
(2014) 08 MP CK 0093
In the Madhya Pradesh High Court
Case No : First Appeal No. 251/2007

Arti Sharma

APPELLANT

Vs

Sanjay Sharma

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Hindu Marriage Act, 1955 — Section 13, 13(1), 28, 9

Citation : (2014) 08 MP CK 0093

Hon'ble Judges : S.K. Palo, J;S.K. Gangele, J

Bench : Division Bench

Advocate : Jitendra Sharma, Advocate for the Appellant; Sunil Jain, Advocate for the Respondent

Final Decision : Allowed

Judgement

S.K. Palo, J.—Appellant filed an application u/s 13 of Hindu Marriage Act for seeking divorce on the ground of cruelty and desertion against the respondent-non-applicant/husband before the Second Additional District Judge, Shivpuri. This application was decided by the impugned judgment on 16.08.2007 whereby the learned Additional District Judge dismissed the same. Feeling aggrieved by this judgment, the appellant/wife has filed this appeal u/s 28 of the Hindu Marriage Act.

2. It is not disputed that the marriage of appellant with respondent was solemnized on 09.05.1998 observing the Hindu rites at Shivpuri. A son is born due to this wedlock, and is living with her mother at Guna.

3. Before the Trial Court, the appellant submitted the application for divorce on the ground that after her marriage with the respondent, the respondent and his family members demanded dowry and harassed her. They demanded dowry of 1,00,000/- rupees. They were subjected her with cruelty by not providing food and were treated her badly. On 20.12.2002 at about 8.00 P.M., the non-applicant and his family members poured kerosene oil on her and tried to set fire. They

also said that if one lac rupees is not brought by her from her father, they will not keep her in her matrimonial home. Appellant's parents tried to resolve the matter but brought no result.

4. Per contra, the non-applicant/respondent denied all the averments and alleged that in January, 2006, the applicant/appellant went to her parental house, celebrated Makarsankranti and did not return. She is living with her parents. Her son has been admitted into a school and in spite of the appellant and respondent's name as mother and father, the names of appellant's brother and sister-in-law have been mentioned in the records. The non-applicant/husband purchased a vehicle on 13.10.2001 in her name. She is living in her parental house without sufficient cause.

5. After adducing the evidence, the learned Trial Court pronounced the impugned judgment and dismissed the prayer made in the petition.

6. Aggrieved, by this, the appellant/wife has filed this appeal and assailed the impugned judgment on several grounds.

7. Heard the counsels for the parties and perused the record.

8. This petition was filed on 29.07.2006, before the District Judge, Shivpuri, which was later made over to Second Additional District Judge, Shivpuri. The non-applicant/respondent filed an application u/s 9 of Hindu Marriage Act, 1955, for restitution of conjugal rights before the District Judge, Guna. This application was decided ex parte and the decree of restitution of conjugal rights was granted in favour of the respondent/husband.

9. As regarding the evidence of pouring of kerosene oil and attempted to set fire, no report has been lodged by the appellant. The appellant explained that she has never lodged any complaint against the respondent or his family members. Her father PW-2 also has stated the same. But he has explained that the names of his son and daughter-in-law has been mentioned as guardians of the minor in the School not as his father and mother.

10. About the harassment and cruelty at the matrimonial home, the statement of the appellant/applicant would be the best possible evidence. The non-applicant has denied all the averments made by the applicant. The statement of Brijesh Rathore, NAW-2, who is a neighbour, of the non-applicant could not be taken as fully correct. Because, he is not a member of the family of non-applicant nor is the resident member of his house. What-ever transpired inside the house is not possibly unknown to him.

11. In this case, the appellant/wife remained at her matrimonial home for one and half year. During this period, a child was born and in the year 2002, she left her matrimonial home. Suddenly, leaving the matrimonial home is quite not understandable. Had it not been for the harassment and of pouring of kerosene oil why should she leave her matrimonial home?

12. "Cruelty", no doubt, constitutes a strong ground for desertion of marriage. "Cruelty" is a very antithesis of love and affection. Cruelty is not always explicitly spell out, as cruelty conduct implies harsh behaviour of certain intensity and persistence.

13. The pouring of Kerosene oil and trying to set her on fire amounts to cutting the sacred link that of the appellant and respondent which they had when they were entering into the marriage sought to create between themselves. The non-applicant respondent also admitted that he has a son aged six years but he does not know which class he studies. He never tried to bring his son his home nor filed any application before any Court for the custody of the child. This behaviour of the respondent/husband indicate that he has been not looking after the applicant/wife and his minor son since long (more than two years). From these facts, inference can be drawn that there has been "desertion".

14. "Desertion" in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential ingredients of this offence in order that it may furnish a ground for relief are:

1. The factum of separation;
2. The intention to bring cohabitation permanently to an end animus deserendi;
3. The element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period.

15. In the present case, there is no scope for finding "animus" to bring cohabitation and marital life. The reasonable cause as contemplated by explanation u/s 13(1) of the Act is caused which is sufficiently grave and weighty so as to justify the living of the wife away from the husband. There were demands of dowry and the applicant was attempted to set on fire. There exists reasonable cause for her to refuse to return to the non-applicant/husband.

16. Keeping in view the above circumstances, we hold that the learned Trial Court failed to assess the evidence properly and, therefore, we set aside the impugned judgment dated 16.08.2007.

17. Consequently, we allow the appeal and a decree of divorce is granted in favour of appellant/wife and against the respondent/husband. The marriage solemnized on 09.05.1998 between them is declared dissolved.

18. Keeping in view the peculiar facts of the case, parties shall bear their own cost.