

Smt. Vimla Vs. Surendra Singh

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Court : Rajasthan

Decided On : Apr-02-1997

Reported in : 1998CriLJ1464

Judge : P.C. Jain, J.

Acts : [Family Courts Act, 1984](#) - Sections 19; Code of Criminal Procedure (CrPC) , 1974 - Sections 125

Appeal No. : Criminal Revn. No. 336 of 1995

Appellant : Smt. Vimla

Respondent : Surendra Singh

Advocate for Def. : H.S. Balot, Adv.

Advocate for Pet/Ap. : Haider Aaga, Adv.

Disposition : Petition allowed

Judgement :

ORDER

P.C. Jain, J.

1. The wife-petitioner has filed this revision petition under Section 19 of the [Family Courts Act, 1984](#) against the order dated 23-9-1995 passed by the learned Judge,

Family Court, Jodhpur whereby the application filed under Section 125, Cr. P.C. by the wife-petitioner was dismissed.

2. The brief facts relevant for the disposal of this petition are that the wife-petitioner filed an application under Section 125, Cr. P.C. against the husband-non-petitioner on the ground that she was treated by him with cruelty and was turned out of her matrimonial house. Her two minor sons were detained by him.

3. There is no dispute that the wife-petitioner was married to husband-non-petitioner and out of their wedlock, two sons who were minor on the relevant date were born. For a few years, both the parties lived peacefully and harmoniously. Thereafter the husband-non-petitioner not only treated her with cruelty but also demanded dowry and subjected her to harrassment and beating. The non-petitioner also used to take liquor and under its influence, used to abuse her. On account of this negligence and maltreatment, the petitioner had no alternative but to leave her matrimonial house. She has got no means to sustain herself. According to her, the non-petitioner earns about Rs. 2,000/- per month. She, therefore, claimed maintenance of Rs. 500/- per month.

4. The non-petitioner opposed the application and admitted their marriage and also admitted the fact that out of the wedlock, two sons were born. He categorically denied all the above allegations made by the petitioner. According to him, the malicious. He treated the wife-petitioner with due love and affection. He however, submitted that she developed illicit relations with one Thansingh Parihar, who incidentally lived with-the parties in their house for two years. After developing the illicit relations with Thansingh Parihar, the attitude of the wife-petitioner towards the husband-non-petitioner underwent a serious change and she became indifferent to the non-petitioner and always insisted that he should take the house on rent near the house of Thansingh Parihar.

5. Despite all this, the husband-non-petitioner offered to allow the wife-non-petitioner to live with him if she severed her illicit relations with Thansingh Parihar. The husband-petitioner also alleged that the petitioner was earning Rs. 800/-or Rs. 900/- per month by preparing raggene bags. The non-petitioner did not deny that he earns Rs. 2000/- per month.

6. In support of her allegations, the wife-petitioner examined herself and two other witnesses. The husband-non-petitioner on the other hand examined 7 witnesses. No documentary evidence was laid by either of the parties.

7. Thereafter, the learned Judge, Family Court proceeded to decide the question whether non-petitioner neglected or refused to maintain the petitioner without any sufficient reasons. In this regard, he discussed the evidence of the parties and ultimately came to the conclusion that both the parties lived together peacefully and harmoniously for 6-7 years after marriage and suddenly there was a change in the attitude of the petitioner towards the non-petitioner. According to the learned Judge, the petitioner did not produce any evidence regarding beating. He also believed the statement of the non-petitioner that he was ready to accommodate the petitioner even though she had illicit relations with Thansingh Parihar. Thus, the non-petitioner was not guilty of neglecting the petitioner or subjected her with cruelty or harrassment. The petitioner deserved her matrimonial home without any basis and reasonable cause. He, therefore, dismissed the application filed by the petitioner under Section 125, Cr. P.C.

8. I have heard Mr. Haider Aaga, the learned Counsel appearing for the wife-petitioner and Mr. H. S. Balot, the learned Counsel for the husband-non-petitioner and have carefully gone through the record of the case.

9. The learned Counsel for the petitioner has assailed the appreciation of evidence made by the learned Judge, Family court. He submitted that there was absolutely no basis for giving a verdict in favour of the non-petitioner that the petitioner had developed illicit relations with one Thansingh Parihar. Admittedly, Thansingh Parihar once lived with the parties in their house but there was not an iota of evidence that she had any illicit relations with Thansingh Parihar. The adulterous conduct of the wife is the greatest affront to the husband and normally the husband never forgives his wife and the infidelity of the wife always torments the husband. It is, therefore, strange that the non-petitioner has offered to maintain or accommodate the wife-petitioner if she promised to cut-off her illicit relations with Thansingh Parihar.

10. The, learned Counsel further submitted that the evidence produced by the non-petitioner does not at all prove the adulterous conduct of the petitioner. Since Thansingh lived with the parties in their house, it shows that both the parties are intimate relations with Thansingh but no inference from such intimacy can be drawn that the wife-petitioner has got developed illicit relations with Thansingh Parihar. The allegation of adultery is, therefore, baseless and malicious.

11. The learned Counsel also submitted that it is correct that for about 6 years, both the parties lived peacefully and happily. It appears that the husband-non-petitioner got suspicion about (he conduct of the wife-petitioner for which there was no basis and on account of this suspicion, he started torturing the wife-petitioner and subject her to harassment and cruelty.

12. The learned Counsel for the husband-non-petitioner on the other hand supported the order of the learned Judge, Family Court and submitted that this petition is liable to be dismissed.

13. I have given my most anxious consideration to the rival submissions made at the Bar.

14. It may be stated at the very outset that the husband-non-petitioner has made a serious allegation of adulterous conduct against the wife-petitioner. He alleged that the wife-petitioner was carrying on illicit relations with one Thansingh Parihar. Thus is the crux of the whole matter. After a careful reappraisal of the evidence of the parties, I am of opinion that the learned Judge, Family Court has misconducted himself and arrived at a conclusion which is not supported by the evidence on record. It is an admitted fact that Thansingh Parihar was not only intimate with the petitioner but with both the parties so much so that he lived jointly with them for a few years. The burden of proof lay on the husband-non-petitioner to prove adultery against the wife-petitioner. Except that once the wife-petitioner was seen riding on the scooter with Thansingh Parihar, there is not an iota of evidence to suggest that she had illicit relations with this person. Hence, the allegations of adultery against the wife-petitioner was made a ground to defend the action launched by the wife-petitioner, which has got no basis at all. The husband-non-petitioner even made the allegation that at the instance of wife-petitioner, Thansingh Parihar

administered beating to him and locked him in a Room. Had it been so, the non-petitioner would have lodged a complaint at the Police Station. If this incident can be believed, definitely some doubt may be cast in the mind of the non-petitioner regarding the conduct of the wife-petitioner. However, this incident appears to be totally fabricated and made up. It is a matter of common knowledge that a Hindu wife who had lived with her husband happily and peacefully for a period of six years would not desert her children and husband, without any reason.

15. The hollowness of the allegation is exposed, when we read the statement of the husband-non-petitioner, where he offered to pardon the wife-petitioner and intended to allow her to live with him, if she severs her relations with Thansingh Parihar.

16. For the above reasons, I hold that the allegation of adultery made by the non-petitioner against the petitioner is totally false, malicious and appears to have been cooked up in order to defend the application filed by the wife-petitioner. I further hold that the allegation of the non-petitioner that she left her matrimonial home without any reason is not correct. Since the husband-non-petitioner entertained some suspicion about the conduct of the wife-petitioner, he started harrasing her and also subjected her to cruelty and ill-treatment. The wife-petitioner was, therefore, justified in leaving her matrimonial home.

17. Regarding quantum of maintenance, it has been admitted that the wife-petitioner is also doing some job of preparing raggene bags. The husband-non-petitioner admittedly earns about Rs. 2,000/- per month. Taking all the facts and circumstances into consideration, I assess the maintenance at Rs. 400/-per month.

18. For the above reasons, I allow this petition, set aside the impugned order dated 23-9-1995 passed by the learned Judge, Family Court, Jodhpur and order that the wife-petitioner shall be entitled to get maintenance @ Rs. 400/-per month from the date of Mer application.