

Sandhya Sharma Vs. Ravi Sharma

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Court : Madhya Pradesh

Decided On : Apr-14-2003

Reported in : I(2004)DMC275

Judge : A.K. Awasthy, J.

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

Appeal No. : First Appeal No. 169 of 2000

Appellant : Sandhya Sharma

Respondent : Ravi Sharma

Advocate for Def. : T.K. Kharka, Adv.

Advocate for Pet/Ap. : B.M. Dwivedi, Adv.

Disposition : Appeal allowed

Judgement :

A.K. Awasthy, J.

1. This appeal is filed under Section 28 of the Hindu Marriage Act by the appellant/petitioner against the judgment and decree passed in Civil Suit No. 101-A of 1994, decided on 30.1.2000 by 4th Additional District Judge, Jabalpur, wherein the petition filed for seeking divorce on the ground of cruelty was

dismissed.

2. The admitted facts of the case are that the marriage between the appellant and respondent was solemnised on 14.6.1990 at Jabalpur according to Hindu rites and customs and from the wedlock they have a daughter.

3. The case of the petitioner/appellant is that the respondent/husband used to ill-treat and misbehave with her after consuming liquor and he had many times beaten her. The respondent/husband and his family members used to demand more dowry. That in 1991, the respondent dragged her and beat her by sticks and the neighbours intervened and pacified the respondent. The appellant has further alleged that on 4th June, 1993 her husband came back to the house in a drunken state and snatched the child and threw the child from the terrace. The respondent/husband used to habitually misbehave and ill-treat the petitioner. That on 23.4.1994 the appellant made a report in the Police Station Nagpur under Section 498A of the Indian Penal Code. That from last five years, the appellant is separately living from the respondent and there is no chance of their living together and the marriage has become actually dead. That the marriage between the appellant and the respondent be dissolved and decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act be passed.

4. Respondent has denied that he is habitual drunker and that he is in the habit of beating or ill-treating his wife. Respondent/husband has averred that false allegations are made by the wife on account of prompting by her family members.

5. Learned Trial Court has examined witnesses of the appellant and the respondent and after hearing the arguments came to the conclusion that the ground of mental or physical cruelty by respondent/husband is not made out and as such he has dismissed the petition of the appellant/wife.

6. I have heard the arguments of both the parties. The respondent/husband and his Counsel has admitted in Court that the marriage between the appellant and respondent is practically dead and there are no chances of re-union and the consent decree of divorce be passed.

7. From the statement of Sandhya Sharma and her witnesses Rambabu Malhotra (P.W. 2) it is clear that various incidents of beating by the non-applicant of his wife had taken place and the relations between the appellant and the respondent were highly strained. It is noteworthy that from last nine years, the appellant and respondent are living separately. In the argument before me the respondent admitted that the decree of divorce be passed and as there are no chances of the appellant and respondent living together. To assess the actionable cruelty it is necessary that the relations between the husband and wife should be taken in totality and cumulativeness of act and conduct of the parties should be taken into consideration. In the circumstances of the present case it will be in interest of both the parties if marriage between them is annulled.

8. Consequently, the appeal is allowed and it is held that the appellant/petitioner is entitled for the decree of divorce from her husband under Section 13(1)(ia) of the Hindu Marriage Act. Appellant has not claimed the alimony from respondent. As the parties have agreed for divorce, no order as to costs.