

(2019) 12 UK CK 0020

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 3712 Of 2019

Anita Bahuguna

APPELLANT

Vs

Arun Kumar Bahuguna

RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:

Hindu Marriage Act, 1955 — Section 13, 24, 26
Indian Penal Code, 1860 — Section 323, 498A, 504, 506
Dowry Prohibition Act, 1961 — Section 3, 4
Code Of Civil Procedure, 1908 — Order 6 Rule 17

Citation : (2019) 12 UK CK 0020

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Vaibhav Pandit

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. In the present writ petition, the challenge is to the order dated 05.11.2019, which has been passed by the learned Additional Judge Family Court, Dehradun in Original Suit No.696 of 2017 "Arun Kumar Vs. Anita", whereby the applications paper no.25C2 and 27C2 filed by the respondent have been allowed.

2. The present petitioner is the defendant in the said suit which has been filed by her husband under Sections 13 and 26 of the Hindu Marriage Act, 1955. In the said suit, an application under Section 24 of the Hindu Marriage Act, 1955 has also been filed by the petitioner/defendant for the interim maintenance.

3. It is true that by now subsequent to the filing of the suit, a first information report was also lodged by the defendant/petitioner, inter alia, against her husband, which has been registered as Case Crime No.82 of 2018, under Sections 498-A, 323, 504 & 506 of IPC and under Section 3/4 of the Dowry Prohibition Act at Police Station Nehru Colony, District Dehradun.

4. The marriage of the petitioner and respondent was solemnized as per Hindu rites and ceremonies on 25.06.2011 at Kutch (Gujarat). Thereafter the matrimonial dispute arose between the parties, which is the root cause of filing of the suit against the wife/petitioner.

5. Meanwhile, it is an admitted fact that an FIR was lodged by the petitioner/wife and subsequent to the filing of the suit, ultimately a final report has been filed by the Police before the Court concerned stating that no offence as alleged in the FIR has been made out against the respondent/husband.

6. Consequent to the filing of the final report, the plaintiff i.e. respondent before this Court sought certain amendments in the plaint, which have been opposed by the defendant/petitioner. However, this amendment has been allowed by the court below vide order dated 05.11.2019.

7. The provisions regarding amendment of a plaint is given under Order 6 Rule 17 which reads as under:-

"17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

8. What is important in the aforesaid provision is that the amendment can be allowed, if it appears to the courts that "it is necessary for the purpose to determine the real question in controversy between the parties".

9. If it is necessary for the plaintiff to bring to the knowledge of the court that a false FIR has been lodged against him, he has reason to bring such amendments in the plaint.

10. Considering the facts and circumstances of the case, no interference is liable to be made in view of the fact that the amendment application has rightly been allowed by the court below.

11. Consequently, the writ petition fails and it is hereby dismissed.