

Laxman Singh Vs. Smt. Asha Devi

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Court : Rajasthan

Decided On : Sep-11-1985

Reported in : 1985WLN(UC)293

Judge : Panna Chand Jain, J.

Appeal No. : S.B. Civil Misc. Appeal No. 67 of 1985

Appellant : Laxman Singh

Respondent : Smt. Asha Devi

Advocate for Def. : Shri. I.C. Maloo

Advocate for Pet/Ap. : Shri. B.R. Mehta

Judgement :

Panna Chand Jain, J.

1. This appeal has been filed against the judgment and decree passed by the District Judge Jodhpur in Misc. case No. 45-A/80 on 14th Feb. 1985. which on the petition of wife Smt. Asha Devi, a decree for divorce dissolving the marriage was passed against Laxman Singh, the husband of the petitioner Asha Devi. In the judgment a direction was given by the court for prosecution of Laxman Singh for fabricating false evidence under Section 340 Cr.PC. Aggrieved by the judgment and decree dated 14th Feb. 1985 Laxman Singh has filed the appeal under

Section 28 of the Hindu Marriage Act. The petitioner Asha Devi filed the petition on the ground that she was married with Laxman Singh as per the Hindu customs on 8th May 1978. It was also mentioned that from the valid wedlock a daughter was born after one year of the marriage. The daughter is minor, she is living with the petitioner. Divorce was sought on the allegations of cruelty and adultery. It was alleged that the husband had illicit relations with one Badami Harijan lady. The learned District Judge believed the evidence produced by the petitioner, Asha Devi, and passed a decree of divorce dissolving the marriage.

2. Shri B.R. Mehta, learned counsel for the appellant has submitted that the finding on the charge of adultery and cruelty are not correct. He submitted that for proving the charges of cruelty and adultery, evidence beyond reasonable doubt should be taken into consideration and on the basis of vague charges, finding on such counts should not be arrived at. He further submitted that there is a sole testimony of the petitioner, Asha Devi with regard to allegations about cruelty and adultery and as such her statement should not have been believed without proper corroboration. Shri R.K. Thanvi and Shri I.C. Maloo appearing for the respondents have submitted that the finding arrived at by the learned Trial court is based on evidence and as such it cannot be assailed.

3. I have given my thoughtful consideration to the respective submissions made by the learned counsel for the parties, and perused the record. Smt Asha Devi, the petitioner, in her statement has deposed that after the marriage her husband treated her with cruelty. On number of occasions she was given beating. She was driven out of the house after serious beating. She has also stated that one Badami Harijan lady had illicit relations with her husband. As regards cruelty her testimony has not been shaken in the cross-examination. Her testimony is corroborated by Kamla P.W. 3 who is mother of the petitioner. She has deposed that Laxman Singh gave beating to her daughter. It is also on record that F.I.R. was lodged against Laxman Singh. From the statement of Asha Devi it is also disclosed that Laxman Singh had developed relationship with Badami but it is difficult to infer a charge of adultery from her statement. The relationship between Laxman Singh and Badami may be taken to be a circumstance which might have caused an apprehension of ill-treatment with the wife. Thus, these circumstances may be

taken to be a corroborative factor for proving the charge of cruelty.

4. I am of the opinion that as far as the finding of the learned lower court regarding charges of cruelty is concerned it stands proved but charge of adultery has not been satisfactorily proved.

5. The learned Trial Court directed that a prosecution be instituted against the non-petitioner Laxman Singh under Section 340 Cr. PC for fabricating false evidence. The charge of false evidence is based in respect of an affidavit Ex. 1 filed by petitioner respondent. The learned lower court came to the conclusion that statement given in the affidavit is false. Suffice it to say that affidavit Ex. 1 was not filed by the non-petitioner appellant and as such it cannot be said that non-petitioner was responsible for fabricating evidence as far as divorce petition was concerned. Thus, the direction with regard to prosecution given by the learned lower court is not correct.

6. From the judgment appears that though no direction was given with regard to alimony and maintenance of the wife and the minor daughter but a perusal of the record would indicate that no maintenance or alimony was given to the petitioner wife because the wife was in the service and earning a good salary sufficient to meet with her expanses, and, for the maintenance of the minor daughter Rs. 40/- per month was directed to be paid to the wife. This amount is not sufficient to meet the expenses of care to be taken by the wife of daughter of Laxman Singh.

7. In the facts and circumstances of the case, I am of the opinion that ends of justice will be met if the amount of maintenance for the daughter is fixed at Rs. 100/- per month. The learned counsel for the parties also agreed to it. After having a dialogue with the learned counsel, it is hereby directed that appellant Laxman Singh shall pay a sum of Rs. 50/- per month w.e.f. 1st February 1985 to Smt. Asha Devi the respondent No. 1 and further a sum of Rs. 50/- per month will be deposited by the appellant Laxman Singh in the 'Hank Account' to be opened in the name of minor Rinku. The amount will deposited w.e.f. 1st September 1985. The account will be in the name of Rinku as aforesaid but through Smt. Asha Devi as her guardian. It will be operated by the daughter herself after obtaining her majority. The aforesaid amount of Rs. 100/- shall be regularly paid on or before

10th of every succeeding month.

8. The appeal is, accordingly, partly allowed and disposed of with no order as to costs.

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