

Vimla Devi Vs. Ram Babu

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Court : Allahabad

Decided On : Apr-06-2004

Reported in : II(2004)DMC639

Judge : M. Katju and ;R.S. Tripathi, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1) and 24; Code of Civil Procedure (CPC) - Order 9, Rule 9

Appeal No. : First Appeal No. 650 of 1998

Appellant : Vimla Devi

Respondent : Ram Babu

Advocate for Def. : S.K. Kulshrestha, Adv.

Advocate for Pet/Ap. : P.K. Srivastava, Adv.

Disposition : Appeal dismissed

Judgement :

M. Katju, J.

1. Heard learned Counsels for the parties.

This appeal has been filed against the impugned judgment of the Court below dated 29.10.1998 by which the respondent's petition for divorce has been decreed.

2. The respondent had filed a petition for divorce against the wife on the ground of mental as well as physical cruelty.

3. In paragraph 12 of the petition for divorce it was alleged by the husband that the wife has started making allegation against the character of the husband, In paragraph 11 of the petition it is alleged that the wife had filed a criminal case against her husband, which was found to be false. In paragraph 11 of the written statement filed by the wife it is stated that the husband is having an affair with his Bhabhi's sister. The Court below has found that there was no evidence in support of this allegation of the wife, and we see no good reason to disagree with the Court below on this point.

4. There is a long line of decisions holding that false, scandalous, malicious, baseless and unproved allegations made by one spouse whether in letters or other writings or plaint or a written statement or even in appeal or by any other mode amounts to cruelty. Such allegations may result in maligning either of the spouses or his/her near relations. Such allegations do cause great mental agony either to the husband or the wife as the case may be. False complaints to the police or other authorities have also the same result. The Court has ample jurisdiction to take into consideration even the subsequent events. Such scandalous and false matter even if it is brought on record subsequent to the filing of the petition or written statement can be taken into consideration. It is the cumulative effect of all the acts and conduct which has to be taken into consideration for finding out whether the behaviour of the erring spouse falls within the ambit of cruelty as envisaged under Section 13(1A) of the Hindu Marriage Act. What may amount to cruelty in one case may not amount to cruelty in another case. The Court has to consider the social status, the environment, the education, the mental and physical conditions and the susceptibilities of the innocent spouse as also the custom and the manners of the parties. Cruelty may consist of a single act or conduct of the respondent or it may consist of a series of acts, none of which by itself can be said to constitute cruelty but in their totality they may amount to cruelty vide Smt. Neelu

Kohil v. Naveen Kohil, II (2004) DMC 223 (DB)=2004 All LJ 374.

5. It has been held by the Supreme Court in Vijay Kumar Ram Chandra Bhate v. Neela Vijay Kumar Bhate, I (2003) DMC 685 (SC)=III (2003) SLT 227=AIR 2003 SC 2462, that the allegation of unchastity against the character of the spouse amounts to mental cruelty. A similar view has been taken by the Calcutta High Court in Smt. Santana Banerjee v. Sachindra Nath Banerjee, AIR 1990 Cal. 367. In V. Bhagat v. Mrs. D. Bhagat, II (1993) DMC 568=AIR 1994 SC 710, the Supreme Court has taken a similar view. Similarly, filing a false criminal case against the spouse also amounts to mental cruelty.

6. Apart from the above, it has also been proved that for at least seven years prior to the filing of the petition the wife has been living apart from the husband and this constitutes desertion. It has been found by the Court below that there was no justification for the wife to leave her husband and start living with her parents for such a long period. Ordinarily it is the duty of the wife to live with her husband because unless the husband and wife live together there is really no marriage. We are in agreement with the view taken by the Court below.

7. Learned Counsel for the appellant has submitted that the husband had earlier filed petition No. 55 of 1992 for divorce which had been dismissed for default as well as on the ground of non-compliance of the order under Section 24 of the Hindu Marriage Act. Hence it is alleged that the present petition is barred by Order 9 Rule 9, C.P.C. We have perused the earlier petition and find that the ground taken of mental cruelty in this petition namely character assassination was not the ground in the earlier petition. Hence in our opinion the subsequent petition was not barred. Thus there is no force in this appeal and it is dismissed.

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