

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL**

Appeal from Order No. 255 of 2019

Rashmi GuptaPetitioner

vs.

Yogesh Babu alias PankajRespondent

Present:

Shri Harshpal Sekhon, learned counsel for the appellant.

Shri Lalit Sharma, learned counsel for the respondent.

**Coram: Hon'ble Ravi Malimath, J.
Hon'ble Narayan Singh Dhanik, J.**

Hon'ble Ravi Malimath.J. (Oral)

Aggrieved by the order passed by the trial court dated 17.05.2019 in Case No. 169 of 2014 in ordering the medical examination of the wife, the respondent-wife is in appeal.

2. The appellant and the respondent were got married on 05.12.2006. Thereafter, the respondent-wife is alleged to have committed various acts of cruelty; that she has also deserted her husband, therefore, he filed the petition before the Family Court, Rudrapur District Udham Singh Nagar in Case No. 169 of 2014 under Sections 13 (ia) and 13 (ib) of the Hindu Marriage Act, 1955. During the pendency of the proceedings, on an application made by the husband, the impugned order was passed by the trial court directing the medical examination of the wife to ascertain whether she is in a position to conceive or not. Aggrieved by the said order, the wife is in appeal.

3. Learned counsel appearing for the appellant-wife submits that the question of the wife undergoing a medical test to ascertain whether she can conceive or not is something unheard of and further whether she can conceive or not is irrelevant to the facts and circumstances of the case.

4. The same is disputed by the learned counsel appearing for the respondent-husband, who submits that the wife is in the constant habit of chewing *gutkha*, etc. and the same has led her to her incapacity to conceive. Therefore, a medical test alone can prove whether she can conceive or not. Therefore, it is pleaded that the appeal be dismissed.

5. On hearing learned counsels, we are of the considered view that an appropriate interference is called for. What requires to be considered is the fact that the husband has sought for a decree of divorce on the grounds under sections 13 (ia) and 13 (ib) of the Hindu Marriage Act, 1955. Section 13 (ia) is with regard to cruelty and section 13 (ib) is with regard to desertion. Therefore, the husband would have to establish these two facts before the court in order to seek divorce on these grounds. The ability of the wife to conceive or not has no relevance or any nexus with sub-section (ia) or (ib) of Section 13 of the Hindu Marriage Act. Her ability to conceive or not is irrelevant in the present proceedings. Therefore, we are of the view that the trial court has exceeded its jurisdiction in passing the impugned order. A woman cannot be subjected to a medical test on the grounds which do not attract under sections 13 (ia) and 13 (ib) of the Act.

6. Hence, for all these reasons, the appeal is allowed. The order dated 17.05.2019 passed by the learned Judge, Family Court, Udhham Singh Nagar in Civil Case No. 169 of 2014 is quashed. The trial court to proceed in deciding the petition on merits and in accordance with law.

(N.S.Dhanik, J.)

(Ravi Malimath, J.)

01.07.2020

Parul/k