

Ram Kishan Vs. Chandra Kanta

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Court : Rajasthan

Decided On : May-05-1992

Reported in : II(1992)DMC198

Judge : Krishna Chandra Agrawal and; Inder Sen Israni, JJ.

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

Appeal No. : D.B. Civil Misc. A. No. 79 of 1987

Appellant : Ram Kishan

Respondent : Chandra Kanta

Advocate for Def. : G. Bardhar, Adv.

Advocate for Pet/Ap. : U.N. Bhandari, Adv.

Disposition : Appeal dismissed

Judgement :

T.S. Israni, J.

1. This Appeal under Section 19 of the Family Courts Act, 1984 read with Section 28 of the [Hindu Marriage Act, 1955](#) (for brevity, 'the Act, 1955') has been filed against the judgment dated December 20, 1986, passed by the learned Judge, Family Court, Jaipur, in case No. 125/86.

2. Briefly stated, the marriage of the parties was solemnized on or about May 17, 1973, in accordance with the Hindu, rites, and customs, at Sawaimadhopur. After the function of 'Muklava', held in the year, 1976, respondent resided with the appellant at his village Kherlawas, Tehsil Bassi, District Jaipur. It is alleged that the respondent, in the year, 1977, while the appellant was studying in Government College, Dausa, without reasonable cause, suddenly left the house of the appellant and went to her father, without consent and permission of the appellant and has not returned since August 8, 1977. The respondent filed proceedings under Section 125, Cr.P.C., for grant of maintenance and was awarded Rs. 200/- per month as maintenance, which the appellant is paying to her.

3. It is submitted by Mr. U.N. Bhandari, learned Counsel, that proceedings for divorce under Section 13 of the Act, 1955 were filed on July 31, 1985. It is further submitted that the said petition was filed on three grounds; namely, (i) cruelty; (ii) adultery; and (iii) desertion. During the course of arguments, the learned Counsel has pressed the grounds of desertion and adultery. It is also submitted that parties are living separately since August 8, 1977 and there is no possibility of conciliation between the parties and, thus, the marriage has broken irretrievably. The desertion became complete after two years from the date she left the matrimonial house, i.e., August 8, 1977. It is pointed out that the respondent gave birth to a male child, much after 280 days from the date she left the matrimonial house and during that period, the respondent had no access to the appellant so as to allow them to resume cohabitation. Thus, it is proved that the respondent is leading an adulterous life. It is further pointed out that no date of birth of the child was registered in the Municipal Records, nor was the appellant informed at the time of birth of the child.

4. It is submitted by Mr. Goverdhan Bardhar, learned Counsel, that from the statement of respondent, it is clear that she was forced to leave the matrimonial house and burden regarding desertion is squarely on the appellant, who alleged the same. It is further submitted that there is no proof of adultery Whatsoever, nor the name of any person has been disclosed. It is also submitted that, according to the appellant himself, he came to stay after few months with the respondent in the house of her parents. It is pointed out that when she was forced to leave them

atrimonial house, she had pregnancy of four months.

5. We have heard both the parties and gone through the documents on record. It will be appropriate to briefly go through the statements of the witnesses. PW 1 appellant Ramkishan has stated that respondent gave birth to a male child, after one and half years she left the matrimonial house, on August 8, 1977, who was alive for about 4-5 months. A Panchayat was called on this account and a resolution was also passed by the Panchayat to socially boycott the father of the respondent. He further states that after respondent left his house, he went to the house of her parents to bring her back. Thereafter, he did not go there. In cross-examination, he states that in the proceedings initiated under Section 125, Cr.P.C., by the respondent, he had stated that the respondent has given birth to an illegitimate child, but the Court did not believe upon him and fixed maintenance of Rs. 200/- per month. He states that in the application the fact regarding any resolution having been passed by the Panchayat to socially boycott the father of the respondent has not been mentioned. PW 2 Mool Chand is father of the appellant. He states that after the respondent left the matrimonial house, she has not returned back. She gave birth to a male child one year 1 1/4 years after she left the matrimonial house. A resolution had been passed by the Panchayat, regarding social boycott of the family of the respondent. In cross-examination, he states that he cannot give any date regarding birth of the child. P.W. 3 is Ratan Lal, who is relative of appellant. He has stated that the respondent gave birth to a son, after about one and half years, she left the matrimonial house. In cross-examination he has stated that he was not present when the birth of the child took place. He has also stated that he cannot give the date or the month of the birth of the child. NPW 1 Smt. Chandra Kanta-respondent has stated that my husband gave me beatings and he took me himself the house of my parents at Jaipur. After coming to Jaipur, she gave birth to a son after four months and fifteen days, who died after one and half years. She also stated that no resolution of the Panchayat was ever passed to socially boycott her father. She further stated that after the applicant left her at the house her parents, he cross-examination, she denies, that she on her own come away from the matrimonial house, while her husband was at Dausa. She further denies that she refused to go husband come She also dinies that she picked up quarrels with every body in the house, while she lived with her

husband. NPW 2 Narainlal is father of respondent. He states that the appellant refused to take respondent to his house. He also states that she gave birth to a son after 4-5 months she started living in his house. In cross-examination, he has denied that the respondent on her own came away from the house of her husband. He has further denied that the respondent has adulterous relations with several persons. He also denied that any Panchayat ever met to pass a resolution to boycott him socially.

6. From the evidence discussed above, it can be said that there is no sufficient proof to come to the conclusion that the respondent has deserted the appellant. There is no reason to disbelieve her statement, in which she has stated that it was the appellant, who forcibly left her at the house of her father and, thereafter, never came to take her back. She has clearly stated that she gave birth to a male child after about 4 1/2 months of coming to Jaipur. Mere vague allegations, regarding chastity of respondent alleged by the appellant, cannot be relied upon to hold that she is living in adultery or that she gave birth to a child, after 1 1/2 years of her coming to Jaipur. No name of any person with whom respondent may be living in adultery has been disclosed. A vague and irresponsible statement has been made that she lives in adultery with several persons. Neither any document, nor any reliable oral evidence has been produced to discharge the burden regarding the fact that birth of the child took place after 1 1/2 years. Mr. Bhandari, learned Counsel, relying on *Rameshwar Singh v. Bajit Lal*, AIR 1929 PC 95 stated that it is the respondent, who has not produced evidence to show when she gave birth to a child, therefore, adverse presumption should be drawn against her. The matter referred to by the learned Counsel is regarding ownership of agricultural land. In the matter under consideration, the burden of proving that the respondent was living in adultery and she gave birth to a child, after 1 1/2 years of leaving the matrimonial home, is squarely on the appellant and no adverse presumption can be drawn against her when she clearly stated that she gave birth to a child after about 4 1/2 months of her coming to Jaipur.

7. The learned Counsel for the appellant has referred to *Ms. Jorden Diengdeh v. S.S. Chopra*, AIR 1985 SC 935 in which, the Apex Court observed that it will be desirable to introduce ground of irretrievable break-down of marriage in the Act,

1965 as one of the grounds for divorce. However, this authority is of no help to the appellant, as the divorce can be granted only on such grounds as enumerated in Section 13 of the Act, 1955. Therefore, this Court cannot dissolve the marriage and grant divorce on the ground, which is not available under the Act, 1955.

8. We are, therefore, of the considered opinion that the appellant has completely failed to prove the grounds of desertion and adultery against the respondent. There is no force in this appeal, which is, therefore, dismissed. The appellant shall pay Rs. 1100/- as costs of this appeal to the respondent.

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