

Smt. Sandhya Sharma Vs. Shiv Kumar Sharma

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Court : Madhya Pradesh

Decided On : May-08-2000

Reported in : I(2001)DMC58

Judge : V.K. Agarwal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 24; [Hindu Marriage Act, 1955](#) - Sections 13

Appeal No. : Miscellaneous Civil Case No. 506 of 1999

Appellant : Smt. Sandhya Sharma

Respondent : Shiv Kumar Sharma

Advocate for Def. : Vijay Naik, Adv.

Advocate for Pet/Ap. : Abhay Gupta, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V.K. Agarwal, J.

1. This petition under Section 24 of the Civil Procedure Code has been filed by the petitioner/ wife for transfer of Civil Suit No. 360-A/98, pending in the Court of III

ADJ, Bhopal registered on the application under Section 13 of the Hindu Marriage Act (hereinafter referred to as 'Act' for short) for divorce filed by the respondent / husband.

2. Undisputably the parties are married with each other on 8.12.1997 at Bhopal and the petitioner/wife resided with the respondent/husband at Bhopal for sometime. During the above period she visited her parents at Bilaspur.

3. The petitioner has urged that she was maltreated and harassed by the respondent /husband and his family members. There was demand of dowry of Rs. 1 lac, and since there was non-fulfilment of the demand as above, the respondent/husband had left her at Bilaspur at her parents' home. The petitioner/wife filed a complaint with the police in the above regard. Since the police did not take action, she filed a private complaint and an offence under Section 498A and 406 read with Section 34 of the Indian Penal Code has been registered by Judicial Magistrate 1st Class, Bilaspur. Subsequently on 23.5.1999 the petitioner came to know about the filing of a petition under Section 13 of the 'Act' by the notice published in 'Dainik-Bhaskar' at Bilaspur. She, therefore, prayed for transfer of the said case from Bhopal to Bilaspur.

4. It has been urged in the petition that the petitioner is a woman. Her father is old and is aged about 75 years, residing at Bilaspur, and it would not be possible for the petitioner to go to Bhopal to defend the above case. She has no means of earning, while the respondent is a rich businessman.

5. The defendant/husband has resisted the prayer as above. It has been averred in reply by the respondent/husband that there was no demand of dowry by him or his family members. It has been submitted that the petitioner/wife lodged a false complaint against the respondent/husband. She had illicit relation with another person and had tried to commit suicide in the matrimonial home. Hence, a petition for divorce has been filed by him. He does not have sufficient income and is not a rich businessman. The copy of application under Section 13 of the 'Act' for divorce has been filed, which is marked as Annexure R/I.

6. The learned Counsel for parties during arguments supported their stand as above. Learned Counsel for the petitioner/wife has also relied upon *Nirmala Devi v. Ravindra Singh*, 1999 (1) MPWN 9=I(1999) DMC 467, in support of his contention and has urged that in view of the threat to the life of the petitioner, the case deserves to be transferred from Bhopal Court to the Court at Bilaspur.

7. It may be noticed from the above averments that the petition is based mainly on the ground that the petitioner is a woman who is living with her aged father and is unable to attend the Court at Bhopal, because of weak financial condition. However, it may be noted that the marriage of the parties admittedly took place at Bhopal and they cohabited there. Therefore, the normal jurisdiction for trial of the case is at Bhopal. It is also clear that the petitioner can succeed in his petition for transfer only on showing cogent and reasonable ground for transfer of the case. In the instant case the marriage having taken place at Bhopal and in view of the averments made by the respondent/husband as would be clear from his petition Annexure R/1 under Section 13 of the 'Act' that he had alleged unchastity and illicit relation of the petitioner/wife, it is clear that the witnesses and the evidence to be led by the respondent /husband would be available at Bhopal. Moreover, if the petitioner/wife has no sufficient means for litigation, she can claim interim maintenance as well as litigation expenses under the provisions of Hindu Marriage Act.

8. It may also be noted that the petition Annexure R/1 under Section 13 of the 'Act' was filed on 23.12.1998. It further appears that the police report and the criminal complaint filed by the petitioner/wife Annexure R/2 were registered much later, as would be indicated from order sheet Annexure R/2. Obviously, therefore, the petition under Section 13 of the 'Act' being much prior in time, and in view of the nature of allegations made therein, it would not be just and proper to transfer the case from Bhopal to Bilaspur, as has been prayed by the petitioner/ wife. It may be noticed that vague averments that there was threat to the life of the petitioner would not subserve the purpose of transfer of the case. There appears to be no reasonable ground to transfer the case, as has been prayed for by the petitioner/wife.

9. Accordingly, I reject this petition for transfer.

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