

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE MS. RITU BAHRI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

FIRST APPEAL NO. 209 OF 2022

01ST AUGUST, 2024

Vishal Upadhyay

.....Appellant.

Versus

Arpita Shukla

....Respondent.

Counsel for the Appellant

:

Mr. Pankaj Kaushik, learned
counsel.

Counsel for the Respondent

:

Mr. Ankur Sharma, learned
counsel.

The Court made the following:

JUDGMENT: (per Hon'ble The Chief Justice Ms. Ritu Bahri)

The present appeal has been filed by the appellant-husband against the judgment and order dated 16.09.2021, passed by the Judge, Family Court, Haridwar in Original Suit No.22 of 2021, "*Vishal Upadhyay vs. Smt. Arpita Shukla*".

2. The marriage of the parties was solemnized on 02.05.2019, and they are living separately since July, 2019. *Vide* order dated 30.08.2022, this Court directed the appellant- husband to pay maintenance @Rs.20,000/- per month to the respondent- wife from the date of filing the present appeal.

3. The relevant details of the present appeal are as follows :-

Date of marriage	02.05.2019
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Date of separation	27.05.2019
Details of the criminal proceedings between the parties	<p>1. Case No.352 of 2019, under Sections 498A, 323, 504, 506 IPC and 3/4 Dowry Prohibition Act in the Court of 2nd ACMM, Kanpur, "State vs. Vishal Upadhyay", filed by the respondent- wife.</p> <p>2. Case under Section 125 of Cr.P.C. and a case under Section 12 of the Domestic Violence Act filed by the respondent- wife.</p> <p>3. Criminal Misc. No.4075 of 2021 in the Hon'ble Allahabad High Court filed by the appellant-husband.</p>
Issues from the marriage.	-
Maintenance decided by the Family Court.	Rs.20,000/- granted by the Family Court, Haridwar in O.S.22 of 2021.
Reliance placed on the judgments of the Hon'ble Supreme Court that marriage is dead after a long period of separation.	<p>1. Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511.</p> <p>2. Shilpa Sailesh v. Varun Sreenivasan, 2023 SCC OnLine SC 544.</p> <p>3. Prakashchandra Joshi v. Kuntal Prakashchandra Joshi @ Kuntal Visanji Shah, 2024 INSC 55.</p>

4. Keeping in view the judgments of the Hon'ble Supreme Court, since both the parties are qualified, it would amount to cruelty if they are not freed from this relationship. There is no scope of patching up between the parties.

5. The marriage of the parties was solemnized in the year 2019, and both the parties are living separately since 2019. There is no child from the marriage.

6. Keeping in view the facts of this marriage, it can be said that this marriage is nothing more than a dead marriage, and if both the parties are not granted divorce, it will amount to cruelty to both the parties. There is no emotional bonding between the parties, and there is no scope of patch-up between them, keeping in view the long period of separation of five years.

7. The appellant is paying Rs.20,000/- per month as maintenance to the respondent- wife.

8. Appellant has made a statement that an amount of Rupees Twenty Five Lakhs will be paid to the respondent within a period of six weeks, as permanent alimony.

9. In view of the above-said discussion, the present Appeal is allowed, and the judgment and order dated 16.09.2019 passed by the Judge, Family Court, Haridwar, is set-aside. Divorce is granted to the parties.

10. The appellant is directed to pay Rs.25.00 Lakhs to the respondent- wife as permanent alimony within six weeks, and inform this Court.

11. List for reporting on 26.09.2024.
12. Pending application, if any, also stands disposed of.

(RITU BAHRI , C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 01st August, 2024

NISHANT