

Mt. Nokhi Vs. Tehru

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Court : Himachal Pradesh

Decided On : May-11-1957

Reported in : AIR1957HP65

Judge : Ramabhandran, J.C.

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

Appeal No. : F.A.F.O. No. 10 of 1956

Appellant : Mt. Nokhi

Respondent : Tehru

Advocate for Def. : Kedar Ishwar, Adv.

Advocate for Pet/Ap. : Puru Anand, Adv.

Disposition : Appeal allowed

Judgement :

1. Mt. Nokhi presented a petition under Section 13, [Hindu Marriage Act, 1955](#), for the dissolution of her marriage with Tehru, respondent, on the ground that he had another wife, named Mt. Nirmi, and further that he used to ill-treat her.
2. Both the allegations were denied by Tehru.

3. The trial Court (Senior Subordinate Judge, Mandi) came to the conclusion that Mt. Nirmi's marriage with Tehru had not been proved. He further found that although previously Tehru had illicit connection with Mt. Nirmi, the same ceased some two years prior to the filing of the petition. Consequently he dismissed the petition for divorce. Hence, this appeal.

4. Arguments of the learned counsel for the parties were heard yesterday. For reasons to be stated shortly, I am of the opinion that this appeal must be allowed. I may point out that Section 13, [Hindu Marriage Act, 1955](#), consists of two parts. The first part enumerates as many as nine grounds. On the proof of any of these grounds either party to marriage, i.e. the husband or the wife, may petition for divorce. The second part of Section 13 enumerates two additional grounds on the basis of which the wife (and not the husband) could sue for divorce. One of these grounds is that the husband had a second wife living.

5. It was, apparently, this ground which was mainly relied upon by the appellant in her petition for divorce. Therein, it was alleged that the respondent had gone through a form of Jhanjhara marriage with Mt. Nirmi some 5 or 6 years previously and a daughter was born to them subsequently. The respondent denied that he had married Mt. Nirmi, or that any daughter was born to him through her. The Court below found that the alleged Jhanjhara marriage was not proved and that finding has not been seriously assailed here. This, however, would not result in the failure of the appeal, because under Section 13(1) (i), the appellant would be entitled to a decree for divorce, if she could show that Tehru was living in adultery with Mt. Nirmi, although he may not have been married to her.

6. Learned counsel for the parties took me through the evidence tendered by the parties at the trial. In a case like this, especially where the parties belong to backward areas the evidence has to be oral, we have therefore, to arrive at a conclusion on the scrutiny of the evidence coupled with the attendant circumstances of the case.

7. Learned counsel for the appellant argued--and in my opinion with considerable justification--that while according to Tehru, he never had illicit connection with Mt. Nirmi, the latter (when examined as a Court witness) frankly admitted that, after

the death of her husband, Situ (who was none other than Tehru's brother), illicit connection developed between her and Tehru, resulting in the birth of two daughters. She, however, added that for the last two years, there was no intimacy between her and Tehru. It is remarkable that in a matter like this Mt. Nirmi's statement should be diametrically opposite to that of Tehru.

Why should Tehru go out of his way and deny illicit connection with Mt. Nirmi, while the latter admits it. It must also be borne in mind that the appellant was married to the respondent some 5 or 6 years ago. Mt. Nirmi admitted having had illicit connection with Tehru till two years ago. In other words, the illicit connection between Mt. Nirmi and Tehru continued for 3 or 4 years, even after the appellant was married to Tehru. It is, therefore, clear that the illicit connection between Tehru and Mt. Nirmi did not come to an end with the appellant's marriage to him.

8. Having found this, it remains to be seen whether the Court can place implicit reliance on the statement of Mt. Nirmi to the effect that illicit connection between her and Tehru had ceased to exist for the last two years. Learned counsel for the appellant rightly pointed out that Tehru and Mt. Nirmi as well as their children are living under the same roof in two rooms. It was urged on behalf of the appellant that the Court below was not justified in remarking that since Mt. Nirmi was about 50 years of age now, no adultery could be committed with her.

No authority has been cited for this proposition. It seems to me that no hard and fast rule can be laid down. Having regard to the fact that Tehru and Mt. Nirmi had lived together and co-habited for several years, as a result of which two children were born to them and bearing in mind that they are still living under the same roof, it is impossible to hold that the connection between them has altogether ceased--merely on the strength of Mt. Nirmi's statement.

9. Learned counsel for the appellant cited the following rulings:--(a) *Captain S. I. Davidson v. Norah MacDonald Davidson*, 62 Ind Cas 782 (Lah) (A). There, a Division Bench of the Lahore High Court held that :

'It is a fundamental rule that in a suit for dissolution of marriage, it is not necessary to prove the direct fact of adultery. The Court may presume adultery when it is

satisfied that a guilty attachment subsisted between the parties, and that opportunities occurred when a guilty intercourse might, with ordinary facilities, have taken place.'

(b) *George Arthur Canning Hearsey v. Anna Marguerite Hearsey* A.I.R. 1931 Oudh 259 (B). There, Pullan, J., observed that:

'It is a fundamental rule that it is not necessary to prove the direct fact of the adultery. In every case; almost, the fact is inferred from circumstances that lead to it by fair inference as a necessary conclusion, and unless this were the case, and unless this were so held, no protection whatever could be given to marital rights. But the circumstances must be such as would lead the guarded discretion of a reasonable and just man to the conclusion.'

(C) *Major Stanley Hugh Barker v. Mrs. Patricia May Barker*, AIR 1955 Mad. B 103 (C). There, a division Bench of that High Court indicated that :

' In divorce cases, there can be no direct evidence regarding an act of adultery, and circumstantial evidence is all that can be normally got regarding adultery and on a petition by husband for divorce on the ground of adultery by wife, what the Court has to see is whether the circumstantial evidence produced in the case is such as to leave no reasonable doubt regarding the fact of commission of adultery by the wife.'

10. Judged by the above criterion, it seems to me that, under the circumstances, including the total denial on the part of Tehru, which has been negated by the almost complete admission on the part of Mt. Nirmi, it can be fairly inferred that the adulterous connection between Tehru and Mt. Nirmi had not ceased and existed at the time the appellant presented her petition for divorce.

11. Learned counsel for the respondent cited *Earnest John White v. Mrs. Kathleen Olive white*, AIR 1954 Pat 560 (D) as well as *Mrs. Chandra Leela v. P. Victor Matheus*, (S) AIR 1956 Hyd. 144 (FB) (E). In the former decision, a Division Bench of the Patna High Court Observed that:

'In a divorce case the charge of adultery must be proved beyond reasonable doubt. Public Policy, namely, the peculiar duty of the Court of protecting the sanctity of marriage relationship requires this.'

In the latter decision, a Full Bench of the Hyderabad High Court expressed itself in the following terms:

'Further, the evidence adduced by the petitioner must be looked into with utmost caution and circumspection. The allegations in the petition must be proved by some clear and convincing evidence. The Court should not act as a rule on the uncorroborated evidence of a single witness.'

In my opinion, however, these two rulings do not help the respondent. There is nothing to suggest that there has been collusion between the parties. On the other hand, the petition has been vigorously opposed by Tehru. The case does not hang on the uncorroborated evidence of a single witness. On a careful examination of the entire evidence and the attendant circumstances of the case, I have come to the conclusion--as already stated--that it could be fairly inferred that Tehru had adulterous connection with Mt. Nirmal at the time the appellant presented her petition for divorce. Accordingly, this appeal must be allowed and the appellant granted a decree for divorce.

12. In conclusion, Mr. Kedar Ishwar for the respondent suggested that there has been undue delay in filing the petition and, consequently, no relief should be granted to the appellant: vide Section 23 (d). He submitted that although the Hindu Marriage Act came into force in May 1955, the petition was filed only on 6-2-1956. Mr. Purn Anand for the appellant, on the other hand, pleaded that there has been no undue delay, since parties live in a backward area and were not aware of the change of law. In my opinion, there has been no such undue delay, as to deprive the appellant of the relief she is entitled to under the law.

13. I allow this appeal, set aside the decision of the Court below and grant the appellant, Mt. Nokhi, a decree for divorce, dissolving her marriage with the respondent, Tehru. The appellant will get her costs, assessed at Rs. 50/-, from the respondent.

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