



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 3rd DAY OF MARCH, 2022

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN

FIRST APPEAL FROM ORDER (FAMILY COURT) NO. 383 OF 2011

Between:-

**SMT. SUNITA DEVI W/O SHRI
SURESH KUMAR, R/O VILLAGE
HATERA, P.O. BHOTA, TEHSIL
BARSAR, DISTRICT HAMIRPUR,
H.P.**

...APPELLANT

**(BY SH. SUNEET GOEL,
ADVOCATE)**

AND

- 1. SH. SURESH KUMAR S/O RAN
SINGH, R/O VILLAGE AND P.O.
SAMIRPUR, TEHSIL AND P.S.
BHORANJ, DISTRICT HAMIRPUR,
H.P.**
- 2. LEKH RAJ, S/O BRIJ LAL, R/O
VILLAGE HATERA, P.O. BHOTA,
TEHSIL BARSAR, DISTRICT
HAMIRPUR, H.P.**

...RESPONDENTS

**(SH. VIRENDER THAKUR,
ADVOCATE)**

This appeal coming on for orders this day, the Court passed the following:-

ORDER

Aggrieved by the decree of divorce passed by the learned Court below, the appellant - wife has filed the instant appeal.

2. Brief facts of the case are that the marriage of the appellant and respondent No. 1 was solemnised on 25.04.1983 according to Hindu rites and ceremonies. However, on account of matrimonial discord, appellant filed a petition for divorce in the year 1985-86 which, however, was ultimately compromised. Thereafter, the parties resided peacefully and out of wedlock two sons were born on 20.06.1990 and 20.01.1992.

3. According to respondent No. 1-husband, after the birth of two children, appellant-wife started abusing, quarreling and insulting his mother and brother even on petty matters and she also became habitual of leaving the matrimonial home without his permission and consent. However, despite that he used to bring her back with great difficulty. The husband suffered humiliation, insult and mental torture due to unreasonable and torturing behaviour of the wife, which made it impossible to continue matrimonial relationship, as there was nothing common between the husband and the wife as she not even allowing the husband to have sexual intercourse.

4. In the year, 1999, the wife gave beatings to the husband and a criminal case was registered against her with the police. Thus, it was established that the wife treated the husband with cruelty to the extent that it would be harmful and injurious to his health in case he continues living with her. Not only this, in

the year, 1999, the wife left the matrimonial house and later in the year, 2003, she began living in adultery with respondent No. 2-Lekh Raj. It was on these allegations the husband sought a decree of divorce.

5. The wife contested the petition by filing reply, wherein, she admitted the relationship and also the factum of two sons having born out of legal wedlock, however, rest of the allegations were denied and she urged that it was the husband who had given beating and had thrown her out of the matrimonial house. It was claimed that it is the husband who is living with some other lady and it was only after the husband had given an undertaking to mend his behaviour towards her that she had compromised the earlier divorce petition filed in the year, 1985-86. She also alleged that the allegations raised by the husband in the petition were also raised by him in the petition filed under Section 125 Cr.P.C. before Judicial Magistrate Ist Class, Badsar, and the Court had found these allegations to be false and directed the petitioner to pay monthly maintenance to her as well as children. It was alleged by the wife that husband had been harassing her on one pretext or the other, which compelled her to live separately. She denied that she is living with Lekh Raj.

6. The learned Trial Court on 22.02.2008, framed the following issues:-

1. Whether respondent No. 1 has after the solemnization of the marriage treated the petitioner with cruelty?OPP

2. Whether the respondent No. 1 has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition?OPP

3. Whether the respondent No. 1 is living in adultery with respondent No. 2? OPP

4. Relief.

7. After recording evidence and evaluating the same, the learned Court below passed a decree of dissolution of marriage in favour of the husband constraining the wife to file the instant appeal.

8. It is vehemently argued by Shri Suneet Goel, learned Advocate, that learned Court below erred in coming to the conclusion that the wife is living in adultery, which contention had already been negated by the Court while adjudicating the petition filed by the wife for maintenance under Section 125 Cr.P.C. It was further argued that learned Court below has come to a far fetched conclusion of adultery simply on the ground that the wife was residing at village Hatera after purchasing land from Smt. Shakuntala Devi, who happens to be the mother of respondent No. 2-Lekh Raj, which by itself would not mean that appellant and respondent No. 2 were living in adultery.

9. On the other hand, Shri Varinder Thakur, learned Advocate, vehemently argued that as regards the findings recorded by learned Court below under Section 125 Cr.P.C., the same were not binding on the matrimonial Court in the matrimonial disputes and secondly there is ample amount of evidence available on record, which shows that wife was living in adultery with respondent No.2-Lekh Raj.

I have heard learned counsel for the parties and have gone through the records of the case.

10. At the outset, it needs to be observed that the findings in a proceeding under Section 125 Cr.P.C. cannot be binding on matrimonial Court while dealing with an application for divorce on the ground of *res judicata*. A matrimonial Court is required to arrive at an independent finding based on a material placed before it and taking this view I am duly supported by the judgment rendered by a Division Bench of Calcutta High Court in **Pranab Kumar Karmakar vs. Aarti Karmakar, AIR 2008 (NOC) 2092 Cal = 2008(3) WP LR 697.**

11. As regards the other contention that the wife had been living in adultery, it would be noticed that the husband appeared as PW7 and stated that his wife had left the house permanently in the year, 1999 and thereafter lived for some time with her parents and sister, however, after the year, 2003, she

was residing with respondent No.2-Lekh Raj in one house as husband and wife. In cross-examination, he denied that his wife was not living with respondent No. 2 as wife. The case of the husband is corroborated by PW6 Sarwan Singh, who has categorically stated that Sunita Devi and respondent No.-2Lekh Raj had been residing together in one house as husband and wife for the last 4-5 years.

12. The appellant Sunita Devi (wife) appeared as RW1 and respondent No. 2-Lekh Raj appeared as RW3 and stated that they were not residing together as husband and wife. As per their statements, Sunita Devi was residing in her house constructed on the land purchased by her from Shakuntla Devi, who was the mother of respondent No. 2-Lekh Raj. As per the statement of RW3, he also sold land to Sunita Devi. But then there is overwhelming evidence to establish that Sunita Devi is running a shop in the premises alongwith Lekh Raj.

13. As a last ditch effort, the learned counsel for the appellant would argue that despite the interim order dated 06.05.2013 passed by this Court in CMP No. 804 of 2011, whereby it was ordered that the matrimonial relationship between the parties shall be subject to the outcome of the appeal, the husband has solemnised the marriage with one Kanta Devi, as is evident from the certificate (Annexure A-1)

annexed with the application for bringing on record the subsequent events registered as CMP No. 6821 of 2019. ◊

14. It needs to be noticed that this Court while passing the order dated 06.05.2013 had only directed that the matrimonial relationship between the parties shall be subject to the outcome of the appeal. The wife has already been held to be living in adultery with respondent No. 2. Therefore, in such circumstances, even if the husband has solemnised the second marriage, the same can nowhere affect the merits of this case much less call for any action against him, as there was no restraint order passed by this Court.

15. Lastly and more importantly, going by the pleadings, evidence and subsequent events, I am of the considered view that there has been no matrimonial relationship between the parties for the last nearly two decades, which in itself establishes that the parties are not in a position to live together any longer. Moreover, each of the parties is already residing with a partner of opposite sex as husband and wife. Their relations are so strained that there is no possibility of reconciliation and the marriage between them has broke down irretrievably.

16. It would be unrealistic for law to not take notice of the fact that the irretrievable broke down of marriage must be considered as a ground for divorce as held by the Three Judge

Bench of the Hon'ble Supreme Court in **Navin Kohli vs. Neelu Kohli 2006 (4) SCC 558**.

17. In view of the aforesaid discussion, I find no merit in this appeal and the same is accordingly dismissed, leaving the parties to bear their own costs.

(Tarlok Singh Chauhan)
Judge

3rd March, 2022
(sanjeev)

High Court of Jharkhand