

SUPREME COURT OF INDIA

Mahendra Nath Yadav

Vs.

Sheela Devi

C.A.No.1801 of 2007

(P.Sathasivam and Dr.B.S.Chauhan JJ.)

25.08.2010

ORDER

1. This appeal has been preferred against the judgment and order dated 8th October, 2004 of the High Court of Judicature at Allahabad passed in First Appeal Nos.786 and 787/2000 and by which the decree of divorce granted by the Family Court, Varanasi has been reversed and dismissal of the petition under Section 9 of the Hindu Marriage Act, 1955 (hereinafter called as "Act, 1955") filed by the respondent before the Family Court has also been reversed and her case has been allowed. The parties herein got married on 3rd May, 1990. The ceremony of 'Gauna' was performed in 1991. Appellant is serving in the Army and respondent is serving as a teacher. There was no proper opportunity for both of them to lead a normal family life. Thus, differences arose and litigation started between the parties. The respondent-wife filed an Application under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter called as "Cr.P.C."), before the Judicial Magistrate, Ist Class, Varanasi. The Magistrate vide order dated 10th May, 1995, allowed the said application by directing the appellant to pay the respondent-wife a sum of Rs.400/- p.m. as maintenance. She also filed Case Crime No.131 of 1991 under Section 498-A of the Indian Penal Code, 1860 (IPC) against the appellant and his family members in the Police Station, Choubeypur, Varanasi. The appellant preferred Revision No.330/95 in the Court of Sessions Judge, Varanasi against the order of the Magistrate granting the maintenance to the respondent.

“However, that was dismissed by the Revisional Court vide order dated 15th February, 1996. Though the order passed under Section 125 of Cr.P.C. was subsequently modified by the Family Court vide order dated 2nd June, 1997, the relations between the parties deteriorated, an attempt was made by the appellant's family to settle the matter. According to appellant, it was customary in the locality and in the community to which both parties belong to have a divorce through the Panchayat. Thus, the Panchayat was convened on 7th June, 1997. The said Panchayat decided that the appellant should pay a sum of Rs.30,000/- to the respondent's family. It was paid and a document was prepared which was duly signed by the parties. Thus, the marriage came to an end. In order to give legal effect to the said customary

divorce, the appellant tried to persuade the respondent to get divorce from the Family Court under Section 13-B of the Act, 1955 by consent. However, she did not agree. Thus the appellant approached the Family Court by filing Petition No.370 of 1998 under Section 13 of the Act, 1955, seeking divorce on the ground of desertion and cruelty. The respondent filed the counter case i.e. Petition No.57 of 1999 under Section 9 of the Act, 1955, for restitution of conjugal rights. The Family Court decreed the suit mainly on the ground that the marriage stood dissolved through Panchayat and dismissed the petition filed by the wife for restitution of conjugal rights vide order dated 15th September, 2000.”

2. Being aggrieved, the respondent preferred appeals against both the orders before the High Court and the High Court has reversed the said order in both the cases. Hence this appeal.

3. In spite of service the respondent-wife did not enter an appearance. Thus, we have heard Dr. J.N. Dubey, learned senior counsel appearing for the appellant. Dr. Dubey has taken us through the evidence available on record and through both the judgments. The High Court has rightly held that dissolution of marriage through Panchayat as per custom prevailing in that area and in that community permitted cannot be a ground for granting divorce under Section 13 of the Act, 1955. We fully agree with the said decision for the reason that in case the appellant wanted a decree on the basis of customary dissolution of marriage through Panchayat held on 7th June, 1997, he would not have filed a petition under Section 13 of the Act, 1955. Filing this petition itself means that none of the parties was of the view that the divorce granted by the Panchayat was legal. In view of the above, we do not see any reason to interfere with the well-reasoned judgment of the High Court. The appeal fails and is accordingly dismissed. No 3 costs.