

Kusum vs.gurcharan Singh

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Court : Delhi

Decided On : Nov-15-2018

Appellant : Kusum

Respondent : Gurcharan Singh

Advocate for Def. : Mr. Chaggar

Advocate for Pet/Ap. : Mr. Tiwari

Judgement :

\$~7 * % IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Judgement:

15. h November, 2018 + MAT.APP.(F.C.) 168/2016 & CM APPL422322016
KUSUM Appellant Through: Mr. Ruchit Dugal, Advocate. versus
GURCHARAN SINGH Respondent Through: Mr. R.S. Chaggar, Advocate.
CORAM: HON'BLE MR. JUSTICE G.S. SISTANI HON'BLE MS. JUSTICE JYOTI
SINGH G.S. SISTANI, J.

(ORAL) 1. Despite the matter having been passed over twice and called for third time, none has appeared in the matter on behalf of the counsel for the appellant.

2. Mr. Chaggar, counsel for the respondent has taken us to the order sheets to show that on 13.07.2018, the matter was adjourned at the request of Mr. Gaurav Bharadwaj, Advocate, who claimed to have been recently engaged in the matter and time was sought to complete his file. Prior thereto, on 11.10.2017, the matter

was adjourned as the arguing counsel was in some personal difficulty. On 09.10.2017, the matter was adjourned as none had appeared on behalf of the appellant and also the learned Joint Registrar had noted that no rejoinder was filed by the appellant. Mr. Chaggar thereafter has taken us through the MAT.APP.(F.C.) 168/2016 Page 1 of 12 impugned judgment dated 28.09.2016 passed by the learned Family Court to show that there is no infirmity in the same and the appeal is without any merit.

3. At this stage, Mr. Rachit Dugal, Advocate has appeared in the matter, on instructions from Mr. Rahul Tiwari, he seeks an adjournment on the ground that Mr. Tiwari, counsel for the appellant is not available. The prayer for adjournment is opposed by counsel for the respondent.

4. The present appeal has been filed against the impugned judgment dated 28.09.2016 passed by the Family Court by which a decree of divorce has been granted in favour of the respondent-husband on the ground of cruelty.

5. The necessary facts to be noticed for the disposal of the present appeal are that the marriage between the parties was solemnized on 14.08.2006 at Arya Samaj Mandir. Subsequently, on 02.11.2006, Anand Karaj was performed. Out of their wedlock, a son was born, who is now in the custody of the mother. The parties knew each other since the year 2005 and on the expressed willingness of the wife to adopt the Sikh religion, the respondent-husband proposed to her for marriage. The divorce petition was filed by the respondent/husband on 25.03.2009 wherein various instances of cruelty have been raised against wife/appellant. It was also alleged by the respondent/husband that she was ill-temper, stubborn, quarrelsome and also insensitive towards her husband and his parents.

6. We may note that the learned Family Court has relied upon the following case-laws : MAT.APP.(F.C.) 168/2016 Page 2 of 12 (i) (ii) Dr. N.G. Dastane Vs. Mrs. S. Dastane reported at AIR 1975 SC1534 Smt. Kamini Gupta Vs. Mukesh Kumar Gupta reported at AIR1985 Delhi 221 (iii) V. Bhagat Vs. D. Bhagat, reported at (1994) 1 SCC337(iv) K. Srinivas Rao Vs. D.A. Deepa reported at (2013) 5 SCC226 (v) Vijay Kumar Ramchandra Bhate Vs. Neela Vijay Kumar Bhate, reported at (2003) 6 SCC334 (vi) Jai Dayal Vs. Shakuntla Devi, reported at 107

(2003) DLT33 (vii) D.N. Sharma Vs. Usha Sharma, reported at AIR2004 Delhi 198. (viii) Kanchanapalli Lalithakumari Vs. Kanchanapali Ramaprasada Rao, reported at 1992 (2) ALT631 (ix) Swati Vs. Arvind Mudgal reported at 2015 (2) LRC301(Delhi) (x) Samar Ghosh Vs. Jaya Ghosh, reported at (2007) 4 SCC511(xi) Rajani Vs. Subramonian, reported at AIR1990 Kerala 1. (xii) Gananath Pattnaik Vs. State of Orissa, reported at (2002) 2 SCC619 (xiii) Shobha Rani Vs. Madhukar Reddi, reported at (1988) 1 SCC105 7. While applying the aforesaid case-laws to the facts of the present case, the Family Court observed as under : (i) Primarily, the Family Court was persuaded by the fact that the wife showed insensitivity towards the religion of her husband. (ii) Repeated attempts were made by the wife to commit suicide. (iii) Putting tremendous financial pressure on the husband by making him to repay the loan amount taken and constant MAT.APP.(F.C.) 168/2016 Page 3 of 12 humiliation at the hands of the recovery agents of various banks. (iv) Pledging the jewellery given by her husband and his parents to secure loan from Muthoot Finance without informing the husband and levelling false allegations of adultery.

8. On the basis of the evidence led by the parties and the ground of cruelty urged by the respondent/husband, the Family Court vide impugned judgment dated 28.09.2016 has discussed in detail the aspect of cruelty. We deem it appropriate to reproduce para 37 to 56 of the judgment of the Family Court which read as under: 37. I have also examined the above aspect from the angle of right of an individual to practice his or her own religious beliefs and practices. But even on that anvil, respondents conduct cannot be justified. Respondent is a non Sikh Hindu. By being sensitive about the religious beliefs of the petitioner and by not getting cut her hair and hair of their son, respondent would not have become lesser Hindu. For, it is nobodys case that by not getting cut her hair and her sons hair, either of them would have suffered any harm or infringement of any religious practice. It was a choice between getting cut hair and being sensitive to the religious beliefs of petitioner. Respondent opted for the former, without any reasons. Therefore, it cannot be said that claim of petitioner, having suffered immense mental agony due to abrogation his religious beliefs by the respondent, is unjustified. As held in the above quoted law, in such proceedings, the court has to probe into the mental process and effects of incidents in relation to the husband

and wife before the court and not an ideal couple.

38. Another instance of extreme cruelty, as alleged by petitioner is the repeated attempts of respondent to commit suicide. According to petitioner, on the night intervening 27.08.2008 and 28.08.2008 when petitioner refused to get separated from his joint family, respondent tied a dupatta around her neck and threatened to commit suicide; and thereafter on the evening of 29.08.2008, respondent tried to consume 5-6 tablets of Avil; and finally on 02.09.2008, MAT.APP.(F.C.) 168/2016 Page 4 of 12 respondent wrote a suicide note Ex.PW1/16 and while she was leaving the house, petitioner woke up and stopped her. On these incidents of attempted suicide by respondent, there is no cross-examination of petitioner except to the limited extent regarding reasons in cross-examination that it is due to financial distress and his incapacity to repay loans of respondents family that she tried to commit suicide. those attempts; and petitioner stated for 39. In her cross-examination, respondent specifically admitted that the suicide note Ex.PW1/16 is in her handwriting. But respondent took a stand that the said suicide note was not written by her voluntarily and that she had been compelled to write the same. Stand of respondent that she was compelled to write the suicide note Ex. PW1/16 fails to inspire confidence. In her cross-examination, respondent stated that she did not remember the date when she was so compelled and she did not even remember as to whether she had lodged any complaint with any authority alleging that she had been compelled to write a suicide note; and that she did not even remember if she had been compelled to write the suicide note prior to her police complaint dated 12.09.2008 or subsequent thereto. As regards the suicide note Ex.PW1/16, in the written 40. statement, respondent came up with another interesting version, pleadings that the suicide note was got forcibly written from her by petitioner and his family members when she returned to matrimonial home after lodging complaint with the Crime Against Women Cell on 12.09.2008. Further, respondent pleaded in the written statement that on the first date in CAW Cell on 19.09.2008, petitioner undertook to live respectfully with her and their son, so she returned home. If on 12.09.2008, petitioner was compelled to write a suicide note, it remains unexplained as to why she did not allege about the said compulsion on 19.09.2008 before CAW Cell. In fact, as per respondent, their disputes remained pending before police till 26.11.2008. But even till 26.11.2008,

respondent did not even whisper before police that she had been compelled by the petitioner to write a suicide note. Even after 26.11.2008 respondent did not allege anywhere till filing her written statement that she had been compelled to write a suicide note.

41. Rather, in complaint dated 19.09.2008, copy whereof is Ex.PW1/X1, the respondent categorically stated that since petitioner was not mending his adulterous ways of life, she had threatened to commit suicide and even wrote a suicide note because petitioner MAT.APP.(F.C.) 168/2016 Page 5 of 12 wanted to desert her. But even this explanation of respondent that she wrote the suicide note because petitioner wanted to desert her is false. The suicide note Ex.PW1/16 specifically mentions that respondent was committing suicide since her mother had made life difficult for petitioner and herself and that petitioner and his parental family are not at fault. Contents of the suicide note Ex.PW1/16 fully support the stand of the petitioner that on account of pressures from her mother, respondent tried to commit suicide.

42. It is clearly established that respondent repeatedly attempted suicide and the suicide note Ex.PW1/16 was voluntarily written by her. Repeated attempts of suicide by a spouse is indeed an extreme form of cruelty, especially when at subsequent stages the erring spouse tries to hold the aggrieved spouse guilty of abetment.

43. Then comes the allegation of the petitioner that respondent was treating him as money making machine and she put tremendous financial pressure on petitioner by making him repay the loan amounts to recovery agents of various banks and she surreptitiously and repeatedly pledged the jewellery given by petitioner and his parents in order to obtain loan from Muthoot Finance. the recovery agents when instances In his chief examination, petitioner specifically deposed 44. specific from ABN Amro Bank, HDFC Bank and ICICI Bank visited matrimonial home of the parties and demanded repayment of different loan amounts which had been taken by the respondent prior to their marriage and in order to save his reputation, petitioner had to shell out money to all those recovery agents. In his chief examination, petitioner also proved on record documents

Ex.PW1/8-11 and Ex.PW1/14-15 related to repayment of loan amounts by petitioner to the said banks. But despite opportunity, learned counsel for respondent opted not to challenge this part of statement of petitioner in cross-examination.

45. Further, in his pleadings and chief affidavit, petitioner specifically stated that on 20.03.2007 he had handed over a sum of Rs.80,000/- to mother of respondent, since respondent had been insisting him to help her father for purchasing air tickets to Dubai but despite promise to pay back, respondents mother did not return the said amount to the petitioner.

... Petitioner

further pleaded and deposed that through notice dated 10.08.2007 Ex.PW1/12 of Muthoot Finance Pvt. Ltd., he came to know that respondent had obtained a loan of Rs.1,63,000/- on 05.05.2007 by pledging the gold MAT.APP.(F.C.) 168/2016 Page 6 of 12 jewellery given to her by him and his parents at the time of marriage, so in order to get the jewellery released, he had to pay the finance company.

... Petitioner

further pleaded and deposed that even after he repaid the loan to Muthoot Finance, respondent deceitfully pledged the same jewellery once again and obtained a loan of Rs.1,39,000/- from Muthoot Finance Pvt. Ltd. on 04.08.2008 vide loan receipt Ex.PW1/13.

46. In response, the respondent took a stand in her pleadings and evidence affidavit that petitioner had given Rs.80,000/- to her father but out of that amount, Rs.50,000/- had been arranged by petitioner by pledging jewellery of her mother in October, 2007 with Muthoot Group and that the entire amount of Rs.80,000/- was returned by her father to petitioner and in addition to that, her father used to give Rs.4,000/- per month to petitioner for paying interest to Muthoot Group but petitioner misappropriated that amount. the aspect of petitioners 47. On financial assistance of Rs.80,000/- to respondents father at her insistence, the only cross-examination of petitioner is regarding the source of the said money, which he stated to be his savings and admitted that he did not take any receipt from respondents mother, which is understandable in view of their relationship. As

regards the aspect of Muthoot Finance loans, despite opportunity, counsel for respondent opted not to challenge the testimony of petitioner that more than once the respondent surreptitiously pledged the jewellery given to her by petitioner and his parents in order to obtain loan from Muthoot Finance to extend financial help to her parents.

48. On the other hand, respondent was cross-examined on both the above aspects, i.e. the financial assistance of Rs.80,000/- and loan of Muthoot Finance. In her cross-examination, respondent stated that she could not show any document to establish that her father used to give Rs.4,000/- per month to petitioner for payment of interest to the Muthoot Finance and she also could not show any document to establish that petitioner had pledged jewellery of her mother with Muthoot Group to arrange Rs.50,000/-, which formed part of his financial assistance of Rs.80,000/- to her father. Respondent even got her cross-examination deferred, so that she could produce some document reflecting that it is the petitioner who had pledged the jewellery with Muthoot Group; but on the next date, first she stated that she had brought the original records related to Muthoot Finance, but subsequently stated that the record of Muthoot MAT.APP.(F.C.) 168/2016 Page 7 of 12 Finance is already in judicial file, but after going through the entire record, respondent could not find the same on judicial record.

49. Besides, in view of the unchallenged version of both sides that the financial assistance of Rs.80,000/- was given by petitioner to respondents father on 20.03.2007, version of respondent that out of those Rs.80,000/-, a sum of Rs.50,000/- was arranged by petitioner by pledging her jewellery cannot be believed since according to respondent herself, the said amount of Rs.50,000/- was arranged in the month of October 2007. In other words, if in October 2007 petitioner obtained Rs.50,000/- by pledging jewellery of respondents mother, that amount could not form part of the financial assistance of Rs.80,000/- given much earlier in the month of March 2007. Further, version of the respondent that petitioner pledged her mothers jewellery with Muthoot Finance to raise a loan of Rs.50,000/- does not appear truthful, also in view of her own oral testimony and documentary evidence adduced by her that petitioner is earning Rs.2,00,000/- to

Rs.2,50,000/- per month.

50. Thus, it is clearly established from oral as well as documentary evidence that respondent not just made the petitioner repay the loans which she had taken prior to marriage from various banks but also put the petitioner in embarrassing position by letting the circumstances to such a pass that recovery agents started visiting their matrimonial home. Not just this, respondent went to the extent of surreptitiously and that too repeatedly pledging the jewellery given to her by petitioner and his parents in order to obtain loan for financial help of her parents. It is not the pledging of the said jewellery to obtain loan for financial help of her parents which is significant; what that respondent did so surreptitiously and subsequently in this case pleaded and deposed falsehood in that regard, thereby causing extreme distress to the petitioner. is significant is 51. Lastly, comes the issue of baseless and scurrilous allegations of infidelity leveled by respondent against the petitioner. As per respondent, the first police complaint lodged by her against the petitioner was on 12.09.2008, copy whereof is Ex. PW1/X1 and it was for dowry harassment. But in her cross-examination, after going through entire complaint as Ex.PW1/X1 respondent could not point out a single allegation of dowry harassment in that complaint. In the said complaint Ex. PW1/X1 respondent had extensively alleged that MAT.APP.(F.C.) 168/2016 Page 8 of 12 petitioner was involved in extra marital affair, so the local police was requested to counsel him.

52. Further, in her written statement as well as chief affidavit, respondent pleaded and deposed that during the subsistence of marriage of the parties, petitioner has got married again with one Ms. Mandeep Kaur with whom petitioner is residing in Gurgaon, Harayana.

... Petitioner

, as expected, denied in his pleadings and chief examination that he was ever involved in any extra marital affair or got married with the said Mandeep kaur. Although petitioner was extensively cross examined, there 53. was not even a whisper in the cross-examination that he was involved in extra marital affairs or got remarried during the subsistence of his present marriage.

54. Respondent tried to prove marriage between petitioner and the said Ms. Mandeep Kaur by summoning the records of election office through RW4, who proved on record one of the pages of the voters list as Ex.RW4/1. But in cross-examination, RW4 stated that he could not say if his department had taken any document from any of the persons named in the voter list in support of the particulars recorded in the voter list. Merely because name of husband of Ms. Mandeep Kaur in voters list Ex.RW is mentioned as Gurucharan Singh, it cannot be claimed with certainty that it is the petitioner only who is the said Gurucharan Singh.

55. It would also be significant to note that respondent admittedly never opted to prosecute the petitioner for the offence of bigamy, which also shows that she herself is not certain about truthfulness of her allegations. But despite that, respondent continued to assail the character of the petitioner.

56. In other words, allegations of infidelity and bigamy leveled by the respondent against the petitioner remain without any foundation. The above described persistent attack by respondent on the character of the petitioner without any cogent basis also squarely falls within the meaning of the expression cruelty in accordance with law described above. 9. In the case of Narendra vs. K. Meena reported at (2016) 9 SCC455 the Honble Supreme Court while taking into account the ground of MAT.APP.(F.C.) 168/2016 Page 9 of 12 cruelty made the following observations. The relevant para 11 and 12 read as under: 11. We feel that there was no fault on the part of the appellant nor was there any reason for the respondent wife to make an attempt to commit suicide. No husband would ever be comfortable with or tolerate such an act by his wife and if the wife succeeds in committing suicide, then one can imagine how a poor husband would get entangled into the clutches of law, which would virtually ruin his sanity, peace of mind, career and probably his entire life. The mere idea with regard to facing legal consequences would put a husband under tremendous stress. The thought itself is distressing. Such a mental cruelty could not have been taken lightly by the High Court. In our opinion, only this one event was sufficient for the appellant husband to get a decree of divorce on the ground of cruelty. It is needless to add that such threats or acts constitute cruelty. Our aforesaid view is fortified by a decision of

this Court in Pankaj Mahajan v. Dimple [Pankaj Mahajan v. Dimple, (2011) 12 SCC1 wherein it has been held that giving repeated threats to commit suicide amounts to cruelty.

12. The respondent wife wanted the appellant to get separated from his family. The evidence shows that the family was virtually maintained from the income of the appellant husband. It is not a common practice or desirable culture for a Hindu son in India to get separated from the parents upon getting married at the instance of the wife, especially when the son is the only earning member in the family. A son, brought up and given education by his parents, has a moral and legal obligation to take care and maintain the parents, when they become old and when they have either no income or have a meagre income. In India, generally people do not subscribe to the western thought, where, upon getting married or attaining majority, the son gets separated from the family. In normal circumstances, a wife is expected to be with the family of the husband after the marriage. She becomes integral to and forms part of the family of the husband and normally without any justifiable strong reason, she would never insist that her husband should get separated from the family and live only with her. (Emphasis Supplied) 10. Taking into consideration the aforementioned judgments and the observations made by the Family Court, we have found that the MAT.APP.(F.C.) 168/2016 Page 10 of 12 Family Court after relying upon the evidence led by the parties has reached to the conclusion that the appellant/wife on the intervening night of 27.08.2008 and 28.08.2008 tied a dupatta around her neck and threatened him to commit suicide as the respondent/husband had refused to seek separation from his parents. In the evening of 29.08.2008, she also tried to consume 5-6 tablets of Avil. Thereafter, on 02.09.2008, she wrote a suicide note which was proved as Ex.PW1/16. The Family Court has noticed that with respect to the specific instances pointed out by the husband/respondent, there was a limited cross-examination including that the suicide note was not written voluntarily but she was compelled to write the same at the instance of the respondent/husband and his family members. This explanation was found to be factually incorrect for the reason that the parties had appeared before the Crime Against Women Cell (CAW) soon after 02.09.2008 and in case the wife was compelled to write the suicide note, it would have been mentioned in the complaint dated 12.09.2008 that

since the husband was not mending his adulterous ways of life, she has attempted suicide and even written a suicide note because the husband wanted to dissert her. In our view, the Family Court has rightly reached to the conclusion that repeated attempts to commit suicide by his wife amounts to extreme cruelty, especially when the wife tried to implicate her husband guilty of abetment.

11. Another ground, which has been alleged and found in favour of the respondent/husband is that there was tremendous financial pressure put by the appellant/wife for repayment of loan to the recovery agent of bank and also pledged her jewellery, which was given by the MAT.APP.(F.C.) 168/2016 Page 11 of 12 respondent/husband and his parents to obtain loan from Muthoot Finance. It had also come in the evidence of the respondent/husband that there were specific instances when recovery agents from ABN Amro Bank, HDFC Bank and ICICI Bank visited the matrimonial home and demanded repayment of different loans, which have been taken by the appellant/wife prior to her marriage and in order to save his reputation, he repaid the amount. There is nothing in the cross-examination, which would disbelieve the evidence led by the husband/respondent. The explanation regarding repayment of some of the amount by the mother of the appellant/wife was also not found convincing. The allegation of adultery raised by the appellant/wife has also not been proved. However, the Family Court has rightly taken this ground also as cruelty on the husband while granting divorce between the parties.

12. We have repeatedly requested the counsel, who had appeared in the matter, to argue, but he submits that he is neither carrying file with him nor he is prepared to argue.

13. We find no infirmity in the judgment passed by the Family Court. Resultantly, the appeal alongwith pending application stand dismissed. G.S.SISTANI, J.

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