

Poonam v. Surender Kumar, 2021 SupremeCourtOnline 5205 (SC)**2021 SupremeCourtOnline 5205 (SC)**

SUPREME COURT OF INDIA

Before:-Sanjay Kishan Kaul and M.M. Sundresh, JJ.

Poonam – Appellants

Versus

Surender Kumar – Respondents

Civil Appeal No.9545 of 2010. D/d. 29.9.2021.

Hindu Marriage Act, 1955, Section 13 - Divorce - Irretrievable breakdown of marriage - After 10 days of marriage, case was registered under Section 498A read with Section 406, IPC alleging that appellant- wife was not being permitted to enter house on account of her inability to satisfy dowry demands - If The parties have not been able to subserve the very objective of marriage of companionship for each other from the very inception and have been living apart for more than 19 years, we are of the view that if this is not an irretrievable break down of marriage then what would be the situation of that kind. [Para 7]

Cases Referred :-

A. Jayachandra v. Aneel Kaur, (2005) 2 SCC 22.

Sivasankaran v. Santhimeenal, Civil Appeal Nos.4984-4985 of 2021. D/d. 13.09.2021.

For the Appellants :- Mr. Brijendeer Chahar, Sr. Adv., Mrs. Jyoti Chahar, Mr. Karan Chahar, Ms. Pooja Chahar, Ms. Shashi Bhushan, Mr. Vinay Garg, Advocates. For the Respondents :- Mr. Shish Pal Laler, Mr. Atul, Mr. Ravi Panwar, Advocates.

ORDER

Marriage between the parties was solemnized on 09.06.2002 as per Hindu rites, but it appears that there were problems from the very inception for which the appellant blames not only the respondent but the family members too. It is on 09.09.2003 that the appellant filed a petition on grounds of cruelty and desertion under section 13 of the Hindu Marriage Act, 1955. The petition was however dismissed on 04.01.2006 predicated on a reasoning that the real brother of the appellant had deposed against her. The claim of the appellant is that the testimonies of the brother of the appellant Subhash Chand and her bhabhi Rani Devi in whose presence the harassment of the appellant took place have been ignored while giving credence to the testimony of the other brother of the appellant who stayed separately from the family and is not even on talking terms with her parents.

2. The aforesaid judgment was challenged in appeal and by the impugned judgment dated 05.11.2009, the appeal was dismissed.

3. In the present proceedings assailing the impugned order notice was issued initially on 15.02.2010 and the matter was referred to mediation vide order dated 10.09.2010. Nothing apparently worked out and ultimately leave was granted on 29.10.2010.

4. We are informed that in view of the maintenance directed to be paid by the trial Court of Rs. 800/- per month, that amount continues to be paid.

5. On 23.09.2021, learned counsel for the appellant submitted, on instructions, to put an end to the dispute, the appellant was willing to go through a mutual consent divorce with all allegations made earlier withdrawn and not claiming any maintenance henceforth.

6. Learned counsel for the respondent took time to obtain instructions and we directed the parties also to remain virtually present on the next date, i.e., 28.09.2021. The parties joined the proceedings but respondent was unwilling even for the suggestion made on 23.09.2021. Thus we proceeded to hear the matter.

7. On the plea of the learned counsel for the appellant, on instructions, the limited question is whether this is a fit case for grant of divorce on account of irretrievable break down of marriage, since even the mutual consent divorce is not acceptable to the respondent. If we look to the facts of the case as set out aforesaid, there is little doubt, and even for that matter the respondent who appeared before us could not dispute, that the marriage did not take off from the very beginning. The marriage took place on 09.06.2002 and on 29.06.2002, the case was registered under Section 498A read with Section 406, IPC alleging that the appellant was not being permitted to enter the house on account of her inability to satisfy the dowry demands. The divorce petition was filed on 09.09.2003. If The parties have not been able to subserve the very objective of marriage of companionship for each other from the very inception and have been living apart for more than 19 years, we are of the view that if this is not an irretrievable break down of marriage then what would be the situation of that kind!

8. We had in a recent judgment analyzed the issue arising from the unwillingness of one of the parties to go in for a divorce and whether in that scenario this Court would invoke powers under Section 142 of the Constitution of India to dissolve the marriage on the ground of irretrievable break down of marriage in *Sivasankaran v. Santhimeenal*, Civil Appeal Nos.4984-4985/2021 decided on 13.09.2021. In the facts of the case, we had found both cruelty made out as also the marriage not having taken off from the very inception for almost 20 years, somewhat similar in the present case. We thus observed that there was disintegration of marital unity and thus disintegration of the marriage [See. *A. Jayachandra v. Aneel Kaur*, (2005) 2 SCC 22] and went out to notice that there was no initial integration itself which would really allow disintegration afterwards. The position is not different in this case. We are thus of the view that it is appropriate that the parties formally part company having actually lived apart for about 19 years.

9. We are thus of the view that a decree of divorce dissolving the marriage between the

parties be passed in exercise of powers under Section 142 of the Constitution of India on account of irretrievable break down of marriage, but we make it clear that in view of what had been offered by the appellant in Court, the appellant will not claim any maintenance or any other amounts from the respondent henceforth.

10. The appeal is, accordingly, allowed in the aforesaid terms leaving the parties to bear their own costs.