

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

FIRST APPEAL NO. 29 OF 2023

22ND JUNE, 2023

BETWEEN:

Sangeeta Gupta Chauhan

.....Appellant.

And

Devendra Singh Chauhan

....Respondent.

Counsel for the Appellant

:

Mr. Rajendra Tamta, learned
counsel.

The Court made the following:

JUDGMENT: (per Hon'ble The Chief Justice Sri Vipin Sanghi)

The present first appeal, under Section 19 of the Family Courts Act, is directed against the judgment and decree dated 09.11.2022, passed by the learned Additional Judge, Family Court, Rishikesh, District Dehradun in O.S. No.470 of 2019, filed by the respondent- husband under Sections 13(1)(ia) and (ib) of the Hindu Marriage Act, i.e. on the ground of cruelty and desertion, which has been decreed in favour of the respondent- husband and the marriage of the parties has been dissolved by a decree of divorce.

2. The parties were married on 27.11.2009. They separated in September, 2016. They have a child, who was born on 25.10.2010. The child is in the custody of the respondent- husband. The respondent filed the divorce petition in September, 2019 on the aforesaid grounds. Insofar as the ground of cruelty is concerned, the same was held to

be established on account of the fact that the appellant-wife has resorted to serious allegation against the respondent-husband, alleging that the respondent has illicit relationship with his own aunt. The appellant, however, could not establish the said serious allegation against the respondent.

3. It is well settled that such like allegations, which impinge on the character, reputation, honour, and status of the opposite spouse, which have remained unsubstantiated, tantamount to grave mental cruelty to the aggrieved spouse. This position is recognized even by the Supreme Court in ***Vijaykumar Ramchandra Bhate Vs Neela Vijaykumar Bhate, (2003) 6 SCC 334.***

4. The relevant extract from the judgment of the Supreme Court in ***Vijaykumar Ramchandra Bhate (supra)*** reads as follows:

"The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(ia) of the Act. The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement of suggested in the course of examination and by way of cross-

examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.”

5. It is clear to us on a reading of the impugned judgment as well as the evidence led by the parties that the aforesaid ground of cruelty was clearly established against the appellant-wife.

6. The impugned judgment also shows that the appellant- wife, during her cross-examination, stated that she was not ready to live with the respondent- husband, even if the respondent were to take her with him.

7. The aforesaid shows that the appellant is not really interested in restoring her matrimonial tie with the respondent. Clearly, the attempt of the appellant is to merely keep the respondent tied down in the relationship, without any meaningful conjugal relationship between the parties.

8. In these circumstances, we see no reason to interfere with the impugned judgment and decree.

9. The appeal is accordingly dismissed.

10. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 22nd June, 2023

NISHANT