact though denied by the learned counsel for the respondent husband but, it is admitted that the family of the appellant husband is also having another business and they have a 5 sweet shop, which, learned counsel for the respondent submitted that it belonged to the brother of the respondent husband. It is also an admitted fact, which has come during the course of hearing before us, that the family of the husband is having a double storied house. The photographs of the house and also of the sweet shop have also been brought on record, by way of supplementary affidavit filed on behalf of the appellant wife, which have not been denied.

16. In view of these admitted facts, we are of the considered view that permanent alimony of Rs. 15,000,00/- (Rs. Fifteen Lacs only) shall be a fair and reasonable amount to be paid by the respondent-husband to the appellant-wife. In view of the admitted family property, we are also of the considered view that the respondent husband is capable to bear this expence.

17. Though, we are not in a position to uphold the impugned Judgment and Decree passed by the Court below, but in order to save the married life of the lady whom the respondent has subsequently married, we do not propose to interfere with the impugned Judgment and Decree at this stage, subject to the condition that the respondent husband shall make the payment of Rs. 15,00,000/- (Rs. Fifteen Lacs only), to the appellant wife, as one time permanent alimony, within the period of six months from today. If the amount of permanent alimony is not paid to the appellant wife within the said period of six months, the impugned Judgment and Decree dated 21.08.2013 passed by the learned Principal Judge,

Family Court, Palamau at Daltonganj, in Matrimonial Case No. 26F of 2009, shall automatically stand annulled.

18. This appeal is accordingly, disposed of with the directions, as above.
(H.C.Mishra, J.) (Ratnaker Bhengra, J.) Jharkhand High Court Dated 12th June,2017 Sharda/Nibha

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