

**Mamtabai Vs. Bharat Singh**

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**SooperKanoon Citation :** [sooperkanoon.com/511803](http://sooperkanoon.com/511803)

**Court :** Madhya Pradesh

**Decided On :** Oct-01-2002

**Reported in :** I(2003)DMC750

**Judge :** A.K. Gohil, J.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 28

**Appeal No. :** First Appeal No. 90 of 1995

**Appellant :** Mamtabai

**Respondent :** Bharat Singh

**Advocate for Def. :** None

**Advocate for Pet/Ap. :** R.C. Chhazed, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**A.K. Gohil, J.**

1. Appellant/wife has filed this appeal Under Section 28 of the Hindu Marriage Act being aggrieved by the judgment and decree dated 13.12.1994 passed by Additional District Judge, Narsingharh (Rajgarh) in Civil Suit No. 3-A/94 by which it dismissed the petition for divorce.

2. Brief facts of the case are that the appellant was married with respondent on 3.2.1990. She filed this divorce petition on 1.2.1994 alleging therein that the respondent/husband was always compelling to the petitioner to bring dowry from his father which according to the petitioner her father was unable to give because of his poor condition. In the year 1993 appellant's father brought her from her husband's house on the occasion of Holi and thereafter the respondent/ husband never came to take her back. On 5.5.1993 she came to know that the respondent has married another girl Parvatibai. Therefore, by performing second marriage, the respondent/husband has practised cruelty with the appellant. Written statement was filed on behalf of the respondent/husband denying the allegations and his submission was that the father of the appellant came to the house of the respondent and took her daughter back and thereafter the husband went many a times to take her back but the appellant's father refused to send her back. Issues were framed and evidence of both parties was recorded. Appellant Mamtabai examined herself as P.W. 1. On behalf of the appellant P.W. 2 Mangilal was also examined. Appellant had admitted in her cross-examination that later on father-in-law had come to take her but at that time her father refused to send her back along with father-in-law and thereafter neither she went to the house of her husband nor she lived with her husband. Therefore, from this evidence it is clear that it was the petitioner's father who had refused to send her back. So far as the evidence relating to second marriage performed by the respondent is concerned, the Trial Court has found that the petitioner has failed to prove, though P.W. 2 Mangilal has stated that he is aware about second marriage but in the cross-examination he admits that appellant Mamtabai is the daughter of his close relative (Samdhi). It has also come in the evidence of D.W. 1 Bharat Singh that he has not performed any second marriage; he has not practised any cruelty and nor deserted appellant. It is the father of appellant who came to take her back and thereafter she did not come back. D.W. 2 Tularam is the father of Bharat Singh. He has also stated on oath that neither he nor his son demanded dowry nor practised any cruelty for dowry nor his son has performed any second marriage. On the contrary D.W. 1 Bharat Singh and D.W. 2 Tularam both have stated that they are ready to keep the appellant. D.W. 3 Pannalal, who is also maternal uncle of respondent, has also stated that Bharat Singh has not performed second

marriage and the husband and his father both are willing to keep Mamtabai in their house. D.W. 4 Shambhulal who is the brother-in-law of Parvatibai with whom it is alleged that Bharat Singh has performed second marriage has stated on oath that his sister-in-law Parvatibai has not performed any marriage with Bharat Singh. Appreciating the aforesaid evidence on record, the Trial Court dismissed the petition filed on behalf of the appellant/wife as she has failed to prove cruelty, demand of dowry as well as allegation of performing second marriage, against which the appellant has filed this appeal.

3. I have heard learned Counsel for appellant. From the evidence it is clear that the appellant has failed to prove any case of cruelty, demand of dowry as well as the case of second marriage by her husband with Parvatibai. Clear evidence is available on record that the respondent has not performed any second marriage and he is willing to keep the petitioner with him as a wife. Looking to the aforesaid evidence on record, it is clear that appellant Mamtabai has failed to prove any of the allegations on record and has failed to prove ground for grant of divorce. It appears that the appellant is living separately with her father without any reasonable ground. Since no ground is made out for grant of divorce, the Trial Court has rightly dismissed the petition. I have also examined the evidence available on record and I also found that the appellant has failed to prove either ground for demand of dowry or for performing of second marriage by the respondent/husband or any case of cruelty. Therefore, no case is made out for interference in this appeal by this Court. The findings recorded by the Trial Court, after appreciation of the evidence, appears to be just and proper.

4. Accordingly this appeal fails and is hereby dismissed with no order as to costs. A decree be drawn up accordingly. Record be returned.