

(2010) 07 UK CK 0095
In the Uttarakhand High Court

Smt. Sarika

APPELLANT

Vs

Sri Vishwa Jeet

RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 13(1), 13B(2)

Citation : (2010) 07 UK CK 0095

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Judgement

Tarun Agarwala, J.—Heard Mr. Arvind Vashisht, the learned Counsel for the petitioner and Mr. Navneet Kaushik, the learned Counsel for the opposite party.

2. Since the opposite party is being represented by Mr. Navneet Kaushik, the writ petition is decided finally at the admission stage itself without calling for a counter affidavit since disputed questions of facts are not involved in the present petition.

3. The petitioner and the opposite party entered into a matrimonial alliance in the year 2001. On account of discord between them, it is alleged that they separated and are living separately since 2003. Various applications and claims have been filed by both the parties and in one such proceedings arising u/s 125 Cr.P.C. a compromise was entered between the parties on 18th March, 2009 in which it was agreed that the parties will enter into a mutual divorce. This compromise dated 18th March, 2009 which was filed before the High Court was duly verified on 19th April, 2010 and, based on the said compromise, various proceedings were closed. In the compromise application, it was stipulated that parties would file a mutual divorce proceedings before the appropriate court. Instead of filing an application for mutual divorce by both the parties, the opposite party filed an application for divorce on the ground of desertion u/s 13(1)(i-b) of the Hindu Marriage Act. The petitioner upon getting to know of the proceedings filed an application praying that divorce proceedings should be

based on the compromise and not on the basis of the allegations made by the opposite party. This application was rejected by the Family Court by an order dated 28th May, 2010 holding that the applicant was not interested in getting divorce on mutual basis or on the basis of the compromise and that the petitioner was only interested in receiving the monetary benefits under the said compromise. The Family Court, accordingly, rejected the application and also debarred the petitioner from filing the written statement. The petitioner, being aggrieved by the said order, has filed the present writ petition.

4. The learned Counsel for the opposite party Sri Navneet Kaushik submitted that he has received instructions on behalf of the opposite party that he would have no objection, if his suit for divorce is converted into a suit for divorce on mutual consent as required under Sub-clause (2) of Section 13-B of the Hindu Marriage Act. On the other hand, the sole contention of the learned Counsel for the petitioner before this Court is that the divorce application should be made on the basis of mutual consent in view of the compromise arrived at between the parties.

5. In view of the aforesaid contention raised by the learned Counsel for the parties, this Court set asides the order of the court below dated 20th May, 2010 and direct the petitioner as well as the opposite party to file a joint application for divorce by mutual consent annexing the compromise that was verified by the High Court. If such an application is filed jointly by the parties, the Family Court will convert the suit of the opposite party into a suit for divorce u/s 13-B(2) of the Hindu Marriage Act. The court will proceed accordingly in accordance with law thereafter.

6. For the aforesaid purpose, both the parties will appear before the Family Court on 19th July, 2010 for filing the aforesaid application.

7. The writ petition is accordingly disposed of.