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Jayashri Vs. Umesh

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Court : Mumbai Nagpur

Decided On : Oct-01-2016

Judge : The Honourable Mrs. Justice Vasanti A Naik &Amp; The Honourable Ms. Justice Indira Jain

Appeal No. : Family Court Appeal No. 92 of 2015

Appellant : Jayashri

Respondent : Umesh

Advocate for Pet/Ap. : Ms. Umale

Judgement :

Indira Jain, J.

1. Admit.

2. Heard finally with the consent of the learned Counsel for the parties as record and proceedings are received.

3. By this appeal appellant/wife challenges the judgment of the Family Court, Akola dated 18-05-2015 allowing the petition filed by respondent/husband for dissolution of marriage on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

4. Facts giving rise to the appeal may be stated in brief as under:

Appellant and respondent (hereinafter appellant shall be referred as wife and respondent shall be referred as husband) were married on 08-05-2011 at Amravati as per customary rites. After marriage wife went to Akola to cohabit with the husband in a joint family. At the time of marriage husband was serving in Axis Bank Branch at Pimpalgaon Baswant in District Nasik.

5. It is the case of husband that since beginning behaviour of wife was not proper. She was insisting to reside separately from joint family consisting of husband his parents, brothers and uncle. She was misbehaving with mother-in-law on trivial issues. Due to insistence of wife respondent took her to Pimpalgaon Baswant and both started residing in a rented accommodation. It is stated by husband that she used to avoid household work and remain busy for hours together in talking on phone with her parents and sisters. She was avoiding physical relations with him. In the month of July, 2011 husband and wife came to Akola. That time she raised quarrel with her mother-in-law and did not behave like a prudent daughter-in-law.

6. It is the contention of husband that he was incharge of insurance at Pimpalgaon Baswant and once a photograph of a lady customer with some documents was found in his pocket by the wife. Soon she found the photograph and the documents in his pocket she showered allegations of extra marital relations of husband and started suspecting his character. She used to raise quarrel even in midnight and husband was required to face embarrassing situation in front of neighbourers. She then called her brother and went to her parents house at Amravati.

7. It is pleaded by husband that he made continuous efforts to fetch her back but she refused to join his company. On 28-04-2012 a meeting was held with her parents and in that meeting wife and her family members misbehaved with husband and his parents. Due to intervention of mediators and relatives dispute was resolved. In a week she came to Pimpalgaon Baswant with her father at Nasik Road Railway Station and called her husband to pick her up from Nasik Road Railway Station. Though he was on duty that time he was required to rush to Nasik Road Railway Station to fetch the wife. On the same day wife raised a quarrel with

husband on the ground that he did not talk to her father at Nasik Road Railway Station.

8. On 23-04-2012 both had been to Fubgaon to attend a marriage ceremony of cousin sister of husband. There uncle of husband tried to convince wife to discharge her marital obligations properly as she is the elder daughter-in-law n family. She did not pay any heed to it and insulted husband, his uncle and elderly members in the family.

9. According to husband on 26-04-2012 wife left the house in the midnight between 01.00 a.m. and 01.30 a.m. without informing anyone in the house. He and others in family took her search. She was found near railway track. This behaviour of wife caused severe mental harassment to husband and his family members. On 15-11-2012 respondent had been to her parents house for Dipawali festival and took away all the belongings with her. Thereafter she did not return. A meeting was held on 24-04-2013 at the house of Moreshwar Mohod uncle of husband. Respondent and her parents were present in the meeting. She put condition that she be permitted to live her life as per her wish and she should not be asked to follow the customs prevailing in family. As settlement could not be arrived at respondent did not resume company of her husband. Though several efforts were made thereafter and notice was issued on 14-10-2013 by the husband she refused to come back and insisted for divorce. On receipt of notice wife lodged a complaint with Gadge Nagar Police Station, Amravati under Section 498A read with Section 34 of the Indian Penal Code against the husband and his family members. She also initiated proceedings under the Protection of Women from Domestic Violence Act, 2005. Husband pleaded that the entire behaviour of respondent was such that he and his family members were under constant mental stress and trauma. So he filed a petition for dissolution of marriage.

10. Petition was resisted by wife though factum of marriage and cohabitation with husband at Akola for about two months is not in dispute. She stated that during the period of two months stay at Akola in the family of husband she made enquiry from husband and his parents regarding availability of accommodation at Pimpalgaon Baswant. They informed her that accommodation was not available at

Pimpalgaon Baswant. On 12-06-2011 when she accompanied her husband to Pimpalgaon Baswant she was informed by the landlord that her husband had taken the room on rent since 05-05-2011. It is the contention of wife that she was not allowed to talk to her parents. She was not allowed to visit her parents house. At the time of Akhadi festival husband did not allow her to visit her parents house. On the death of maternal uncle of husband as her father did not attend funeral she was harassed and beaten by husband. It is pleaded by wife that at the time of Makar Sankranti festival in the year 2012 her father was not keeping well and so her mother could not attend Makar Sankranti programme. That time also at the instigation of his parents she was beaten by her husband.

11. It is then pleaded by wife that in February, 2012 she was unwell. Without taking care of her health husband abused and beat her as she informed about her ill health to her mother. On 28-04-2012 a meeting was held at the house of her parents. The parents and relatives of wife tried to convince the husband and his relatives. They were not in a mood to listen and then on 06-05-2012 her parents reached her to Pimpalgaon Baswant. On 16-06-2012 grandmother-in-law of wife expired. For some reasons parents of wife could not attend Tervi programme. On this count she was beaten by husband on 28-06-2012. He warned her not to maintain any relations with her parents. It is pleaded by wife that husband used to check her Mobile and when she received a call from her sister he caused damage to Mobile handset. It is alleged by wife that once her husband pressed her face by pillow and attempted to kill her. He compelled her to put her hand on burning gas. He also threatened her to life by showing knife. On 30-08-2012 another room was taken on rent by husband. When they were residing in another rented room husband used to lock her while going to the office. On 14-11-2012 her father came to meet her. He was insulted by husband. She came with her father to Amravati for Bhaubeej and stayed with them for 4-5 days. On 19-11-2012 she went back to Pimpalgaon Baswant but husband did not allow her entry in the house. She was compelled to return to Amravati. Thereafter on 24-04-2013 a meeting was arranged by her father. The said meeting was attended by husband and his relatives. Meeting was not successful. Then wife started residing with her parents since 19-11-2012.

12. According to wife a false notice was given by husband. She was being harassed on the ground that in marriage less dowry was given. She replied the notice and lodged Police complaint. It is the contention of wife that she is ever ready and willing to resume cohabitation but husband always avoided for the same. She initiated proceedings under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, filed an application for maintenance under Section 125 of the Code of Criminal Procedure and lodged a complaint under Protection of Women from Domestic Violence Act stating that husband treated her with cruelty, misbehaved and refused to cohabit with her.

13. On the aforesaid pleadings of the parties Family Court framed issues. Parties adduced evidence in support of their respective cases. Husband examined himself and two other witnesses Shaligram Kitukale and Moreshwar Bhimrao Mohod. In addition to oral evidence reliance was placed on copy of notice (Exhibit-28), reply notice (Exhibit-29), copy of F.I.R. (Exhibit-30) and copy of relieving letter issued by Axis Bank (Exhibit-31). Against the evidence of husband and his witnesses wife examined herself in support of her defence.

14. On appreciation of evidence of parties Family Court came to the conclusion that husband could prove that wife treated him with cruelty and husband is entitled to a decree of divorce. This judgment of Family Court is impugned in this appeal.

15. Ms Umale, learned Counsel for appellant submitted that Family Court was not justified in granting decree of divorce on the ground of cruelty particularly when there is no evidence indicating that wife treated the husband with cruelty. Learned Counsel submits that allegations of cruelty are general in nature as can be seen from paragraph 23 of the judgment of Family Court. It is submitted that Family Court placed reliance on the evidence of Shaligram Kitukale and Moreshwar Mohod to come to the conclusion that wife had given insulting treatment to uncle of husband, husband and his parents. It is pointed out that evidence of Shaligram and Moreshwar is contradictory and in view of material contradictions brought in the evidence of witnesses examined by husband Family Court ought not to have placed reliance on their testimonies. Learned Counsel also refers to a notice dated 14-10-2013 issued by the husband and submits that husband admitted in the

notice that he beat his wife at the relevant time. It is stated that evidence of husband and witnesses examined by husband has not been properly and legally appreciated as a result of which perverse findings have been recorded granting a decree of divorce.

16. Per contra Shri Badar, learned Counsel for husband supports the impugned judgment and submits that in the facts established on record Family Court was justified in granting decree of divorce as there was sufficient evidence to prove cruelty to the husband at the hands of wife. Learned Counsel submits that as appellant made exaggerations in her evidence, Family Court was absolutely right in believing the evidence of husband and his witnesses which has remained unshaken in the cross examination. The learned Counsel submits that during the pendency of this appeal respondent has been acquitted in the proceeding under Section 498A of the Indian Penal Code initiated on the report of appellant. It is pointed out that application filed by wife under the Protection of Women from Domestic Violence Act also came to be rejected. According to learned Counsel wife had made several serious, false and vexatious allegations against the husband in those proceedings constituting mental cruelty and on these subsequent developments also decree of divorce passed by the Family Court needs to be maintained. In support of submissions learned Counsel has placed reliance on:

(a) **K. Srinivas Rao v D.A. Deepa [(2013) 5 SCC 226]**.

(b) **Malathi Ravi, M.D. v B.V. Ravi, M.D. [(2014) 7 SCC 640]**.

(c) **M v R [2014(1) ALL MR 854 (Bom)]**

(d) **Mr. M v Mrs. M [2014(2) ALL MR 750 (Bom)]** Based on the above submissions learned Counsel prays for dismissal of appeal with costs.

17. On considering the pleadings of parties, evidence on record and submissions made by the learned Counsel for parties following points would arise for determination in this appeal :

1] Whether the Family Court could have allowed the petition filed by husband for decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act?

2] Whether husband is entitled to a decree of divorce on the ground of cruelty?

18. As indicated above Umesh Kitukale husband examined himself and two other witnesses in support of his case and against the evidence of husband and his witnesses wife examined herself. In examination-in-chief husband and wife both support their respective cases. It can be seen from the cross examination of husband that he was working as Manager in Axis Bank at Pimpalgaon Baswant in District Nasik. He states that respondent used to wear Panjabi dress in day and night dress during night. He expected that she should wear Saree. There was dispute between them on this ground. He further says in cross examination that when he was at home wife used to wear Saree and in his absence she was wearing Panjabi dress at Pimpalgaon Baswant. It is admitted by him that at the time of Akhadi festival after marriage as per custom bride has to visit her parents house. He does not refute the grievance of wife that at the time of first festival after marriage she was not allowed to go to her parents house. He admits that he did not produce anything on record to show that he was having charge of insurance and a photo of lady with documents found in his pocket by wife were in relation to an insurance case. It was not difficult for husband to prove that he was holding additional charge of insurance. He chose not to do so.

19. Regarding meeting at the house of his uncle Moreshwar Mohod he stated that though efforts were made to pacify wife and her relatives she insulted him, his uncle and family members. Two witnesses Moreshwar Mohod and Shaligram Kitukale came to be examined in support of alleged incident. The important question is whether evidence of these two witnesses examined by husband can be relied upon. It is not in dispute that both Shaligram and Moreshwar are the close relatives of husband. According to Shaligram on 24-04-2013 Umesh called him on phone and informed that a meeting is called at the house of Moreshwar Mohod and requested him to attend the meeting. As per the call Shaligram reached the house of Moreshwar Mohod. It is stated by Shaligram that in the meeting when they tried to pacify wife she and her father insulted them and Jayashri refused to

cohabit with Umesh. It is then stated by Shaligram that before Women Redressal Forum also they tried to convince the wife but she refused for settlement. According to Shaligram, Moreshwar Mohod was also present before Women Redressal Forum. If evidence of Moreshwar Mohod is looked into it is apparent that Shaligram was not present before the Women Redressal Forum. He reiterates in cross examination that Shaligram was not present at the time of settlement before Women Redressal Forum. This is a material contradiction which goes to the root and shakes the credibility of both the witnesses who are the close relatives of husband. In this background Family Court was not justified in placing reliance on the testimonies of Shaligram and Moreshwar.

20. Another significant factor is established through notice dated 14-10-2013 (Exhibit-28) issued by the husband to wife. In this notice husband admitted in unequivocal terms that he slapped and dragged her inside the house during night as she was leaving the house.

21. It appears from the admissions elicited in cross examination of husband that he expected the wife to wear Saree and wife against his wish was wearing Panjabi dress. Not only this his evidence also indicates that he had high expectations from wife and desired that she should stay in joint family, attend the domestic work even when husband resides away at the distance of 450 kilometers from his house. We find that no wife would prefer to stay in the absence of her husband with in-laws at such a long distance place at the cost of her matrimonial life. Gone have the days when expectations of husband and in-laws to wear only Saree and not Panjabi dress were honoured and fulfilled by the wife and daughter-in-law. We are marching towards 21st Century. Wife in the case on hand had completed her B.A.IInd year. Even husband was a Manager in bank. Considering the present scenario it was necessary for the husband to change his mind set and not to allow such unreasonable expectations to intervene in the smooth sailing of matrimonial life.

22. On going through the impugned judgment it can be seen that the learned Judge of Family Court has ignored these important aspects. The husband could not elicit anything substantial in the cross examination of wife to disbelieve her

testimony. If a lady finds a photograph of another lady in the pocket of her husband she is bound to know the reason for keeping such photograph in the pocket by her husband. Nothing was wrong on the part of wife if she countered the husband for such an act. On meticulous evaluation of the evidence of wife we find that her evidence is most natural and believable. The same cannot be brushed aside as was done by the Family Court.

23. Coming to the last contention raised by learned Counsel for respondent regarding acquittal of husband in criminal case under Section 498A of the Indian Penal Code and rejection of application filed by wife under the Protection of Women from Domestic Violence Act question arises whether the allegations alone in those proceedings would help the husband to support his submission that wife treated him with cruelty. We have gone through the judgments of the Hon ble Supreme Court and this Court referred by learned Counsel for respondent. True, subsequent events established on undisputed material brought on record can be considered to find out whether one spouse has treated another with cruelty. This exercise is to be undertaken on the basis of the material placed on record and kind of attitude and treatment of wife towards husband who claims decree of divorce on the ground of mental cruelty. In the facts and circumstances of the case on hand we are of the view that the cases relied upon by the learned Counsel for respondent are not applicable as in the present case there is no iota of evidence to indicate that allegations made by wife in the proceedings under Section 498A of the Indian Penal Code and under the Protection of Women from Domestic Violence Act were intentional, false and vexatious amounting to mental cruelty.

24. In the above premise and on careful scrutiny of the evidence adduced by parties we find that findings recorded by Family Court are not in consonance with the record as the learned Judge has lost sight of the most important and crucial facts elicited in the cross examination of husband and his witnesses. In our view findings recorded by the Family Court are erroneous and call for interference in this appeal. Hence we pass the following order:

(a) Appeal is allowed.

(b) Impugned judgment and order dated 18-05-2015 passed by the Family Court, Akola in Petition No.A31 of 2014 is quashed and set aside.

(c) Petition No.A-31 of 2014 stands dismissed.

(d) In the circumstances no order as to costs.

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