

Onkarnath Vs. Sushila

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Court : Madhya Pradesh

Decided On : Jul-18-2013

Appellant : Onkarnath

Respondent : Sushila

Advocate for Pet/Ap. : Shri. Abhishek Gulati

Judgement :

HIGH COURT OF MADHYA PRADESH : AT JABALPUR FiRs.Appeal No :

64. of 1997 Onkar Nath - V/s - Sushila Present : Honble Shri Justice Rajendra Menon.

Honble Shri Justice A.K.Sharma.

----- Shri Aditya
Adhikari with Shri Abhishek Gulati, Counsel for the appellant.

None for the respondent.

----- Whether
approved for reporting: Yes / No.

JUDGMENT

18/07/2013 Challenge in this appeal under section 28 of the Hindu Marriage Act, 1955 is made to the judgment and decree-dated 19.12.1996, passed by the 5th

Additional District Judge, Rewa in Civil Suit No.8-A/1995.

By the aforesaid judgment and decree, a suit filed by the appellant/husband for dissolution of the marriage under section 13 of the Hindu Marriage Act, has been dismissed.

2- Parties herein were married in the year 1980 and it is the case of the appellant that ever since the marriage, the respondent wife started behaving in a very peculiar manner, she was harassing the appellant and his family members and her acts amounted to act of cruelty.

It is stated that initially she sought for partition of the appellants family property, thereafter made him stay separately from his family members. This was agreed to, but still she was not satisfied, she started harassing the family of the appellant and then deserted him.

It is also stated that the respondent wife had some illicit relations with one of her brother-in-law and accordingly on the ground of desertion and illicit FiRs. Appeal No ::

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relations with the brother-in-law, the suit for divorce was filed.

Respondent wife contested the same and denied the allegations of cruelty and adultery as alleged in the plaint.

It was her case that out of the wedlock two children were born.

The allegations of cruelty and adultery are wrong.

The two sons were 11 years and 9 years of age respectively and it is stated by the respondent wife that false allegations have been alleged only to somehow get the marriage dissolved so that the appellant husband can remarry.

Based on the rival contentions, five issues were framed.

The FIRs issued was as to whether the respondent wife has acted in a cruel manner.

It was held that this issue has not been proved.

The second issue was as to whether the cruelty of the respondent resulted in mental harassment to the appellant husband.

This issue was also decided against the appellant.

The third issue framed was as to whether the appellant without any justification or reason is refusing to look after his wife and children.

This issue was answered in positive by holding that once the appellant is refusing to take care of his wife and children.

The fourth issue framed was as to whether the appellant is entitled to a decree of divorce.

It was held that the grounds alleged in the plaint are not proved and, therefore, the appellant is not entitled to decree of divorce.

3- Shri Aditya Adhikari and Shri Abhishek Gulati, learned counsel appearing for the appellant, took us through the statement of the appellant and his two witnesses - namely PW/2 Naresh Singh and PW/3 Virendra Singh, and tried to emphasize that the allegations of adultery and desertion have been proved and in spite of their being cogent evidence in support of the contention, it was argued that in a perverse manner the learned court below has held the allegation to be not proved.

That apart, it was argued by learned counsel at the time of hearing that in the proceedings that were held before the trial court, respondent wife had made serious allegations of adultery against the appellant by saying that the appellant is having illicit relations with his sister-in-law, this was a serious allegation and the trial court has found the same to be not proved.

Accordingly, it was argued that when in a proceeding held under FIRs. Appeal No ::

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the Hindu Marriage Act, if one of the party makes serious allegations like allegation of adultery and the same is not proved, this amounts to cruelty and, therefore, on this ground the marriage can be dissolved.

Accordingly, the submission made was that in the light of the wild allegations of adultery made by the respondent wife during the proceedings held in the trial court, a case for dissolution on the ground of cruelty is made out.

In support of the aforesaid contention to say that cruelty is made out if such an allegation is levelled in a proceeding held, the following judgments have been relied upon: MRS.Manisha Sandeep Gade versus Sandeep Vinayak Gade, AIR 200.BOMBAY 180 V.

Bhagat versus Mrs.D.Bhagat, AIR 199.SC 71.(1).Smt.

Santana Banerjee versus Sachindra Nath Banerjee, AIR 199.CALCUTTA 367 Smt.

UMr.Bai versus Chitta, AIR 199.MP 205.Smt.

Om Pati versus Rajbir, AIR 200.PUNBAB & HARYANA 171 Shobha Mhatardev Lomte versus Mhatardev Tukaram Lomte, AIR 200.BOMBAY 160 Shyama Bai (Smt) versus Sone Singh Lodhi, 1999 (1) MP Weekly Notes - SN 163.and, Amardas versus Smt.

Usha Pandit, 1984 MP Weekly Notes - SN 538.

4- None had appeared for the respondent, but as the case is of the year 1997 and is pending for a long period of time, we propose to decide the matter after perusing the records.

5- As indicated hereinabove and on going through the issues framed, it is clear that the suit for dissolution was filed mainly on two counts.

One that the respondent wife has deserted the husband, she is living separately; and, second is her illicit relations with one of her brother-in-law.

As indicated hereinabove, three witnesses were produced in support of the aforesaid contention.

PW/1 is the appellant himself, who gave oral statement as narrated in the plaint; and, the other two witnesses - PW/2 Naresh Singh and PW/3 Virendra Singh.

These witnesses are not the family members of the appellant, they are only his friends and they have stated orally that the respondent wife is having illicit relations with her Jeejaji, she is in the habit of mingling with anti- social elements and as anti-social elements are frequently visiting her, it FiRs. Appeal No ::

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is tried to be emphasized that she is leading a life of adultery.

Per contra, the respondent wife has examined herself and has also stated that she is living with her two children; her husband has refused to take care of her inspite thereof she stayed with him for certain periods and she goes on to say that she is managing the family by doing work of a labourer.

The evidence, oral in nature, has been analysed meticulously by the learned court below and the finding recorded is that based on the evidence that has come on record, the allegation of adultery is not proved.

It is stated that only vague allegations are made in the oral statement and there is no cogent supporting evidence to draw a definite conclusion of adultery.

6- Similarly, with regard to desertion the finding recorded is that the respondent wife has been staying intermittently during various periods with the husband and it was found that even during the pendency of the proceedings before the trial court for various period, ranging from nine months or a year, she has stayed with the husband.

Taking note of all these facts ORS. the finding recorded is that the allegation of desertion and adultery as pleaded in the plaint are not proved.

We have gone through the statement of the three witnesses of the appellant and we find that except for making bald oral statement, no cogent evidence or material in support thereof is available.

Even the family members of the appellant have not been examined to prove the act of cruelty etc. In view of the above, we are of the considered view that the learned court below has recorded a reasonable finding with regard to the allegations made in the plaint and the same being in conformity with the evidence available, it is not a fit case where any further indulgence is called for.

7- However, as during the course of hearing, learned counsel tried to indicate that during the proceedings held before the trial court, respondent wife has made allegation of adultery against the appellant and as this is said to be an act of cruelty, we propose to deal with this matter as much stress was made on this count at the time of hearing.

8- Before advertent to consider the said question and analyse the facts available on record in this regard, it would be appropriate to take note of the legal principle applicable in the matter.

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9- The Supreme Court, in the case of V.

Bhagat (supra) has taken note of the import of the mental cruelty as is contemplated in the Hindu Marriage Act and it has been held that if allegations are made by a wife in her written statement against the husband and all members of the family and they are alleged to be lunatic and that streak of insanity runs through the entire family and when specific question by her counsel in cross-examination is put to these persons, the aforesaid act amounts to mental cruelty

and the husband is entitled to a decree of divorce under such circumstances.

It is held by the Supreme Court in the aforesaid case that if in a proceeding filed by the husband the wife comes out with a counter-allegation and emphasizes on the same by making specific pleading and gives evidence, which is found to be false, the same amounts to cruelty and on such ground a decree of divorce can be granted.

The Supreme Court has dealt with the matter in the following manner: In the instant case the husband, practicing advocate in Supreme Court and High Court, had filed a divorce petition against his wife on ground of adultery.

The wife, who is working as Vice-President in a Public Sector Corporation in her written statement and the questions put by her counsel to the petitioner in cross-examination had made the allegations that the petitioner is a mental patient, that he is not a normal person, that he requires psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations - and that he and all the members of his family are a bunch of lunatics.

Held, the said allegations were not made in a fit of anger or under an emotional stress.

They were made in a formal pleading filed in the Court and the questions to that effect were put by her counsel, at her instructions, in the cross-examination.

Even in her additional written statement she has asserted her right to make correct statement of facts FIRs. Appeal No ::

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to defend herself against the wanton, imaginary and irresponsible allegations.

These are not the mere protestations of an injured wife; they are positive assertions of mental imbalance and streak of insanity in the mental build-up of the

husband.

The husband is an advocate practicing in the Supreme Court as well as in High Court.

The divorce petition is being tried in the High Court itself.

Making such allegations in the pleadings and putting such questions to the husband while he is in the witness-box, is bound to cause him intense mental pain and anguish besides affecting his career and professional prospects.

..

10- Similar question has been considered by the Bombay High Court, in the case of MRS.Manisha Sandeep Gade (supra).and it has been held by the Bombay High Court in the aforesaid case that as a normal rule the question as to whether cruelty as a matrimonial wrong is established or not is a question of fact, which has to be determined on account of the individual conduct of the person concerned, the facts and circumstances of the case and there cannot be a general rule.

In the case that was dealt by the Bombay High Court, in a petition filed by the husband, wife made counter-allegation in the written statement against the husband and his mother, gave evidence also and ultimately effectively cross-examined the husband and his family members on this count; and, when these allegations were found to be false, it was held that the act of the wife in making these false allegations amounted to cruelty.

11- Similarly, in the case of Smt.

Santana Banerjee (supra).the Calcutta High Court has considered the said question and similar principles in the lines as indicated hereinabove and held by the Supreme Court, the Calcutta High Court has also held that when serious allegations are levelled by one of the parties in a proceeding to counter the allegations of the other party and if these allegations are found to be not proved, it may amount to cruelty.

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12- In the case of Smt.

UMr.Bai (supra).the Madhya Pradesh High Court has also considered similar questions and the same principle is reiterated.

13- The Punjab and Haryana High Court in paragraphs 12 and 13 of its judgment, in the case of Smt.

Om Pati (supra).has also taken note of similar principles and affirmed it.

14- That being so, a complete reading of the judgments relied upon by Shri Aditya Adhikari and Shri Abhishek Gulati, at the time of hearing, indicates that if in a proceedings initiated by the husband for dissolution of marriage, the wife comes out with serious allegations like allegations of adultery against the husband or some other serious allegations against his family members.and by making specific averments in this regard tries to lead evidence and tries to impress upon the Court that the counter-allegations levelled by her are correct, and ultimately if the allegations are found to be incorrect, it may lead to draw a conclusion that the allegations amount to cruelty.

For holding the allegation to amount to cruelty, the act of wife should be such that serious allegations made by her should be found proved by the Court.

The judgments rendered by the courts below, particularly the Supreme Court in the case of V.

Bhagat (supra) and reproduced hereinabove, goes to show that mere casual allegation or an allegation made in a fit of anger and under emotional stress are not to be considered to be sufficient enough to establish cruelty.

In all the judgments, it has been consistently held that if the party making the counter-allegation makes specific averments in the pleadings and also leads evidence and does cross- examination of the other party elaborately on the issue,

then only the allegations may amount to an act of cruelty.

Mere casual mention of certain allegation at the spur of the moment or in a fit of emotional stress may not amount to an act of cruelty.

There has to be a positive assertion and an effort in the entire proceedings to show that the party concerned has tried to stress upon the assertion and wants the Court to take note of the same and record a finding.

It is, therefore, clear that to constitute an act of cruelty by one of the parties, the same has to be based on the FiRs. Appeal No ::

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pleadings and specific averments, evidence and other positive act to show that serious allegations are made against the opponent and the party making the allegation is bent upon bringing home the allegations by leading evidence or effectively cross-examining the witnesses.

15- That being so, it may be appropriate at this stage to see as to what was the act of the respondent wife in the present proceedings, and whether the assertion made by her with regard to adultery by the husband can be termed as an act deliberate in nature, made for the purpose of casting aspersions on the appellant/husband and based on the principle as enumerated hereinabove, the submissions of Shri Aditya Adhikari can be accepted?.

16- For considering the aforesaid question, we have gone through the pleadings of the parties.

In the plaint filed by the appellant, two allegations have been made - one of desertion and the other of adultery by the respondent wife.

In her written statement filed, which is available on record, the respondent wife has merely denied all the allegations and says that the husband has made these allegations only to somehow get the marriage dissolved so that he can marry

again.

In her written statement filed, which is available on record, there is no whisper by her with regard to adultery if any, committed by the husband/appellant or any other act which can be termed as an act of cruelty, with regard to the appellant or his family members. There is not even a whisper of such an allegation in the written statement.

Thereafter, when the appellant was examined as PW/1 and when his two witnesses - PW/2 Naresh Singh and PW/3 Virendra Singh, entered the witness-box, there is an elaborate cross-examination of all these witnesses by the counsel for the respondent/wife and in the entire cross-examination there is not even a single question put or a whisper made with regard to allegation of adultery against the appellant husband.

There is nothing in the statement of these three witnesses, during examination or cross-examination, to show that any such allegation is made by the respondent wife.

However, it is only in her examination-in-chief and cross-examination before the Court on 3.12.1996 that a casual remark is made in FIRs. Appeal No ::

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by the respondent in two lines, and she goes to say that her husband has some wrong relation with his sister-in-law, and for the last 5-6 years this is going on.

Except for these two sentences, there is nothing in the entire record to say that the respondent at any point of time has made any allegation of adultery.

In fact, the aforesaid statement is made by the respondent in cross-examination undertaken by the appellants counsel and in the examination-in-chief she only says that her husband has wrong relation with his sister-in-law.

17- From a complete analysis of the material available on record and the facts that emerge on such consideration and if we apply the same in the light of the legal principle as discussed hereinabove, it has to be held that during the proceedings held before the trial court, the respondent wife has not made any such consistent serious allegation against the appellant as has been found to be made in the cases discussed and cited by Shri Aditya Adhikari.

In all these cases, the person concerned had made serious allegations consistently in the written statement, cross-examination of the witnesses and at various other stages and after taking note of all these the principle laid down is that mere casual statement or assertion made in a fit of anger etc cannot be construed to constitute cruelty.

If that be so, in the present case the respondent has not made any such serious allegation either in the written statement or in her cross-examination.

She only makes an allegation or statement in her cross-examination that her husband is having wrong relation with his sister-in-law.

Apart from the above there is no assertion made by her and, therefore, applying the law on the question in the facts and circumstances of the case, we are of the considered view that a casual statement made by the wife, in her examination-in-chief, in the facts and circumstances of the present case, will not fall in the category of mental cruelty as is required to be established under law.

For establishing an act of mental cruelty, making of such a casual statement is not enough, something more in support thereof has to be done and when there is nothing to show that the respondent wife has consistently made such false allegation or had tried to create a reasonable FiRs. Appeal No ::

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apprehension in the appellants mind so as to import a feeling of harm or injury, or an act detrimental to his interest, an act of cruelty cannot be made out.

18- Accordingly, in the totality of the facts and circumstances of the present case, we are of the considered view that no interference is called for.

19- Accordingly, the appeal stands dismissed.

No order as to costs.

(RAJENDRA MENo.) (A.K.SHARMA) JUDGE JUDGE Aks/-

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