

Deepak Kumar Singh Vs. Gauri Devi

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Court : Patna

Decided On : Jan-17-2014

Judge : Navin Sinha & Vikash Jain

Appeal No. : Miscellaneous Appeal No. 425 of 2009

Appellant : Deepak Kumar Singh

Respondent : Gauri Devi

Judgement :

Oral Judgment:

Navin Sinha, J.

We have heard learned counsel for the appellant. No one has appeared on behalf of the respondent despite valid service of notice.

The present appeal arises from order dated 8.6.2009 dismissing Matrimonial Case No.59/07, passed by the Principal Judge, Family Court at Darbhanga. The appellant's application for divorce was dismissed.

Learned counsel for the appellant submits that the order under appeal does not adequately consider and discuss why the grounds urged with regard to the conduct of the respondent were not acceptable to the Family Court and only the case made out in defence by the respondent has been believed. In absence of any

proper discussion and consideration of the grounds urged in support of divorce, the order under appeal is bad without furthermore. The respondent left the matrimonial home without just cause. Her conduct was not conducive to matrimonial life as she was mentally dull and was unable to perform routine duties as a house wife.

The criminal prosecution filed by her under Section-498A and 323 I.P.C. and Section-3/4 of Dowry Prohibition Act has been quashed by this Court in Cr. Misc. No.18664/09. The persistent refusal of the respondent to even appear for reconciliation as attempted by this Court also leaves the marriage virtually dead and no purpose is going to be served by continuation of a facade of marriage.

We have considered the submissions on behalf of the appellant as also perused the original records. The plaint alleges that Rejeshwar Prasad Singh and another took away the appellant by deceit to village- Babupur, P.S. Warisnagar, District-Samastipur and by show of force at the point of a pistol got married to the respondent who is the daughter of Rajeshwar Prasad Singh on 9.7.2003.

It is not in dispute that no criminal complaint was lodged by the appellant for such forcible taking away by deceit and marriage by show of force at the point of a pistol. The plaint does not allege that no family member of the appellant was present during marriage or that the guests during the marriage ceremony were extremely limited because of the nature of the marriage being performed, much less the relatives of the respondent alone present at the time of marriage. The appellant in his evidence before the trial court reiterated the story of deceit and forceful marriage but again did not lead any evidence whatsoever on the issue that because of the nature of the marriage being solemnized, none of his family members were present or that extremely limited number of guests were present. The name of the priest or even location of marriage has also not been stated. We are therefore satisfied that this ground sought to be urged in the plaint was but a ploy to build up a case for divorce only.

The plaint then alleged that the respondent was of œdull brain? and did not know how to manage family affairs and did not cook. She would become violent and abuse. We have again examined the evidence of the appellant. It is not his case

that the respondent was suffering from any mental disorder. Had it been a case of acute incurable mental sickness on part of the respondent, matters may have been entirely different. The evidence generally reiterates her reluctance for domestic affairs and her inability without a single incidence or the nature of responsibility declined to be discharged, much less any occasion or date when she may have become offensive along with the nature of the abusive language that may have been used by her. At best, the pleadings in paragraph-5 of the plaint can be classified as skirmishes of a newly married life which was required to be ironed out and settled rather than to be escalated. In our opinion, the respondent having come to the matrimonial home, the responsibility for helping her settle down in a new environment rested more with the appellant.

It is not that the respondent denied her physical company to the appellant. She became pregnant and delivered a baby girl on 10.1.2005. The grievance is that she went to her matrimonial home but refused to come back. There had been no co-habitation since, 2004. This conduct of the respondent constituted cruelty.

The respondent in her evidence alleged that demands for dowry were made from her and she would be locked in a room for a day or two without food and forced to work like a servant in the matrimonial home. After she delivered a female child, the behaviour of the appellant and his family turned from bad to worse and they were desirous that the appellant should perform a second marriage. The respondent was driven out of her matrimonial home along with her minor child.

For the allegations made by the respondent, she had filed C.R. Case No.1476/07 before the Sub-divisional Judicial Magistrate at Samastipur in which cognizance was taken under Section-498A and 323 of I.P.C. read with Section-3/4 of Dowry Prohibition Act. We have not had the benefit of the plaint of the case but from the order in Cr. Misc. No.18664/09 it appears that she had made allegations for dowry, torture and ouster from the matrimonial home.

The complaint case was quashed by this Court ex parte when the respondent did not appear. The prime consideration for quashing the proceedings was her reluctance to appear even for re-conciliation after orders to that effect in the present appeal. There is no finding that the allegations as made out in the

complaint were not fit to go to trial. We are of the opinion that the quashment of Section-498A I.P.C. proceeding, without a merit trial and without any conclusive finding on the allegations is of no avail to the appellant.

The order under appeal holds that the only allegation was that the respondent was of dull mind and never cooperated in cooking of food. These were not grounds sufficient for divorce to constitute cruelty. The mental disorder alleged had to be of a kind that the appellant could not reasonably be expected to live with the respondent. There was no such evidence on record.

The fact that the respondent conceived was evidence by itself that she had not denied her company to the appellant. In conclusion, the Family Judge held that the respondent had not acted with any cruelty and there had been no desertion by her without reasonable cause.

Section-13(1)(a) of the Hindu Marriage Act provides for divorce on grounds of cruelty. Section-13(1)(b) provides for desertion for a continuous period of not less than two years but the explanation requires that the desertion should be without reasonable cause.

In the present case, we have already noticed that the very origin of the plaint was in a story which the appellant failed to prove.

According to the evidence led by the appellant, not a single incidence of cruel behaviour on part of the respondent was cited much less proved. After the birth of a female child circumstances changed and as a consequence of which the respondent had to file a case under Section-498A of I.P.C.

In the facts and circumstances of the present case, keeping in mind the contention of the respondent that she was driven out of the matrimonial home after the birth of the female child, and failure of the appellant to prove cruelty, we can reasonably conclude that even if the respondent left the matrimonial home it shall not amount to desertion because she did not do so without reasonable cause.

In the facts and circumstances of the case, we are satisfied to hold that to set aside the judgment under appeal may be giving an advantage to the appellant for

his own conduct and behaviour.

In absence of any statutory provision for divorce on grounds of irretrievable break down of the marriage, our jurisdiction being limited to the statutory requirements, in the facts and circumstances of the present case, we find it difficult to accept the submission for grant of divorce on grounds of irretrievable break down given the long passage of years.

The appeal is dismissed.

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