

Kanchan Devi

Vs

Promod Kumar Mittal and another

Criminal Appeal No. 439 of 1996

(Dr. A.S. Anand, Faizanuddin JJ)

03.04.1996

JUDGMENT

1. Leave granted

2. The marriage between the parties was solemnised on 18-4-1973, According to the appellant she was thrown out of the matrimonial home, after she gave birth to four female children one after the other which annoyed her in-laws. Thereafter the respondent husband neglected and refused to maintain her which compelled her to file an application for maintenance under S. 125, Cr. P. C. The trial Court allowed the application and granted her Rs. 500/- p. m. as maintenance. In appeal, the order of maintenance was maintained but the amount was reduced to Rs. 400/- per month. The respondent moved High Court in revision and on 6-10-82 the High Court remanded the matter for rehearing. During the pendency of the application in trial Court, it was dismissed in default and on appellant's moving an application for restoration, the same was restored by the trial Court. A revision petition filed by the respondent against the order of restoration was dismissed. Subsequently, the High Court also dismissed an application filed under S. 482, Cr. P. C. by the husband on 16-1-1984. While the matters rested thus it transpires from the record that the respondent husband had also filed a petition for divorce and obtained an ex parte decree of divorce on 22-10-80. On a petition filed by the appellant, the ex parte decree of divorce was set aside on 9-9-83 and subsequently the petition for divorce filed by the respondent was finally dismissed on 13-10-1983. There is variance between the parties as to whether the matter is pending in appeal at the instance of the husband. No payment, in the case under S. 125, Cr. P. C. was ever made to the appellant thereby compelling the wife to seek execution of the order. The respondent thereupon brought the appellant back to his house. It appears that compromise was then arrived at between the parties with regard to the order of maintenance made under S. 125, Cr.P. C. and as per the terms of the compromise, the appellant agreed to accept Rs. 200/- per month as maintenance arrears with effect from 10-2-1984 as against Rs. 440/- p. m. awarded in her favour. The appellant, alleges that thereafter she was at once again thrown out of the matrimonial home by the respondent husband after he had made her to sign the compromise deed. She filed an application under S. 127, Cr. P. C. on 10-2-84. The application was dismissed in default on 11-8-86 but on petition filed by the appellant it was restored by the trial Court on 29-8-86. A revision filed by the respondent before the Sessions Judge was dismissed on 9-4-87. A interim order came to be made by the trial Court on 24-4-1987 enhancing the maintenance amount by Rs. 150/- per month. The appellant moved the High Court through a petition under S. 482, Cr. P. C. and on 4-11-87 the High Court quashed the order of restoration, the order of the Session Judge dismissing revision, filed by the respondent as also the order of enhancement of maintenance granted in favour of the appellant. This appeal calls in

question the said order of the High Court dated 4-11-87.

3. During the pendency of the proceedings in this Court, an effort was made for reconciliation between the parties. It was admitted by the learned counsel for the parties that the parties have not been living together for the last more than one decade as husband and wife and their relationship was totally strained and bitter against each other. On 7-12-95 it appeared to us that there was no possibility of any reconciliation between the parties and that the marriage between them had irretrievably broken down. The respondent through his learned counsel categorically submitted that there was no possibility of the parties remaining together as husband and wife and that position was not disputed by learned counsel appearing for the appellant.

4. On 7-12-95, during the course of arguments in the Court, the appellant made the following statement in this Court:

"I have no objection to a decree of divorce being made because my marriage with the respondent has irretrievably broken down provided, however, the respondent pays a sum of Rs. 60,000/- (rupees sixty thousand) within twelve weeks from today. My agreement to divorce by mutual consent is subject to that condition and in the event that amount is not paid, I shall not be bound by this statement, as it is without prejudice to my other rights in the case. On the amount being paid, the dispute arising out of the petition under S. 125, Cr. P. C. shall also stand settled."

The respondent husband also made a statement to the following effect :

"Petitioner Smt. Kanchan Devi is my wife. The relations between her and myself as husband and wife have irretrievably broken down. I have heard her statement made in the Court today. I agree with her statement and shall pay a sum of Rs. 60,000/- (rupees sixty thousand) within twelve weeks from today to her. That amount shall be in settlement of all the disputes arising out of the maintenance proceedings under S. 125, Cr. P. C. as well as for a grant of divorce on mutual consent. On the payment of the amount to her, the parties should withdraw all the pending cases against each other arising out of matrimonial proceedings or the maintenance proceedings."

5. On 18-3-1996 learned counsel for the parties submitted that a settlement had been arrived at and the terms of the memorandum of settlement reading thus was filed in the Court on 18-3-96 :

"1. We agree that our marriage be set aside by a decree of divorce on payment by the respondent of a sum of Rs. 60,000/-. Disputes arising out a petition under S. 125 Cr. P. C. also stand settled.

2. Parties agree that all pending cases against each other arising out of matrimonial proceedings or maintenance proceedings stand terminated."

6. In view of the peculiar facts and circumstances of the case and being satisfied that the marriage between the appellant and the respondent has irretrievably broken down and that there is no possibility of reconciliation, we in exercise of our powers under Art.142 of the Constitution of India hereby direct that the marriage between the appellant and the respondent shall stand dissolved by a decree of divorce. All pending cases arising out of the matrimonial proceedings and the maintenance proceedings under S. 125, Cr. P. C. pending between the parties shall stand disposed of and consigned to the records in the respective Courts on being moved by either of the parties by

providing a copy of this order, which has settled all those disputes in terms of the settlement. This appeal is disposed in the above terms. No costs.

7. Before parting with the judgment we wish to record, as admitted before us, that all the four daughters of the parties are living with the husband and he has been maintaining them ever since. He shall continue to do so and the welfare of the children shall be properly taken care of. A reasonable opportunity to the wife to meet the children, if she express any such desire in writing to the husband, shall be provided but the said meetings shall take place at the residence of the husband and that too only on prior arrangements. Order accordingly.