



2026:DHC:5606-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9089/2019**

MS. KAMLESH

.....Petitioner

Through: Mr. Shaileshwar Yadav and Ms
Radhika Mohapatra, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL

.....Respondent

Through: Ms. Sriparna Chatterjee, Mr.
Soumitra Chatterjee, Mr. Manish and Ms.
Pranjal Vyas, Advs.

Mr. Varun Vats, SPC for Delhi Police

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT (ORAL)

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13.07.2026

C. HARI SHANKAR, J.

1. This is a hard case. Equity would compel us to grant relief to the petitioner, but the constraints of the law hold us back.

2. Angoori Devi, the mother of the petitioner, was working as a *Mali* in the New Delhi Municipal Council¹ since 2 September 1951.

3. The petitioner got married on 26 May 2003. Claiming that her marriage had been dissolved by way of a deed of dissolution of



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marriage, in accordance with the prevalent customs in the Khatik caste to which she belonged and that, consequent to the dissolution, she had returned to her parental home and had since then been residing with her parents as a dependent, the petitioner, consequent to the demise of her mother on 3 March 2015, applied to the respondent to transfer the family pension received by her mother to her.

4. On 20 October 2015, the respondent rejected petitioner's representation on the ground that she did not qualify for receipt of family pension as per Rule 54 of the Central Civil Services (Pension) Rules 1972².

5. Aggrieved thereby, the petitioner approached the Central Administrative Tribunal³ by way of OA 1248/2016, which stands dismissed by the Tribunal by judgment dated 1 November 2018. Aggrieved, the petitioner has approached this Court under Article 226 of the Constitution.

6. Before the Tribunal, the respondent relied on the fact that, in Form 3, which was filed by Angoori Devi with the respondent on 21 September 2011, the petitioner was not named as one of the dependents of Angoori Devi to whom her family pension could be paid. That apart, it was submitted that no proper decree of divorce had been produced by the petitioner so as to satisfy the requirement of her being a divorced daughter of Angoori Devi.

² "CCS (Pension) Rules

³ "the Tribunal" hereinafter



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7. Office Memorandum⁴ dated 25 July 2001 issued by the Department of Pension and Pensioner's Welfare⁵ entitles divorced and widowed daughters of Government servants who have expired in harness to family pension under Rule 54(6) of the CCS (Pension) Rules. Admittedly, one of the conditions, which has mandatorily to be satisfied for a divorced daughter of a retired pensioner to claim the family pension payable to the pensioner, is that the divorce is valid in law.

8. The Tribunal has held, in the impugned judgment, that, as there was no evidence to show that the petitioner's marriage had been validly annulled, she was not entitled to receipt of the family pension payable to her mother.

9. Aggrieved thereby, the petitioner has approached this Court by means of the present writ petition.

10. During the course of these proceedings, by order dated 30 April 2025, a Coordinate Bench of this Court noticed the fact that, in order to support his submission that the manner in which the petitioner's marriage was dissolved was recognized in the community to which she belonged, learned counsel for the petitioner was placing reliance on the judgments of the High Court of Gujarat in ***Union of India v. Mayuriben Jani, daughter of Sh. Durgeshbhai Nandlal Jani***⁶ and in ***Twinkle Rameshkumar Dhameliya v. Superintendent, Regional***

⁴ "OM" hereinafter

⁵ "DOPPW" hereinafter

⁶ Judgment dated 10 February 2020 in R/SCA No. 4792/2019



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Passport Office, Ahmedabad⁷.

11. The Division Bench on 30 April 2025, further directed the SHO of the Police Station under whose jurisdiction the petitioner resides to carry out an investigation regarding the period for which the petitioner had been residing there and as to whether she was residing with her husband, as also an investigation from her husband regarding the claim of customary divorce. Pursuant thereto, the SHO has filed a report which reads thus:

STATUS REPORT

Respectfully Showeth :-

In compliance with the order dated 30/04/2025 of this Hon'ble High Court, an enquiry was conducted at the petitioner's residence, i.e., House No. B-304, Dakshinpuri, Delhi, as well as at the residence of the petitioner's then husband, Mr. Vijay Kumar, S/o Hazari Lal, R/o A-3/134, Veena Enclave, Nangloi, Delhi.

1. During course of enquiry at the petitioner's residence, it was found that her marriage took place around 20-22 years ago. However, a dispute arose within a few days of the marriage, and a customary divorce took place with the mutual consent of both families. Since then, the petitioner has been residing with her family and has not remarried. Statements of neighbours were also recorded in this regard.

2. Thereafter, an enquiry was conducted with Mr. Vijay Kumar. He stated that he was married to the petitioner, but a dispute arose between them from the very first day of the marriage. A Customary divorce was taken place between them with the involvement of both families. Mr. Vijay Kumar remarried after some days of the customary divorce and now has a 19-year-old son.

3. During the course of enquiry, Mr. Vijay Kumar was persuaded many times to provide documentary proof of the marriage and to give written statement regarding the customary



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divorce, but he vehemently refused to do so. He stated that he would produce the same before the Hon'ble High Court if he was asked by the Hon'ble High Court.

4. The Status report is submitted for the kind perusal of the Hon'ble High Court.

5. However, the undersigned is ready to abide by any directions passed by this Hon'ble Court.

Submitted Please.

Sd/-

Insp. Harendra Singh
Station House Officer
PS. Ambedkar Nagar
08-08-25"

12. As we commented at the start of this judgment, this appears to be a harsh case.

13. The status report filed by the SHO thus seems to indicate that, within a few days of marriage, some form of separation between the petitioner and the husband took place, after which the petitioner has been residing with her parents. If we were purely a court of equity, we might have been persuaded by the circumstances, to grant relief as sought by the petitioner.

14. Equity, however, has to be tempered with law. Even though our preambular goal is justice, justice can only be administered by a Court only in accordance with the law, and not in ignorance thereof.

15. Apart from statute, executive instructions issued in accordance with law also constitute "law" within the meaning of Article 13(3)(a)⁸

⁸ (3) In this article, unless the context otherwise requires,—

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or



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of the Constitution of India. Besides, DOPPW OM dated 25 July 2001 is not under challenge before us.

16. One of the first and foremost conditions for entitlement to receipt of family pension by a divorced daughter of a pensioner who has died in harness is that the divorce is valid in law. Admittedly, the petitioner does not have any decree of divorce or any document to the effect that there has been a valid annulment of her marriage with her husband by any Court of law. She relies on the Deed of Dissolution of Marriage dated 2 December 2004.

17. We note that the said Deed does not itself refer to any custom prevalent in the society on the basis of which it was issued. Besides, divorce by operation of custom is recognized in Section 29(2)⁹ of the Hindu Marriage Act. Apropos the factors which have to be proved in order for a case of customary divorce under Section 29(2) of the Hindu Marriage Act to be made out, the Supreme Court has recently in **Sanjana Kumari v. Vijay Kumar**¹⁰ has underscored the following requirements for a valid customary divorce:

“6. There is no doubt that Section 29(2) of the Hindu Marriage Act, 1955 (for short, ‘the 1955 Act’) provides that, “Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act”. While construing the effect and import of the above provision, this Court has held time and again that spouses can have a valid divorce through a customary divorce deed, *provided they prove that it was an established*

usage having in the territory of India the force of law;

⁹ (2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnised before or after the commencement of this Act.

¹⁰ MANU/SCOR/159996/2023

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custom.

7. In *Yamanaji H. Jadhav v. Nirmala*¹¹, the wife had filed a suit for declaration and pleaded that the customary divorce deed entered into by her was invalid in law. Having found that the lower court did not deal with the issue of validity of customary divorce properly, this Court remanded the matter to the trial court observing as follows:-

“7. In the view that we are inclined to take in this appeal, we do not think it is necessary for us to go into the contentions advanced by the learned counsel for the parties in this case, because we find that *the courts below have erroneously proceeded on the basis that the divorce deed relied upon by the parties in question was a document which is acceptable in law*. It is to be noted that the deed in question is purported to be a document which is claimed to be in conformity with the customs applicable for divorce in the community to which the parties to this litigation belong to. As per the Hindu law administered by courts in India divorce was not recognised as a means to put an end to marriage, which was always considered to be a sacrament, with only exception where it is recognised by custom. Public policy, good morals and the interests of society were considered to require and ensure that, if at all, severance should be allowed only in the manner and for the reason or cause specified in law. Thus *such a custom being an exception to the general law of divorce ought to have been specially pleaded and established by the party propounding such custom since the said custom of divorce is contrary to the law of the land and which, if not proved, will be a practice opposed to public policy*. Therefore, there was an obligation on the trial court to have framed an issue whether there was proper pleadings by the party contending the existence of a customary divorce in the community to which the parties belonged and *whether such customary divorce and compliance with the manner or formalities attendant thereto was in fact established in the case on hand to the satisfaction of the court*. In the instant case, we have perused the pleadings of the parties before the trial court and we do not find any material to show that prevalence of any such customary divorce in the community, based on which the document of divorce was brought into existence was ever pleaded by the defendant as required by law or any evidence was led in this case to substantiate the same. *It is true that in the courts below the*



parties did not specifically join issue in regard to this question and the lawyers appearing for the parties did orally agree that the document in question was in fact in accordance with the customary divorce prevailing in the community to which the parties belonged but this consensus on the part of the counsel or lack of sufficient pleading in the plaint or in the written statement would not, in our opinion, permit the court to countenance the plea of customary divorce unless and until such customary divorce is properly established in a court of law. In our opinion, even though the plaintiff might not have questioned the validity of the customary divorce, the court ought to have appreciated the consequences of there not being a customary divorce based on which the document of divorce has come into existence bearing in mind that a divorce by consent is also not recognisable by a court unless specifically permitted by law...”

8. In **Subramani v. M. Chandralekha**¹², a property dispute arose in which the respondent claimed right over the property by virtue of being married to one Kandaswamy. The appellant argued that she did not have the right because she was divorced by a customary divorce deed. In this context, this Court held that:-

“9. It is not disputed before us that as per Hindu law divorce was not recognised as a means to put an end to marriage which was always considered to be a sacrament with only exception where it is recognised by custom. Hindus after the coming into force of the Hindu Marriage Act, 1955 (for short “the Act”) can seek to put an end to their marriage by either obtaining a declaration that the marriage between them was a nullity on the grounds specified in Section 11 or to dissolve the marriage between them on any of the grounds mentioned in Section 13 of the Act. Section 29 of the Act saves the rights recognised by custom or conferred by special enactment to obtain the dissolution of marriage, whether solemnised before or after commencement of the Act...”

10. It is well established by a long chain of authorities that prevalence of customary divorce in the community to which parties belong, contrary to general law of divorce *must be specifically pleaded and established* by the person propounding such custom. The High Court came to the conclusion that the appellants failed to either plead the existence of a custom in their community to dissolve the



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marriage by mutual consent or to prove the same by leading cogent evidence.”

9. To the same effect is the view taken by a coordinate Bench in **Swapnanjali Sandeep Patil v. Sandeep Ananda Patil**¹³.

10. There can be thus no doubt that *the party who places reliance on customary divorce deed is obligated to establish that such custom is allowed by a practice that has been uniformly observed for a long time and such custom is not unreasonable or opposed to public policy and thus the validity of such customary divorce is duly protected by the exception carved out in Section 29(2) of the 1955 Act.*

11. The issue whether the parties are governed by the custom under which a divorce can be obtained without recourse to Sections 11 and 13 of the 1955 Act, *is essentially a question of fact which is required to be specifically pleaded and proved by way of cogent evidence. Such question can ordinarily be adjudicated only by a civil court.* May be in the peculiar facts and circumstances of a case, the validity of a customary divorce deed can be examined even by a court other than the Civil Court in some collateral proceedings. But that is not the question which falls for our consideration in these proceedings.”

(Emphasis supplied)

18. A coordinate Bench of this Court in **Sushma v. Rattan Deep**¹⁴ has also recently examined the circumstances in which a customary divorce within the meaning of Section 29(2) of the Hindu Marriage Act could be said to have been proved, and has held in that regard thus:

“13. Section 29 of the HMA saves any right recognised by custom or conferred by any special enactment to obtain dissolution of a Hindu marriage. Hence, the customary divorce, if validly proved, is saved by the provision of the HMA. Before delving deeper into how custom ought to be proved, it is significant to iterate how courts have interpreted ‘custom’:

14. In **Bhimashya v. Janabi (Smt) Alias Janawwa**¹⁵, the Supreme Court held:

¹³ (2020) 17 SCC 510

¹⁴ 2025 SCC OnLine Del 8663

¹⁵ (2006) 13 SCC 627



“A custom is a particular rule which has existed either actually or presumptively from time immemorial and has obtained the force of law in a particular locality, although contrary to or not consistent with the general common law of the realm. *A custom to be valid must have four essential attributes. First, it must be immemorial; secondly, it must be reasonable; thirdly, it must have continued without interruption since its immemorial origin, and fourthly, it must be certain in respect of its nature generally as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect.*

15. In **Gokal Chand v. Parvin Kumari**¹⁶, the Supreme Court declared that:

“A custom, in order to be binding, must derive its force from the fact that by long usage it has obtained the force of law, but the English rule that ‘a custom, in order that it may be legal and binding, must have been used so long that the memory of man runneth not to the contrary’ should not be strictly applied to Indian conditions.”

16. However, to prove custom, the parties are required to lead cogent evidence. It is not sufficient to prove custom of dissolution of marriage by examining few witnesses. It is expected from the parties to prove the prevalence of customary divorce in their area/community by producing judgments that recognise their custom and show past instances of customary divorce in the community.

17. One of the ways to prove the custom is reference to any text or interpretation of Hindu law or usage for long period of time. Once the Court is called upon to declare that there exists a custom which is contrary to the codified law, the burden of proof is heavy upon the party asserting custom. Custom cannot be extended by analogy and it cannot be established by a priori method. **Uzagar Singh v. Mst. Jeo**¹⁷ laid down that the ordinary rule is that a custom, general or otherwise, has to be proved under Section 57 of the Evidence Act, 1872. This fact has been laid down by the Court from time to time in the following manner:

17.1. The Supreme Court in **Saraswathi Ammal v. Jagadambal**¹⁸ held as follows:

¹⁶ (1953) 1 SCC 362

¹⁷ AIR 1959 SC 1041

¹⁸ (1953) 1 SCC 362



“Privy Council in **Abdul Hussein Khan v. Soma Dero**¹⁹. It was there said that it is incumbent on a party setting up a custom to allege and prove the custom on which he relies and it is not any theory of custom or deductions from other customs which can be made a rule of decision but only any custom applicable to the parties concerned that can be the rule of decision in a particular case. It is well settled that custom cannot be extended by analogy. *It must be established inductively, not deductively and it cannot be established by a priori methods.* Theory and custom are antitheses, custom cannot be a matter of mere theory but must always be a matter of fact and one custom cannot be deduced from another. A community living in one particular district may have evolved a particular custom but from that it does not follow that the community living in another district is necessarily following the same-custom.”

17.2. An identical view has been taken by the Supreme Court in **Salekh Chand (Dead) By Lrs v. Satya Gupta**²⁰. In **Yamanaji H. Jadhav v. Nirmala**²¹, the Supreme Court reiterated this principle in the context of the Act, holding as follows:

“As per the Hindu Law administered by courts in India, divorce was not recognised as a means to put an end to marriage, which was always considered to be a sacrament, with only exception where it is recognised by custom. Public policy, good morals and the interests of society were considered to require and ensure that if at all, severance should be allowed only in the manner and for the reason or cause specified in law. Thus such a custom being an exception to the general law of divorce ought to have been specially pleaded and established by the party propounding such custom since said custom of divorce is contrary to the law of the land and which if not proved will be a practice opposed to public policy. It is true in the courts below that the parties did not specifically join issue in regard to this question and the lawyers appearing for the parties did orally agree that the document in question was in fact in accordance with the customary divorce prevailing in the community to which the parties belonged but this consensus on the part of the counsel or lack of sufficient pleading in the plaint or in the written statement would not, in our opinion, permit the court to countenance the plea of customary divorce unless and until such customary divorce is properly established in a court of law. In our opinion,

¹⁹ (1918) 20 BOMLR 528

²⁰ (2008) 13 SCC 119

²¹ (2002) 2 SCC 637



even though the plaintiff might not have questioned the validity of the customary divorce, the court ought to have appreciated the consequence of their not being a customary divorce based on which the document of divorce has come into existence bearing in mind that a divorce by consent is also not recognisable by a court unless specifically permitted by law.”

17.3. The Gujarat High Court in **Bhartiben W/O Amitbhai Vitthalbhai**²² held that:

“13. It is well settled principles of law as laid down by the Supreme Court that prevalence of customary divorce in the community to which the parties belong, contrary to general law of divorce must be specifically pleaded and established by person propounding such custom. In our view, in the absence of any proper pleadings on behalf of the plaintiff in the plaint about the then alleged existing custom and customary divorce in the Leuva Patel Community, the plaintiff could not have led any oral evidence on the said issue.”

(Emphasis supplied)

19. All that the learned counsel for the petitioner has placed on record, in order to support his submission that the marriage between the petitioner and her husband stood dissolved by a customary decree of dissolution, are two other such similar documents executed in respect of others in the society. Given the rigorous standards which have to be met in order for a case of customary divorce under Section 29(2) of the Hindu Marriage Act to be said to have been made out, as laid down by the Supreme Court in **Sanjana Kumari v. Vijay Kumar** and the Division Bench of this Court in **Sushma v. Rattan Deep**, we regret that it is not possible for us to hold that the petitioner has made out a case of a valid divorce as recognized in the custom prevalent in the caste to which she belonged.



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20. We, therefore, cannot fault the Tribunal in its view that the requirement of proving the existence of a divorce which is valid in law has not been satisfied in the present case.

21. Accordingly, we do not find this to be a case warranting interference with the judgment of the Tribunal.

22. However, we clarify that this order would not inhibit the petitioner from, if she can prove making out a legally sustainable case of a valid customary divorce having taken place between her and her husband, re-approaching the Department in that regard for seeking transfer of the family pension to her account. In case any such request is made, the Department would examine the matter in the light of the law declared by the Supreme Court in *Sanjana Kumari* and the Division Bench of this Court in *Sushma*. In that event, the denial of relief by us in the present judgment would not stand in the way of grant of family pension to the petitioner.

23. That is the limited extent to which we can provide succour in the present case.

24. The writ petition stands disposed of, in the aforesaid terms.

C. HARI SHANKAR, J.

VINOD KUMAR, J.

JULY 13, 2026/yg

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