

# RAJASTHAN HIGH COURT

Srikant Mathur

Vs.

Smt. Rajni

D.B. Civil Misc. Appeal No. 1528 of 1999  
(Shiv Kumar Sharma and R.S. Chauhan, JJ.)

23.01.2007

## JUDGMENT

**Shiv Kumar Sharma, J.**

1. Whether acquittal of husband in a criminal case instituted by wife provides a ground to seek divorce?

2. This question that requires consideration in the instant appeal arises in the circumstances set out below:

(i) The-appellant husband and respondent wife, both are bank employees posted at different places. Their marriage was solemnized according to Hindu rites on June 24, 1988 and from their wedlock two children were born.

(ii) The appellant husband filed a petition under Section 13 of the Hindu Marriage Act, 1955 against the respondent wife in the Family Court No. 2, *Jaipur* seeking divorce on the ground of cruelty and desertion,

(iii) The respondent wife filed reply and denied the allegations of desertion and cruelty made by the appellant husband. She stated that the appellant husband used to malign her character. He used to harass her and ask her to bring dowry.

(iv) On the basis of pleadings of the parties learned Family Court framed as many as five issues. The appellant husband examined himself and produced seven witnesses. Whereas the respondent wife gave her statement and examined three witnesses. Thereafter on hearing final submissions learned Family Court held that since appellant husband failed to prove the allegation of cruelty and desertion he was not entitled to decree of divorce.

3. Learned counsel for the appellant husband urged that the respondent wife after delivery of first child did not come back to him. Similarly on second delivery at *Jaipur*

on March 17, 1992 she strangely went to her parental house and did not return till August, 1995. Not only this she filed FIR against the appellant husband and his family members under Section 498A and 406 Indian Penal Code and put all of them under mental stress. Since July 5, 1992 the respondent wife was living separately from the appellant husband and deserted him. Reliance is placed on a decision of this Court in *Narendra Kumar Gupta v. Smt. Indu*,<sup>1</sup> wherein filing of frivolous complaint under Section 498A and 406 Indian Penal Code was treated as cruelty by the wife towards husband. It is further contended that since the parties are living separately for the last 15 years the decree for divorce may be granted on the ground of irretrievable break down of marriage.

4. Per contra, learned counsel for the respondent wife supported the impugned judgment and urged that the judgment of acquittal dated November 29, 2000 of learned Judicial Magistrate No. 3, North Kota has been assailed by the respondent wife and petition seeking leave to appeal is pending in the High Court. Thus at this stage it cannot be said that false criminal case was lodged by the respondent wife.

5. We have pondered over the submissions and scanned the statements of appellant (PW1), Gopal (PW2), Praveen Mathur (PW3), Shanti Mathur (PW5), Urmila Mathur (PW6) and Dipti Mathur (PW7) as well as the testimony of respondent (DW1), Anil Kumar (DW2), Radhey Shyam (DW3) and Ram Kumar (DW4).

6. Learned Family Court in the impugned judgment observed as under :

(Matter in vernacular omitted. Ed.)

Having closely scrutinized the material on record we find that aforequoted observations of learned Family Court is based on the appreciation of the evidence of the parties and there is no infirmity in it.

7. Since petition seeking leave to appeal is sub judice in the High Court against the judgment of acquittal of the appellant husband, it cannot be held at this stage that frivolous case was registered by the respondent wife. We are satisfied that issues of desertion and cruelty have been correctly decided by the learned Family Court against the appellant husband. The appellant husband himself harassed the respondent wife and abandoned her, he therefore, cannot be allowed to take advantage of his own wrong and claim divorce on the ground of irretrievable break down of marriage.

8. For these reasons, we find no merit in this appeal and the same stands dismissed without any order as to costs.

Appeal dismissed.

Cases Referred.

1. 2002(2) R.C.R.(Civil) 32 (Raj) : (D.B. Civil Misc. Appeal No. 186/1990) decided on July 17, 2001