

(2019) 05 UK CK 0235
In the Uttarakhand High Court
Case No : First Appeal No. 71 Of 2013

Mamta

APPELLANT

Vs

Manoj Kumar

RESPONDENT

Date of Decision : 22-05-2019

Acts Referred:

Family Courts Act, 1984 — Section 19
Hindu Marriage Act, 1955 — Section 13
Indian Penal Code, 1860 — Section 323, 406, 498A, 504, 506
Code Of Criminal Procedure, 1973 — Section Section 125

Citation : (2019) 05 UK CK 0235

Hon'ble Judges : Sudhanshu Dhulia, J; Ramesh Chandra Khulbe, J

Bench : Division Bench

Advocate : Divya Jain, Rajat Mittal

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. This is a wife's appeal under Section 19 of the Family Courts Act, 1984 against the judgment and decree dated 11.04.2013 passed by the Principal Judge, Family Court, Dehradun in Case No. 28 of 2008, whereby the suit filed by the husband/respondent under Section 13 of the Hindu Marriage Act, 1955 has been decreed.

2. Brief facts of the case are that the marriage of the appellant and the respondent was solemnized on 04.07.2005 in Dehradun as per Hindu rites and ceremonies. Thereafter there occurred a matrimonial discord between the two. Although out of the wedlock, they have a child who is presently about 14 years of age and is presently living with his mother i.e. the present appellant before this Court.

3. Be that as it may, a suit for dissolution of marriage under Section 13 of the Hindu Marriage Act, 1955 was filed by the husband/respondent before the Family

Court at Dehradun primarily on the ground of cruelty. The cruelty as alleged by the respondent/husband was that his wife is a patient of acute depression and in that state she on different dates had tried to commit suicide. It has been said by the husband/respondent that a false complaint was also lodged by the appellant before the police alleging that she was beaten up and tortured at the hands of the plaintiff/husband and since 28.11.2007 his wife is staying separately at Dehradun. It has also come in evidence before the court below that the appellant/defendant had also filed a criminal case against the respondent/husband on 06.02.2008 at Police Station in Ambala under Sections 406, 498A, 323, 504 and 506 of IPC.

4. It is an admitted fact that in the above criminal case a charge-sheet was filed by the Police against the husband/respondent, and the respondent had faced the trial, in which he was finally acquitted by the court concerned. It has also been alleged by the respondent/husband that the criminal proceedings lodged at the behest of his wife were purely done in order to harass him and this amounts to cruelty, inasmuch as, at no point of time, the plaintiff/respondent and the defendant/appellant had stayed as husband and wife at Ambala and no cause of action arose at Ambala and the criminal case was deliberately filed at Ambala, whereas the respondent residing at Dehradun had to frequently visit Ambala while facing criminal trial. Not only that, the respondent had to get bail from the Court at Ambala and he has suffered a lot of harassment.

5. It is indeed true that these facts were not there before the court below at the time of the institution of the suit as the criminal proceedings at Ambala were instituted by the wife/appellant during the pendency of the divorce proceedings, but these are admitted facts and cognizance of this is liable to be taken by the Court, particularly when the husband has been acquitted in that criminal case.

6. As far as the factum of depression is concerned, the court below came to the conclusion that there was no substantial evidence placed by the plaintiff/respondent in order to prove the fact that the appellant/wife was suffering from depression. This has gone against the husband, but thereafter the court below came to the conclusion that recurring activities at the hands of the appellant/wife, such as, her comments against her mother-in-law, her behaviour towards mother-in-law and the husband as well as the false complaint made by her against her in-laws, this all amounts to cruelty. Not only this, what is most important is that the appellant/wife in her written statement has made allegations that her husband is having an extramarital affair with one woman, namely, Rajni, who is residing at Dehradun. But this fact was never proved, and in fact, she retracted on her earlier statement, to a large extent. Her other allegations against her husband are that her husband is a habitual drunkard and a gambler, which were also to a large extent retracted by the appellant later. All this amounts to nothing but making false allegations against the respondent/husband in a court of law which amounts to cruelty, submits the counsel for the respondent.

7. This Court is of a considered view that the court below had rightly reached to a finding that there was cruelty at the hands of the appellant/wife against her husband and the decree of divorce has been granted on this aspect.

8. In view of the above, we see no reason to interfere in the matter. The first appeal is hereby dismissed.

9. However, having made the aforesaid conclusion, we cannot loose sight of the fact that out of the wedlock of the appellant and the respondent, there is a child, who at the time of the institution of the suit for divorce was two years old, and as of now, he is fourteen years of age. The husband/respondent must bear the expenses for upbringing his son and for that reason, we fix a total amount of Rs.11,00,000/- (Rupees Eleven Lakh Only) as permanent alimony, out of which, the respondent shall give an amount of Rs.3,00,000/- (Rupees Three Lakh Only) within a period of two weeks from today by way of a demand draft in favour of his wife and further an amount of Rs.3,00,000/- (Rupees Three Lakh Only) shall be deposited by the respondent within a period of four weeks thereafter in the name of his son, namely, Krish, where the appellant shall be the nominee and this amount shall be locked in for a period of five years and the same can be withdrawn by the appellant/wife after a period of five years or earlier as the parties agree, and the remaining amount of Rs.5,00,000/-(Rupees Five Lakh Only), the husband/respondent shall pay to the appellant in regular monthly installments within a period of three years.

10. This Court has been informed that in the proceedings under Section 125 of CrPC, which have been initiated by the appellant/wife, an amount of Rs.10,000/- (Rupees Ten Thousand Only) is being given by the respondent and against which a revision is also filed before this Court.

11. Since we have already fixed a permanent alimony in the matter, the parties would be at liberty to move an appropriate application before the Court for bringing proceedings under Section 125 of CrPC to an end in view of the present disposal of the case.