

Om Prakash Vs. Krishna

Om Prakash Vs. Krishna

SooperKanoon Citation : sooperkanoon.com/503199

Court : Madhya Pradesh

Decided On : Sep-25-1990

Reported in : I(1991)DMC380

Judge : D.M. Dharmadhikari, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1) and 28

Appeal No. : F.A. No. 45 of 1989

Appellant : Om Prakash

Respondent : Krishna

Advocate for Def. : None

Advocate for Pet/Ap. : D.K. Jain, Adv.

Disposition : Appeal dismissed

Judgement :

D.M. Dharmadhikari, J.

1. The divorce petition under Section 13(1)(i-a) of the Hindu Marriage Act (in short 'the Act') was dismissed by the trial Court by order dated 28-2-1989, against which the present appeal has been filed under Section 28 of the Act by the husband.

2. The husband claimed a decree of divorce on the alleged ground of cruel treatment meted out to him by the respondent/wife. The main allegations of the husband/appellant against the wife/respondent, which were sought to be proved in the case, are as under : --

(1) That the wife quarrelled with the members of the family of the husband on trivial affairs and used to leave the house of the husband as and when she desired, without any pre-intimation or permission.

(2) That during the gas leakage at Bhopal the eldest son, Santosh, of the parties died and other members of the family were admitted in the hospital. The respondent/wife inspite of the above information of the calamity in the family did not attend the hospital and did not return from the house of her parents where she was living at the relevant time.

(3) That the second son, Sanjay, of the parties who had gone with the wife to her parents, died there but no information of the same was immediately sent to the husband/appellant and other members of his family.

(4) That the wife always threatened to commit suicide and had on one occasion made an attempt for the same but it was averted because of the timely intervention of the husband.

3. The above allegations, according to the husband constituted acts of cruelty deserving grant of decree of divorce against the wife/respondent. The husband sought to prove the above allegations by himself in the witness box as PW 1 and his father Kaluram s/o Rajaram (PW 4). The husband also examined other witnesses Kaluram s/o Ramlal (PW 2) and Nanhelal Yadav (PW 3), who were said to be close acquaintances.

4. The wife contested the proceedings and opposed decree of divorce by denying all the allegations made against her. She stated in her reply to the divorce petition and also in her deposition that she had always suffered ill-treatment from the husband and other members of his family so much so that she had become seriously ill and in that serious condition she was left at the place of her parents.

She specifically stated that when in the gas tragedy she had lost one of her sons and other members were admitted in the hospital, she had gone there. In her deposition before the Court in paragraphs 14 and 15, she stated that as soon as she had received information about the death of her son in gas tragedy and about her husband and relations being admitted in the hospital, she had gone in search to the hospital but could not meet them. She had also gone in search of the other members of the family to the house of the husband but nothing could be known about them. She explained in her testimony that she was sent to her parents by the husband after ill-treating her and making demand of money from her.

5. The trial Court dismissed the petition for divorce holding that the allegations made by the husband were not true and that some trivial irritations caused between the parties to the marriage and their relations, furnished no ground for granting a decree of divorce.

6. Learned counsel appearing for the husband submitted that the Court below committed an error in disbelieving the version of the husband regarding acts of cruelty on the part of the wife and holding that the acts did not constitute cruelty within the meaning of Section 13 of the Act. The counsel argued that acts on the part of the wife in not attending to the health of the husband and his family members when they were admitted in the hospital in the gas tragedy were serious acts of cruelty justifying a decree of divorce. It was also argued that not attending the husband's house even for the funeral ceremony of the son, was an extreme act of cruelty.

7. Having considered the submissions of the counsel for the appellant, I am of the view that no grounds have been made out in the case for grant of decree of divorce. The acts attributed by the husband to the wife have been disbelieved by the Court below. I have also gone through the testimony of the husband as also of the wife and do not find any reason to disbelieve her when she explained in her deposition before the Court that soon after receiving the news of the gas tragedy, she had rushed to the hospital as also to the husband's house where she could not meet any of them. The explanation appears to be natural and believable since immediately after the gas tragedy, there was utter confusion in the town at Bhopal

where large number of people were affected in the gas tragedy and were admitted in the hospitals.

8. There is nothing on record to hold that the wife had at any time made any attempt to commit suicide. The witnesses examined by the husband were rightly disbelieved as they could not narrate the whole incident which led the wife to make an attempt to commit suicide. Even if such an attempt was made by the wife, it only indicates that there might be some circumstances created in the house of the husband which led her to such a drastic course. In the present case, in the absence of any clear evidence in proof of the above allegation of the husband, it cannot be held that the wife was guilty of any cruel act against the husband.

9. It is true that after introduction of clause (i-a) to Section 13 of the Act by Marriage Laws Amendment Act, 1976, the 'cruelty' for the purpose of grant of a decree of divorce need not be a cruelty as 'to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injuries for the petitioner to live with the other party', as was the requirement under the unamended provision. Under the amended provision of Section 13(1)(i-a) even mental cruelty can be a good ground for grant of a decree of divorce. The cruelty, however, which can furnish a ground for divorce should be of the type which will satisfy the conscious of the Court that the relationship between the parties has deteriorated to such an extent that it has become impossible for them to live together without mental agony, torture or distress. It need, not be of such a character as to cause danger to life, limb or health. (See : Dr. Kesharao Krishnaji Londhe v. Mrs. Nisha Londhe, AIR 1984 Bombay 413). It is thus clear that even after the amendment in Section 13 by introduction of Section 13(1)(i-a), ordinary wear and tear or minor irritations of married life do not amount to acts of cruelty.

10. From the evidence on record it does appear that the parties to the marriage were not pulling on happily and there were occasions when the wife left husband's home and lived with her parents. There were also earlier matrimonial proceedings which terminated in reconciliation between the parties, but the husband has not proved anything to show that the relations between the parties have deteriorated so much that their joint living is impossible.

11. In ray considered opinion, therefore, the husband was rightly denied the relief of a decree of divorce. This Court hopes that the misunderstanding between the parties will be removed soon if each of them adopts a co-operative attitude and decides to start married life anew.

12. The appeal, therefore, fails and is hereby dismissed. There shall, however, be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com