

Laxmibai Vs. Suresh Chandra

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Court : Madhya Pradesh

Decided On : Nov-17-2003

Reported in : II(2004)DMC165

Judge : A.K. Awasthy, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1), 23 and 28; Indian Penal Code (IPC) - Sections 498A

Appeal No. : First Appeal No. 550 of 2001

Appellant : Laxmibai

Respondent : Suresh Chandra

Advocate for Def. : B.I. Mehta, Adv.

Advocate for Pet/Ap. : Yashpal Rathor, Adv.

Disposition : Appeal allowed

Judgement :

A.K. Awasthy, J.

1. Appellant/defendant has filed this appeal under Section 28 of the Hindu Marriage Act against the judgment and decree dated 31.8.2001 in Civil Suit No. 62/2000 passed by the learned Additional District Judge, Shujalpur, whereby the

marriage was dissolved by a decree of divorce on the ground of cruelty and desertion.

2. Admitted facts of the case are that the marriage in between the petitioner and the defendant was solemnized in the year 1992 according to the Hindu rites and customs and that they have no issue from the wedlock. It is also not in dispute that the appellant wife is living separately from the respondent-petitioner from 1996 and that the petitioner has filed this divorce petition on 9.12.2000. It is also not in dispute that the appellant has lodged a report in the police against her husband and her husband along with his Bhabhi has been convicted by the Judicial Magistrate, First Class for an offence punishable under Section 498A of the Indian Penal Code.

3. The case of the petitioner is that his wife is ill-tempered. She habitually insulted and misbehaved with the petitioner and his parents. That the defendant has left the matrimonial house without informing the petitioner and she has refused to resume the relation inspite of repeated efforts by the petitioner. It is further alleged by the petitioner that the defendant has lodged a false report of the demand of dowry on 27.5.1998 against the petitioner and his Bhabhi and the petitioner and his Bhabhi are being unnecessarily harassed in the criminal case filed on the basis of the false report by the defendant. That the defendant has deserted the petitioner for more than two years.

4. The defendant has denied that she has insulted or abused the petitioner or his family members. She has also denied that she left the matrimonial house without informing her husband. She has stated that the petitioner and his family members were in habit of torturing and insulting the defendant to satisfy their greed of more dowry. That on account of persistent demand of dowry and the torture by the petitioner, she has lodged the report, in which after trial on 3.11.1999 the petitioner and his Bhabhi have been found guilty under Section 498A of the Indian Penal Code and sentenced to undergo R.I. for six months each with fine of Rs. 1,000/-. It is denied that the defendant has deserted her husband.

5. The learned Trial Court, after framing the issues, has examined petitioner Suresh Chandra (P.W. 1), Bhagwati Prasad (P.W. 2) and from the opposite side

defendant Laxmibai and Harisingh and the learned Trial Court has held that the ground of desertion and cruelty are proved and the marriage deserves to be dissolved by a decree of divorce.

6. The appellant has assailed the impugned judgment and decree on the ground that the respondent-husband was guilty of misbehaving and torturing the appellant for dowry and as such the learned Trial Court has erred in passing the decree of divorce on the basis of desertion and cruelty.

7. Suresh Chandra (P.W. 1) has stated that his wife is till-tempered and she used to avoid serve her husband and his family members. Suresh Chandra (P.W. 1) has further stated that his wife has made a report against him in which he has been convicted along with his Bhabhi for the imprisonment of six months each. Bhagwati Prasad (P.W. 2) has not stated about the ill-treatment of the defendant with her husband or his family members. The allegation of misbehaviour by the wife are too trivial and they are not serious in nature. Such bald and sweeping allegations do not constitute matrimonial offence of divorce of cruelty. This type of incidents comes in category of ordinary wear and tear of the matrimonial life and they should be tolerated.

8. From the statements of Laxmibai (D.W. 1) and Harisingh (D.W. 2) it is clear that the petitioner was in habit of demanding dowry and torturing his wife to extract more money in dowry. The police has conducted investigation on the report lodged by the defendant and the learned Trial Court has framed the charge and after recording the evidence, the defendant was found guilty for the offence punishable under Section 498A of the Indian Penal Code. Consequently, it is clear that the report lodged by the defendant wife against her husband was not false. Under the circumstances the marriage between them cannot be dissolved, on the ground that the wife has lodged the report against her husband, because Section 23 of the Hindu Marriage Act postulate that the petitioner should not take the advantage of his own wrong. It is proved that the petitioner was guilty of misbehaving his wife for the demand of dowry. In these circumstances, it cannot be said that the defendant is living separately from her husband without reasonable cause and she has forsaken the matrimonial relations with her husband.

9. Learned Counsel for the respondent has argued that the appellant-wife is living separately from her husband for more than 13 years and as she has lodged the report against her husband resulting in his conviction the decree of divorce should be passed on the ground of desertion. The defendant-wife is not living separately with intention to bring the matrimonial relations to an end and animus desirendi leaving does not exist Which is an essential condition to pass a decree for dissolution of marriage on the ground of desertion. In these circumstances I hold that the learned Trial Court has erred in passing the decree of dissolution of marriage on the ground of desertion and cruelty.

10. In the result, the appeal is hereby allowed. The impugned judgment and decree are set aside and the petition filed by the respondent is hereby dismissed. The respondent to bear his own costs and costs incurred in this appeal and in the suit by the appellant-defendant.