

Chandrawati Vs. Kailash Nath

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Court : Allahabad

Decided On : Sep-30-1994

Reported in : II(1995)DMC571

Judge : S.C. Mohapatra and ; V.P. Goel, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1); [Family Courts Act, 1984](#) - Sections 19

Appeal No. : F.A. No. 461 of 1992

Appellant : Chandrawati

Respondent : Kailash Nath

Advocate for Def. : Sheo Shanker Tripathi, Adv.

Advocate for Pet/Ap. : Usha Kiran, Adv.

Disposition : Appeal allowed

Judgement :

S.C. Mohapatra, J.

1. This is an appeal by wife under Section 19 of the Family Courts Act against a decree of divorce obtained by her husband from the Family Court.

2. There is no dispute that in the year 1973, parties were married and became parents of a child. Shortly thereafter wife left the matrimonial home to live separately from her husband. In the year 1988, husband filed an application under the Hindu Marriage Act for decree of divorce against his wife. While contesting this application, wife asserted amongst others that husband was leading a life of adultery which was the cause for leaving company of her husband. As a counter blast, husband has filed documents like affidavit stated to have been sworn in by the wife on 27.4.1982, where it is stated that she admitted to be leading an adulterous life and a letter dated 2.6.1984 which is eleven pages long alleged to have been written by wife, where, while admitting her past misconduct, she wanted to be exonerated so that both can lead life of husband and wife. Learned Judge of Family Court having accepted the affidavit and letter to be written by wife has granted divorce which is grievance of wife in this appeal.

3. Learned Family Judge does not appear to have realised his onerous duty to distinguish grain from the chaff. In an Indian society wife is a member of the weaker section of the society. Normal attitude of a Hindu wife is to be in company of her husband. A Hindu wife having a child in her laps would not leave company of her husband unless there is a situation which compels her to take such action. Husband is required to bring all material circumstances to record so that Court will be in a position to consider whether wife is the cause of separation. No doubt admission of wife is a material piece of evidence. However, such admission from wife about her own chastity is to be looked with suspicion. No husband would remain quiet for six years to continue relationship of husband and wife from 1982 to 1988 with an unchaste lady. Two years after, a wife would not write a long letter of 11 pages on 2.6.1984, accepting her unchastity. Silence of husband inspite of such periodical admission, lead to an inference that either he is idiot or crack. Second condition is more apt in this case and we are satisfied that taking advantage of the wife being a member of weaker section of society, these two documents have been preferred to be utilised when occasion arises. It is not normal for a lady aged about 45 years with a son aged 4 to 5 years to write such letters or swear such affidavit.

4. Even assuming that the affidavit and letter are voluntary, conduct of husband tolerating wife inspite of such admission for more than two years amount to condonation of bad conduct of the wife. After condoning bad conduct, there is no scope to revert back and utilize such bad conduct for termination of marital tie.

5. On perusal of the entire material on record and after hearing learned Counsel for both the parties, we are satisfied that allegations against wife are misconceived and on such allegations and materials, there was no scope for granting a decree of divorce. We declare that they continue as husband and wife.

6. In result, impugned order is reversed and appeal is allowed with costs. Hearing fee is assessed at Rs. 1,500/-.

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