

Surjeet Singh Vs. Smt. Paramjit Kaur

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SooperKanoon Citation : sooperkanoon.com/514409

Court : Uttaranchal

Decided On : Aug-21-2008

Reported in : AIR2009Utr10

Judge : Prafulla C. Pant and; Dharam Veer, JJ.

Appellant : Surjeet Singh

Respondent : Smt. Paramjit Kaur

Disposition : Petition dismissed

Judgement :

Prafulla C. Pant, J.

1. This appeal, preferred under Section 19 of Family Courts Act, 1984, is directed against the judgment and order dated 23.04.2008, passed by Additional Family Judge, Rishikesh, in Suit No. 11 of 2006, whereby the appellant's petition for divorce, moved under Section 13 of Hindu Marriage Act, 1955, is dismissed.
2. Heard learned Counsel for the parties and perused the lower court record.
3. Brief facts of the case are that appellant Surjeet Singh got married to respondent Smt. Paramjit Kaur on 02.06.1996 according to Sikh rites. Out of the wedlock two daughters, namely, Sifat Kaur and Achint Kaur were born in the year 1999 and 2000 respectively. The appellant's case is that the respondent treated

him with cruelty. It is further pleaded that the respondent left the house of the petitioner (present appellant) on 15.06.2002, without any rhyme and reason, and started living with her parents, whereafter, she did not return to her matrimonial house. It is also pleaded by the appellant in the petition, moved under Section 13 of Hindu Marriage Act, 1955, that the appellant suffered serious illness and had to be admitted twice in the Hospital but the respondent never cared to see him. It is further stated that on 08.03.2004, the respondent allegedly lodged a false First Information Report against the appellant and members of his family relating to offence punishable under Sections 498-A, 506, 406/34 I.P.C.. Apart from this, the respondent further filed a petition under Section 125 of Code of Criminal Procedure, 1973, which was decided on 24.10.2005. Alleging that the appellant has undergone cruelty at the hands of the respondent, the divorce was sought on that ground.

4. Respondent contested the petition for divorce moved by the appellant and filed the written statement before the trial court. In the written statement, it is admitted to the respondent that she got married to the appellant and two daughters were born out of the wedlock. However, she has denied other contents of the divorce petition and it is pleaded that the answering respondent was harassed by the appellant and his parents for non-fulfilment of demand of dowry made by them. It is denied that the respondent treated the petitioner with cruelty. However, it is admitted that since 15.06.2002, the respondent is living with her parents, but it is alleged that she was forced to leave her husband's house.

5. On the basis of the pleadings of the parties, the trial court framed following issues:

(i) Whether the respondent has treated the petitioner with cruelty and was he subjected to mental torture?

(ii) To what relief, if any, the petitioner is entitled?

6. Both the parties led their oral and documentary evidence before the trial court and said court after hearing the parties decided the above mentioned issues against the petitioner (present appellant) and dismissed the petition. Hence this

appeal by the husband.

7. Admittedly, respondent got married to the appellant on 02.06.1996. It is also admitted between the parties that two daughters were born out of the wedlock, namely, Sifat Kaur (on 07.02.1999) and Achint Kaur (on 19.11.2000). It is also not disputed between the parties that Sifat Kaur is living with her father while Achint Kaur is living with her mother. The only question involved in this case is whether the respondent treated the petitioner with cruelty, if so, is the husband is entitled to decree of divorce? In this connection on behalf of appellant (husband) attention of this Court is drawn to letter written by the respondent (in her hand writing) before leaving to her parents' house (on earlier occasion) on 12.02.1998. The contents of said letter read as under:

(Vernacular matter omitted...Ed)

8. The perusal of the evidence on record shows that this letter is not denied by the respondent but she has stated that she was forced to write that letter. Leaving the matrimonial house on 15.06.2002 by the respondent with daughter Achint Kaur is also not denied to the respondent but what she stated is that she was forced to go from her matrimonial house. From the above discussion, this much is clear that the aforesaid letter was written by the respondent in the year 1998 and she did leave her matrimonial house on 15.06.2002. It is also proved on record that on 08.03.2004 respondent lodged First Information Report relating to offence punishable under Sections 498A, 506, 406/34 I.P.C. against the appellant (husband) and members of his family. It is also come on the record that the appellant and his parents had to get themselves surrendered and bailed out. Though it is disputed whether the allegations made in the First Information Report were correct or not, but this much is certain that the appellant has undergone mental cruelty particularly after lodging the First Information Report when he and his parents had to surrender and get themselves bailed out. Having gone through the evidence on record, we are unable to concur with the trial court that the petitioner (present appellant) has not proved that he has not undergone cruelty at the hands of his wife (respondent). Having considered the submissions of learned Counsel for the parties and after going through the trial court record, we are

satisfied that the petitioner/appellant has made out a case for divorce on the ground of cruelty suffered by him at the hands of his wife Paramjit Kaur. Therefore, we are of the view that the trial court has erred in law in dismissing the petition for divorce moved by the petitioner (appellant).

9. For the reasons as discussed above, we are of the opinion that the appeal deserves to be allowed.

10. However, we are conscious of the fact that Achint Kaur aged some 8 years is living with her mother (respondent) and there is no evidence that the respondent has independent means to maintain herself. Considering the economic status of the husband, who was doing business of Tent House and also owns agricultural property, we think it just and proper to pass a conditional decree of divorce directing the appellant to pay a lump sum permanent alimony of Rs. 10 lac to the respondent.

11. Therefore, the appeal is accordingly allowed and the impugned judgment and order dated 23.04.2008, passed by Additional Family Judge, Rishikesh, in Suit No. 11 of 2006 is set aside. The petition, under Section 13 of Hindu Marriage Act, 1955, moved by the petitioner (present appellant) is allowed and the marriage between appellant Surjeet Singh and respondent Paramjit Kaur is dissolved by the decree of divorce subject to the condition that the appellant shall pay a lump sum permanent alimony amounting Rs. 10 lac to the respondent, within a period of one month from today, failing which this appeal and the petition, under Section 13 of Hindu Marriage Act, 1955, shall stand dismissed.