

Usha Devi Vs. Sunder Singh

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Court : Himachal Pradesh

Decided On : Aug-06-1991

Reported in : I(1992)DMC74

Judge : Kamlesh Sharma, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 125

Appeal No. : Crl. R. No. 7 of 1991

Appellant : Usha Devi

Respondent : Sunder Singh

Disposition : Petition allowed

Judgement :

Bhuvaneshwar Presad, J.

1. This Criminal Revision Petition has been filed at the instance of the petitioner-wife, Smt. Usha Devi, challenging the judgment dated 19-12-1990 of Sub Divisional Judicial Magistrate, Theog, District Shimla, whereby her application under Section 125 Cr. P.C. for maintenance against the respondent-husband, Sunder Singh, was dismissed.

2. The petition under Section 125 Cr. P.C. for maintenance was filed on 15-12-1987. As stated in it, the parties got married in November, 1980, according to local custom of the Ilaqua. Though, since their marriage, the parties had been living together as husband and wife, yet, the grievance of the petitioner-wife is that she was not treated well as the respondent-husband wanted to marry second time. Her allegations are that ultimately in July, 1987, she was turned out of the matrimonial home when she was carrying 8 months pregnancy.

3. The respondent-husband has admitted the marriage but has denied all other allegations. According to him, the marriage stood dissolved on 18-8-1983 by giving writing to him by the petitioner-wife which is called 'Receipt Faisla' in local parlance. The respondent-husband has averred in his reply that the petitioner wife had lived with him for two years after the marriage and thereafter she had come to his house on 18-8-1983 to seek divorce. After the divorce, he had no relation whatsoever with the petitioner-wife and the petition for maintenance was filed by her in order to fasten the legitimacy on the respondent-husband of the child which she had begotten out of her adulterous relations with somebody else. In her rejoinder, the petitioner-wife denied that any divorce took place on 18-8-1983 by the alleged writing. She has explained that the respondent-husband had got her signatures on blank papers by playing fraud on her and by mis-representing facts which might be used as alleged 'Receipt Faisla'. After the trial, the petition was dismissed by the Trial Court accepting the defence of the respondent-husband in toto. It was held that marriage between the parties was dissolved on 18-8-1983 in accordance with custom. Thereafter, the respondent-husband had no relationship with the petitioner-wife. It is also found by the Trial Court that the child born to the petitioner-wife was not begotten from the respondent-husband as he had no access to her after the divorce.

4. I have heard the learned Counsel for the parties and gone through the record. I find that for coming to its conclusion, the Trial Court has only discussed and relied upon the evidence of the respondent-husband and has not referred to the evidence of the petitioner-wife at all. As such, the judgment of the trial Judge is one-sided and cannot stand the scrutiny of this Court. This Court has scanned the evidence to arrive at its own findings as the matter pertains to the status of a

destitute woman and a baby girl who has been condemned to be illegitimate even before she was born. The first point for determination is whether there was any divorce between the parties in accordance with the custom of the Ilaqua. For deciding it, the primary point to be examined is whether the respondent-husband has proved existence of custom of divorce in the Ilaqua to which the parties belong and also that what is that custom. Once it is known, it will be assessed from the evidence on record whether the alleged divorce between the parties was effected in accordance with custom and is valid to sever the matrimonial ties between the parties.

5. In this regard, so far reply to the petition is concerned, the only averments made in Para No. 1 are, 'However, it may be submitted that the marriage of the petitioner had taken place in November, 1980, which was dissolved later on 18-8-1983 by way of divorce between the parties. There is as such no relationship of husband and wife of the petitioner with the respondent after the said divorce was effected. The petitioner had also given one writing to the respondent in token of the said divorce which is called in local parlance as 'Receipt Faisla'. It is not pleaded by the respondent-husband that the divorce had taken place in accordance with the custom of the Ilaqua and also that what is that custom. In her rejoinder, the petitioner-wife has denied that any divorce took place at any point of time and she had given any writing to the petitioner in respect thereof. In his statement, the respondent-husband has stated that divorce had taken place in accordance with Reet. According to him, in their area there exists of Reet according to which when the parties mutually agree to divorce, receipt is written and mutual exchange (Len Den) is effected in the presence of the witnesses. In his cross-examination, he has admitted that reason for seeking divorce is discussed at the time Reet is effected and it is mentioned in the document of Reet. According to him, though the reason for divorce as stated by the petitioner-wife, that she did not like him and was not happy at his place as his brothers and parents used to trouble her, was discussed, yet, it was not mentioned in the writing Ex. R-I. He further states that his only condition for agreeing to Reet was that the petitioner-wife must take back all her articles to which she had agreed when Reet was effected. He alleges that the petitioner-wife had lived with him for two years only and thereafter left for her parents house and came back on 18-8-1983 to seek divorce.

6. The version given by the respondent-husband seems to be most unnatural. Assuming that the petitioner wife was unable to adjust in her matrimonial home, in the natural course, her parents and relations would have made efforts for reconciliation and not for breaking the relationship at the first available opportunity. The reasons for divorce alleged to have been given by the petitioner-wife at the time of Reet also seem to be concocted. The reasons are only trifles for which no wife in our society will seek divorce unless she is entangled with somebody else for which there are no allegations. Rather, in our society, generally, a wife puts up with lots of troubles, tortures and turmoils smilingly to save her marriage. Above all, it is strange that the petitioner wife did not ask for maintenance and agreed to take back her goods at the instance of the respondent-husband though her parents, on whom she is solely dependant, are not financially well off and are unable to maintain her.

7. For proving 'Receipt Faisla', Ex. R-1, the husband had produced Jai Singh (P.W.-3) and Udi Ram (R.W.-4) who are signatories to the document. Both of them have deposed that one Kewal Ram had written two receipts on behalf of the parties which they had exchanged in their presence. They have identified their own signatures and the signatures of the petitioner-wife on Ex. R-1. Jai Singh states that he was called by Rup Singh, father of the petitioner-wife, for witnessing the Reet but he is unable to state whether the cause of divorce was discussed or not or whether mutual exchange (Lea Den) was made or not. Though this witness is uncle of the petitioner-wife (first cousin of the father of the petitioner), yet, he has come forward to depose against her as there is no love lost between him and the father of the petitioner- wife. He has admitted that only last year a dispute was raised before the Panchayat over a Kitchen. Therefore, the evidence of this witness is not worthy of any reliance. Moreover, he has not spoken a word that the parties are governed by custom of divorce prevalent in the Ilaqua to which they belong and also that what is that custom. Udi Ram (R. W-4) has stated that there is customary divorce in the Ilaqua which is called Reet but he could not give any instance of such customary divorce. Even his statement in this regard is not complete to prove that how Reet is effected except that presence of the wife and her husband is necessary, He has denied that for effecting Reet, the wife and husband are consulted. Moreover, this witness is a chance witness. As stated by

him, he happened to meet the father of the petitioner-wife Rup Singh and Jai Singh (P. W-3) at a place Sunardhari and accompanied them to the house of the respondent-husband at the request of Rup Singh for effecting the compromise. According to him, Sunder Singh was alone at his house at the relevant time which seems unnatural that he had taken such an important decision of divorce without consulting his parents and elders. Further, it is strange that this witness as well as Jai Singh (P. W-3) made no effort for re- conciliation between the parties and also for settlement of some reasonable terms regarding the maintenance and other rights of the petitioner-wife before effecting the divorce. This shows that the statement of this witness is not worthy of reliance for arriving at a conclusion that divorce took place between the parties. The scribe of Ex, R-I, Kewal Ram, was not examined. There is one more witness, Bala Nand (R.W-2), Secretary Gram Panchayat who had proved extract of Parivar Register to show that the name of the petitioner-wife was struck off from the Parivar Register as wife of the respondent-husband in 1983 but it was at his instance.

8. I have examined the document, Ex. R-1 and found an endorsement on it that the petitioner-wife has admitted her signatures but there is no corresponding order that this document was put to her. In her statement, the petitioner wife has categorically denied having signed such a document. Moreover, the writing contains unilateral statement of the petitioner-wife that she released the husband from the matrimonial ties and he was made free to marry any other woman he liked. It does not mention either any reason for making such a writing or that it was done for any consideration. Therefore, this document is of no value muchless to put an end to the matrimonial relations between the parties.

9. The evidence of the respondent-husband is also countered by the statements of the petitioner wife and her witnesses. In her statement on oath, the petitioner-wife has denied that any divorce took place in the years 1983 or any receipt was prepared in token thereof. She was not specifically put whether there is any specific custom in the Ilaqua to effect divorce and her marriage with the respondent-husband was dissolved by following that custom. She has further stated that she had been living with the respondent-husband till July, 1987 when she was turned out of her matrimonial home and was not accepted back despite

intervention by her father and uncle (Mama) of respondent-husband. She has also alleged that. when she was turned out of his house by the respondent-husband, she was in advanced stage of pregnancy from his loins. Her father, Rup Singh (P.W. 3) has also come forward to corroborate the statement of his daughter, the petitioner-wife. He has not only denied that there was any divorce between the parties but also the existence of any such custom. Another witness, Jeet Ram (P.W. 4) has supported the case of the petitioner-wife in toto and denied the existence of any custom of divorce in the Ilaqua. As this witness has admitted that there was pending litigation between him and grand mother (Nani) of the respondent-husband in respect of a piece of land over which he has constructed a house, no much reliance can be placed on the evidence of this witness.

10. The net result of the above discussion is that on the basis of the evidence on record, i.e. cannot be safely concluded that customary divorce took place between the parties. I am constrained to hold that the respondent-husband has failed to prove that there existed any particular custom of divorce in the Ilaqua to which the parties belong according to which their marriage was dissolved. The result is that the parties continue to be husband and wife and the daughter born to them is presumed to be out of the their wedlock. The statement of the respondent-husband and the statement of his witness Jai Singh (P.W. 3) that the petitioner-wife did not live in the house of the respondent-husband after 1982 has been countered by the statement of the petitioner-wife, her father Rup Singh (P.W. 3) and other witnesses that she lived in the house of the respondent-husband upto July, 1987. Assuming that the petitioner-wife has been living in the house of her parents, it is not enough to hold that the respondent-husband had no access to her as his hosue and the house of the parent of the petitioner-wife is at a distance of a few kilometres only. Therefore, I hold that the girl child born to the petitioner-wife was begotten from the respondent-husband.

11. When this matter came before me, at the first instance, I had made an attempt for reconciliation between the parties but failed. During those proceedings, I happend to see the girl-child minutely. She is 31/2 years old. I found that she only resembles the respondent-husband but is his exact replica.

12. In view of the above findings, I set aside the judgment dated 19.12.1990 of Sub Divisional Judicial Magistrate, Theog and allow the Revision petition. Now, the question arises as to what amount of maintenance the petitioner wife is entitled In view of the stand taken by the respondent-husband there is no doubt that he has been neglecting the petitioner-wife and refusing to maintain her. Admittedly, the petitioner-wife is not in organized employment. The allegations that she is earning by tailoring clothes etc. are not proved on record. As such it is held that she does not have any independent source of income to maintain herself. Regarding Income of the respondent-husband, there is the statement of the petitioner-wife on oath that he owns a truck as well as an orchard from which his annual income is Rs. 40,000/- to Rs. 50,000/-. This statement is also corroborated by the witness, of the respondent-husband Udi Ram (R.W. 4) though he had shown his ignorance about the exact income from the orchard. Neither this statement of the petitioner-wife has been challenged in cross-examination nor any independent evidence has been led in respect of his income by the respondent-husband. Any how, on the basis of this evidence, it can be safely presumed that the respondent-husband is capable of giving maintenance allowance of Rs. 300/- per month to the petitioner-wife. Therefore, I order that the petitioner-wife is entitled to maintenance allowance of Rs. 300/- per month from the date of institution of her application under Section 125 Cr.P.C. This amount has been fixed tentatively subject to enhancement by the competent Court if the petitioner-wife is able to make out a case for it.

13. The Revision petition is allowed but there is no order as to costs.