

Bhawna Vs. Pankaj Kumar

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Court : Karnataka

Decided On : Apr-05-2017

Judge : Ashok B. Hinchigeri & The Honourable Mrs. Justice K.S. Mudagal

Appeal No. : Miscellaneous First Appeal No. 4439 of 2015 (FC)

Appellant : Bhawna

Respondent : Pankaj Kumar

Judgement :

(Prayer: This MFA is filed under Section 19(1) of Family Court Act against the judgment and decree dated 10.03.2015 passed in M.C.No.3509/2012 on the file of the I Additional Principal Judge, Family Court, Bengaluru, dismissing the petition filed under Section 13(1) (ia)(ib) of Hindu Marriage Act.)

Ashok B. Hinchigeri, J.

1. This appeal is directed against the judgment and decree, dated 10.03.2015 passed by the Court of the I Additional Principal Judge, Family Court, Bengaluru in M.C.No.3509/2012.
2. The facts of the case in brief are that the marriage between the parties herein was solemnized on 31.10.1998 at Shiv Hari Milap Bhavan, Adarsh Nagar, Jaipur. Invoking Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955, the appellant

filed M.C.No.3509/2012 seeking the relief of the dissolution of her marriage with the respondent. The allegations of the appellant in a nutshell are that the respondent took full control of the bank accounts of the appellant. The amounts earned by her by working in the services of State Bank of India were transferred from her personal account to the joint account of the appellant and the respondent and that thereafter the amounts so transferred were withdrawn by the respondent husband. The respondent used to pull her hair with force, used to throw crockery, etc. at the appellant to intimidate her. She was compelled to do household work also even when she used to get exhausted with the office-work. The respondent used to get black magic performed on her through a tantric lady, namely, Bharati. She was induced and provoked to consume Baygon insecticide on 15.12.2000. She was pushed by the respondent, as a result of which she fell down and lost her two front teeth. It is also alleged that the respondent once put chilly powder into her private parts. He never bothered to show any love and affection to the appellant and their son, Master Amrit Singhani, who is now aged about 17 years. The respondent used to approach colleagues of the appellant and gossip about her personal life, which lowered her esteem in the eyes of the people. He finally left her in 2011.

3. The respondent filed the statement of objections denying allegation of physical and mental cruelty on the appellant. The respondent's version is that whatever money was withdrawn from the appellant's account or joint account of both the parties was for purchasing the insurance, mediclaim policies, etc. The said Mrs. Bharati is a close relative of the respondent. She helps the local community to organize ceremonies. The respondent has not done anything amounting to causing cruelty on the appellant. On the other hand, it is the appellant, who called in the Police unnecessarily and made the respondent leave Canada.

4. Based on the rival pleadings, the Family Court formulated the following points as below:

1. Whether the petitioner proves that respondent has treated her with cruelty?
2. Whether the petitioner further proves that the respondent has neglected and deserted her without any reasons?

3. Whether the petitioner is entitled for the relief claimed in the petition?

4. What order?

5. The appellant got herself examined as PW1 marking the documents at Ex.P1 to Ex.P20. The respondent himself got examined as RW1 marking 26 documents in exhibit R series. The Family Court dismissed the petition holding that the respondent has not treated the appellant with cruelty and that the respondent has not neglected and deserted the appellant. Aggrieved by the said judgment, this appeal is filed by the appellant wife.

6. Sri P.D. Surana, the learned counsel for the appellant submits that the severity of the cruelty was such that the appellant was provoked to commit suicide by taking pesticide called Baygon. He submits that the said incident is vividly stated in paragraph No.12 of the petition and in paragraph No.11 of the affidavit filed by way of examination-in-chief. The averments pertaining to the said incident have not been met by the respondent in paragraph No.9 of the statement of objections. He submits that there is no cross-examination on the incident of her taking the pesticide. On the other hand, the questions put in that regard revolve around as to why the police complaint was not lodged. He submits that the respondent's affidavit filed by way of examination-in-chief is also silent on the said incident.

7. He submits that in paragraph No.13 of the petition, the appellant has stated that the respondent has put chilly powder into her private parts. The paragraph further states that when the appellant refused to give the money to the respondent, the latter pushed her. This resulted in her falling down and losing her two front teeth. These two incidents are not denied by the respondent in the statement of objections.

8. He submits that the respondent has been withdrawing the amounts earned by her by working in the State Bank. The same resulted in the loss of complete financial independence to the appellant. He submits that the Family Court has erred in underplaying these instances by taking the view that it is natural for the husband to draw the money belonging to his wife.

9. Sri Madhusudhana, the learned counsel for the respondent submits that the respondent has no qualms over the conduct of the appellant and that even now he is prepared to take her back. He submits that the appellant has not examined any independent witnesses. Even when she has admitted that she has kept her mother apprised of the things, she has not cared to get her mother examined. He submits that the money drawn by the respondent is used for taking the insurance coverage, fixed deposit, etc. in the name of the appellant and son (Amrit Singhani). He submits that it is not in dispute that the parties lived together till February 2011 and that in September 2012 the divorce petition is filed. He would therefore contend that the requirements for granting divorce on the ground of desertion under Section 13(1) (b) of the Hindu Marriage Act is not existing in the instant case. Unless the respondent deserts her for a continuous period of not less than two years immediately preceding the presentation of the petition, the marriage cannot be dissolved by a decree of divorce, so submits the learned counsel.

10. The submissions of the learned counsel have received our thoughtful consideration. The points which arise for our consideration in this appeal are whether the Family Court is justified in dismissing the petition on the ground that the respondent has not treated her with cruelty and on the ground that he has not deserted her. To answer the first part of this point, the advertence has to be made to the three specific instances of cruelty alleged by the appellant wife:

(i) The appellant has alleged in paragraph No.12 of the petition that she was driven to commit suicide on 8.12.2000 by consuming Baygon insecticide. She has also vividly explained the incident in paragraph No.11 of the affidavit filed by way of examination-in-chief. The respondent has tried to meet that averment by stating that the appellant pretended to consume Baygon insecticide. The respondent admits that he took her to the hospital. If that be so, nothing prevented the respondent from producing the hospital records to show that she never consumed the said insecticide. We also notice that no suggestion was put to the appellant to the effect that she was only pretending to take Baygon insecticide. The affidavit filed by the respondent by way of examination-in-chief is completely silent on this aspect of the matter.

(ii) In paragraph No.13 of the petition and corresponding paragraph No.12 of her affidavit, there is clear statement that the respondent inserted chilly powder into the appellant's private parts. This allegation is not at all denied by the respondent. The appellant is not even cross-examined on this point. The only question posed pertaining to the incident of putting chilly powder is whether she had taken any treatment.

(iii) In paragraph No.13 of the petition, there is unequivocal allegation that the respondent pushed the appellant on account of her refusal to give the amount to him and in this process she fell down and lost her two front teeth. On this incident also, the respondent makes a blanket denial of the allegation in paragraph No.10 of his statement of objections. As per Order VIII Rule 3 of the Code of Civil Procedure, 1908, denial has to be specific. Order VIII Rule 4 states that denial should not be evasive. Rule 5 states that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability. The appellant (PW1) had stated in the course of cross-examination that she was taken to the doctor for transplantation of her front teeth. The respondent does not state anything about the said incident in his affidavit. The three incidents of cruelty are thus demonstrated.

11. The Family Court does not appear to have considered the oral and documentary evidence in this proper perspective. The Family Court appears to have disbelieved the version of the appellant, because she has not filed any police complaint and because she has not examined her mother and brother.

12. The Trial Court has also overlooked the candid apologies tendered by the respondent. Ex.P2 is the respondent's apology-letter to the appellant, whose nickname is Neha, as admitted by both the learned advocates. The said letter is in Hindi and its English version is also produced. It reads as follows:

Dear Neha,

I apologize for deeply hurting your heart and soul and also for things which I told to other people regarding you, your life and for all my past acts and deeds. I also

apologize on behalf of my family.

I don't know what I should do to make amends to you and make you happy. I really beg of you and seek apology for all the things I did to hurt your mind and soul and also apologize for exploiting you financially.

Pankaj.

13. This vital piece of evidence is disbelieved for the technical reasons that it is not signed by the respondent and that no date is mentioned thereon. The respondent has not stated anything about Ex.P2 in his evidence.

14. We are also not in a position to give our acceptability to the view expressed by the Trial Court that it is natural for the husband to withdraw the amount from the account of his wife. The circumstances of the withdrawal ought to have been examined. Although the respondent claims to be an income tax assessee, nothing is placed on record to show that the respondent is an income tax assessee and to show as to what is his income. He does not even produce the PAN card. If he wanted to buy mediclaim policies, he ought to have done it using his funds.

15. The allegations that despite her exhaustion with the office-work in the Bank, heavy domestic work was being assigned to her, that she was not permitted to breast-feed her child fully, etc. are also not satisfactorily met by the respondent.

16. Thus, when the oral and documentary evidence is re-appreciated, it becomes clear that the appellant has suffered cruelty, both physically and mentally at the hands of the respondent. We therefore reverse the findings of the Family Court on point Nos.1, 3 and 4. We grant the decree of the dissolution of marriage between the parties, solemnized on 31.10.1998. Office is directed to draw up the decree of divorce.

17. On issue No.2, we confirm the finding of the Family Court for the simple reason that the pre-requirements for invoking Section 13(1) (ib) of the Hindu Marriage Act, 1955, is not present in the instant case. Admittedly the parties lived together till February 2011. The petition for divorce on the ground of desertion could have been filed only after the expiry of two years from the date of desertion,

but in the instant case the divorce petition is filed in September 2012.

18. The judgment and decree under appeal is thus modified. This appeal is allowed in part.

19. No order as to costs.

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