

**Nirvendra Vs. Mrs. Sadhna**

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**SooperKanoon Citation :** [sooperkanoon.com/512031](http://sooperkanoon.com/512031)

**Court :** Madhya Pradesh

**Decided On :** Nov-14-2003

**Reported in :** II(2004)DMC845

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

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

**Appeal No. :** First Appeal No. 242 of 1997

**Appellant :** Nirvendra

**Respondent :** Mrs. Sadhna

**Advocate for Def. :** None

**Advocate for Pet/Ap. :** Vandana Kasrekar, Adv.

**Disposition :** Appeal dismissed

**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 30.8.1997 of the Ist Additional District Judge, Alirajpur, District Jhabua in Hindu Marriage Case No. 6-A/97, whereby the decree of dissolution of marriage was passed on the ground of

desertion.

2. Admitted facts of the case are that the marriage in between the appellant and the respondent was performed on 27.6.1989 at Alirajpur according to the Hindu rites and customs and they have no issue from the wedlock. It is also not in dispute that after the marriage the respondent/petitioner lived with her husband only for about two months and she left the matrimonial house in the month of October 1989 and since then she is living separately.

3. The case of the petitioner is that after the marriage the defendant started treating the petitioner with cruelty for fulfilling his greed of dowry and she was physically assaulted by her husband and she fainted therein, but her husband has not taken any care; that the defendant has not made any attempt to keep the petitioner in the matrimonial house and he has permanently left her; that the marriage be dissolved on the ground of cruelty and desertion. The defendant has denied that he has beaten his wife or he has ousted her from the matrimonial house.

4. The case of the defendant is that the petitioner has left the house on her own accord and she is not willing to live with the defendant.

5. The learned Trial Court after framing the issues has examined the petitioner as P.W. 1 and her witnesses Purendra Singh, Bheru Singh and Chandra Singh and from the opposite side the defendant has examined himself, Bharat Singh and Vinod Kumar. The learned Trial Court has held that the ground of cruelty is not proved and has passed decree of dissolution of marriage on the ground of desertion.

6. The appellant has assailed the impugned judgment and decree on the ground that the respondent/plaintiff has not proved that her husband has left her without any reasonable and probable cause and as such the decree of divorce on the ground of desertion is not tenable.

7. Smt. Sandhya Bhati (P.W. 1) has stated that in the month of October 1989 she was tortured by her husband and his family members. She was ousted from the

matrimonial house and, thereafter, her father and the family members had made various attempts to persuade the defendant to keep her in the matrimonial house, but the defendant has refused to take her back. Purendra Singh Chandel (P.W. 2), Bheru Singh (P.W. 3) and Chandra Singh (P.W. 4) have also stated that several times they went to the defendant to request to keep his wife in the matrimonial house, but the defendant has refused to keep her in the house. It is further stated by these witnesses that the defendant was in habit of ill-treating the petitioner. There is nothing in the cross-examination of Purendra Singh (P.W. 2) Bheru Singh (P.W. 3) and Chandra Singh (P.W. 4) to doubt the veracity of their statements.

8. The case was fixed in the Lok Adalat to resolve the dispute between the appellant and the respondent and it is clear from the proceeding of the Lok Adalat that the petitioner was ready to live with her husband, but the defendant has refused to keep her in his house.

9. The defendant has not produced any evidence to prove that he has made any attempt to bring his wife back to the matrimonial house. The defendant has also not called the panchayat of his community or done any thing to see that his wife returns back to the matrimonial house. The appellant and the respondent are living separately from each other from last more than 13 years. The appellant is not interested in keeping his wife in matrimonial house and his behaviour with his wife is also unbecoming and uncalled for. In these circumstances there are no chances of resumption of matrimonial relation between the appellant and the respondent. The appellant and the respondent are living separately for the last more than 13 years and as the appellant has deserted his wife without any cause for more than 13 years, the learned Trial Court has rightly dissolved the marriage on the ground of desertion in between the appellant and the respondent.

10. The appeal is devoid of merit and is hereby dismissed. Parties to bear their own costs.