

Anita Ruby Paul Vs. Sandeep Paul and anr.

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Court : Patna

Decided On : Aug-22-1996

Judge : P.K. Deb, J.

Appeal No. : Matrimonial Suit No. 1 of 1995 (R)

Appellant : Anita Ruby Paul

Respondent : Sandeep Paul and anr.

Judgement :

P.K. Deb, J.

1. The petitioner, Anita Ruby Paul and the Opposite party No. 1, Sandeep Paul, both the Christians and they were married to each other on negotiation of both the families and marriage was solemnised on 22.2.1990 at All Saints Church Chaibasa. At the time of marriage, the petitioner Anita Ruby Paul was 25 years of old while the respondent No. 1 Sandeep Paul was 26 years of age. It is the case of the petitioner that at the time of marriage, the petitioner's parents spent a huge amount and gifted many domestic articles for her use in Sasural, such as Double Bed, Dressing Table, Big Iron Trunk, Television, Mixy, Gas Oven, Dinner set and clothes etc. After the marriage, the petitioner went to her Sasural situated at Lucknow alongwith all her articles as mentioned above on 24.2.1990. Over and above the above articles, it is stated that the petitioner was given a cash of Rs, 20, 000/- to purchase Godrej Steel Almirah, Refrigerator and Sofa Set and the said

cash was taken away by Opposite party No. 1, but the articles were never purchased. The started living together as husband and wife in the Sasural of the petitioner at Lucknow in the joint family alongwith parents of the O.P. No. 1. But soon after the petitioner was meeted with torture and cruelty by O.P. No. 1. It is her allegation that she was assaulted even by fist and slaps not only by her husband, O.P. No. 1 but also by his father and mother, 11.3.1990 on the plea of bringing a cash of Rs. 50, 000/- from her parents' house. In course of conjugal life, the petitioner could detect that her husband was a man of bad character. He assaulted one H.K. Harjai, the Area Manager of his Company.

It must be mentioned here that the petitioner at the time of marriage, was a medical representative serving in R.E.C.K.T.T. & Colma Company. The petitioner in the meantime became pregnant and her husband was transferred to Kanpur. She started residing with her husband at Kanpur but on Saturdays, both the couple used to come down to Lucknow. It was brought to the notice of the petitioner that the parents of the Opposite party No. 1 was pressuring her husband to get her pregnancy terminated. Ultimately, she was forced to go back to chaibasa and on 8.2.1991 she gave birth to a male child in Marsi Hospital, Jamshedpur but ill luck would have it, the child could survive for only 18 days, due to the malnutrition and weakness of the petitioner during the period of her pregnancy. It is further stated that the parents of the Opposite party No. 1 came down to Chaibasa and demanded Rs. 50, 000/- from the parents of the petitioner but when the same was refused the petitioner was not taken back to her Sasural. In the month of May, 1991, the petitioner was again brought to Lucknow by her elder brother, but again torture started on her. According to the petitioner, while she was residing at Chaibasa and Jamshedpur for her child' birth, her husband O.P. No. 1 developed illicit relations with one Seem; Shrivastava/ a young girl residing in the front of the house of O.P. No. 1 a Lucknow. She further stated that she could realise and feel that her husband was not having any interest on her as he started to lead an adulterous life with Seema Shrivastava, who has been made as Opposite party No. 2 in the case. I is further stated by the petitioner that the Opposite party No. 1 was-removed from the services for his misbehaviour. When the petitioner was at Ranch with her elder brother, the Opposite party No. 1 came down to Ranchi and begged apology for his misbehaviour and illicit relationship

with Seem; Shrivastava and promised to give up his illicit relationship with Seem; Shrivastava. But the respondent/O.P. No. 1, although assured of taking her back to Lucknow, he did not come back again and since 1991 practically she has been deserted by the Opposite party No. 1. Hence, this petition has been filed under Section 10 of the Indian Divorce Act seeking dissolution of marriage on the ground of adultery coupled with desertion and cruelty.

Besides the decree of divorce, the petitioner has further claimed for the cash amount which has been given allegedly to the Opposite party No. 1 at the time of marriage by her parents and also her Streedhan property gifted at the time of marriage.

2. In the written statement filed by the Opposite party No. 1, all the allegations brought by the petitioner have been denied. Regarding gift of cash and other utensils and Streedhan Property as alleged in the petition have been denied. According to the Opposite party No. 1, from the very beginning of the marriage the petitioner was not maintaining peaceful conjugal life as she was; a fashionable lady, she was not agreeable to stay in the joint family of the Opposite party No. 1. The allegation of termination of pregnancy by Opposite party No. 1 and his parents have been totally denied. It is further stated that at the pressure of the petitioner, the Opposite party No. 1 had to separate himself from his joint family and to live in a rented house near the house of Ramjee Tiwary, brother-in-law of the petitioner and when the Opposite party No. 1 was out of the station, all of a sudden, the petitioner left the house with all belongings in the rented house and as such after coming back from his duty when the Opposite party No. 1 learnt so he filed criminal case against the petitioner, which is now pending before the Magisterial Court at Lucknow. The Opposite party No. 1 further contention is that at the house of Ramjee Tiwary; the petitioner unnecessarily brooked out with the Opposite party No. 1 on 19th October, 1991 and in tense mood while the Opposite party No. 1 was returning home he met with Scooter accident as a result of which he was seriously injured and after prolonged treatment, although, he could survive but his face was; totally disfigured and because of such disfiguration, the petitioner was total unagreeable to lead conjugal life with the Opposite party No. 1 as she wanted a handsome partner for her life and practically after 1991 the petitioner has

withdrawn wilfully from the society of the Opposite party No. 1 and staying at her parents house at her own sweet will, the Opposite party No. 1 made several attempts to bring her back to the matrimonial home but all his attempts proved futile. The allegation of adultery has been vehemently denied from the side of the Opposite party No. 1 and it is stated that only for making a ground of divorce, this story of adultery has been made out, which is nothing but a myth. There is no existence of any Seema Srivastava in reality and a fictitious name has been put by the petitioner for the purpose of bringing the allegation.

3. Notices were issued to Opposite party No. 2 Seema Srivastava but her whereabouts could not be found and as such the suit proceeded against her ex parte.

4. On the basis of the pleadings of the parties, following issues were named by this Court vide order dated 6.2.1996:

(i) Is the suit maintainable in its present form?

(ii) Whether the allegation of desertion as made by the applicant-wife is true?

(iii) Whether the Opposite-party was living in adultery with Seema Srivastava and as such committed cruelty on the applicant-wife? (iv) What relief, if any, is the applicant entitled to?

5. For and on behalf of the petitioner, four witnesses have been examined including the petitioner herself and her brother Dr. Michael Lakra. Two other witnesses have been examined, who happened to be the friend of PW-2 who had visited the house of PW-2 when allegedly the O.P. No. 1 appeared there and begged apology of his misdoings against the petitioner, Anita Ruby Paul.

6. For and on behalf of the Opposite party No. 1, three witnesses have been examined and according to them, it was Aneeta Ruby Paul, who had deserted the O.P. No. 1 and cruelty was there from her side that she denied to stay with opposite party No. 1 after disfiguration of his face.

7. At the fag end of the trialpf the case just before the evidence of Opposite arty No. 1 was taken down, a joint petition has been filed on behalf of the petitioner and Opposite party No. 1 to the effect that their strained relationship had gone to such an extent that it was not possible for them to stay together any further. All attempts made by the well-wishers of the family to conciliate had failed and there remained no scope for leading any conjugal life y the two.

8. The petitioner had given up the plea of adultery and all her demands regarding cash and Streedhan property; while the Opposite party No. 1 has also agreed to withdraw the criminal case filed against the petitioner before le Magesterial court at Lucknow, but they prayed for granting of decree of divorce so that they can live their independent lives of their own choice.

9. It may be mentioned here that such compromise petition or a joint petition is unknown under the provision of the Indian Divorce Act, although such provision is there under the Hindu Marriage Act and Special Marriage ct after due amendments, yet the joint petition could not be construed as a promise petition by joining their hands by the parties to the proceeding, other they are bent upon in severing the marriage knot between the two as they have become fed up of each other in leading any conjugal life in future. At any cost, they want to get themselves separated to lead their independent lives.

While examining the spouses to the proceeding, this Court also felt that there was no scope any conciliation between the parties as the difference between the two had gone a long apart which cannot be abridged by any conciliation method. The parties are living separately for last 4-5 years and practically there is no communication between the two in these days. There was also no scope of conciliation as there is no offspring living between the two which can form a bridge between the two. The nature and behaviour of the spouses were also found to be quite opposite to each other and perhaps because of such behaviour pattern of the spouses discomfeature started from the very beginning of the marriage.

10. Regarding issue No. 3, the ground of adultery, it could not found that this story of adultery was made out/cooked up by the petitioner for making a ground divorce as contemplated under Section 10 of the Indian Divorce Act. Seema Srivastava's

existence could not be found out, although very many attempts were made but could not be served on her. It appears that his story of adultery was made up and a fictitious name of Seema Srivastava was included in the petition to substantiate the said charge. At last the petitioner could understand the position and as such had given up this story of adultery. From the evidence of P.W.I, Aneeta Ruby Paul, it could be found that this story of adultery was only a myth and the same could not be substantiated by any cogent evidence what so ever. Hence, this ground of adultery, although given up by the petitioner, the same could not also be proved from the side of the petitioner and hence this issue is decided in the negative and against the petitioner.

11. As regards, issue No. 2 i.e. ground of desertion and cruelty, it could be found that the parties are living separately for last 4-5 years and there was no communication between the two. From the side of the petitioner, it has been stated that it was the Opposite party No. 1 who had made the life of the petitioner miserable and she had to leave the matrimonial home. On the other hand, the Opposite party No. 1 and made counter allegation, to the effect that, it was the petitioner who had wilfully withdrawn herself from the society of the Opposite party No. 1 in his absence and left the matrimonial home bag and baggage. So, desertion is there from both sides and there is no scope of abridging the two.

12. As regards cruelty, the allegation of the petitioner is that she was meted with torture in the hands of the Opposite party No. 1 just after the marriage and not only by Opposite party No. 1, she was torture also by the parents of Opposite party No. 1 and when such cruelty was unbearable on her apart and even there was proposal of termination of her pregnancy, but that ground could also not be proved from the side of the petitioner by cogent and reliable evidence except her bald statement in her evidence, she had to have the matrimonial home.

13. On the other hand, Opposite party No. 1 has also brought the counter allegation of cruelty against the petitioner, to the effect that after meeting out of the accident, the petitioner never came to take any information about him or his treatment and when she could learn that his face has been disfigured, she denied to stay with such a person with such disfigured face and this is nothing but a

cruelty against the Opposite party No. 1.

14. On scrutiny of the evidence of both the sides, I find that desertion is there from both sides. Desertion is a word which should be construed from all attending circumstances. By mere statement of desertion, the same cannot be ascertained or proved. In the facts and circumstances of the case, I find that as both the spouses were fed up with each other they had broken the matrimonial home and get themselves separated. Now, here in this case, petitioner is the wife and she had filed the petition for divorce under Section 10 of the Indian Divorce Act seeking divorce on the ground of adultery coupled with cruelty and desertion.

15. Section 10 of the Indian Divorce Act runs as follows:

When husband may petition for dissolution-Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization there, been guilty of adultery.

When wife may petition for dissolution-Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion and gone through a form of marriage with another woman:

or has been guilty of incestuous adultery,

or of bigamy with adultery,

or of marriage with another woman with adultery,

or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce a mens et toro,

or of adultery coupled with desertion, without reasonable excuse, for two years of upwards....

Thus, for dissolution of a marriage under the Indian Divorce Act, cruelty and desertion simpliciter are not the grounds for dissolution of marriage while such grounds are available independently in other religions i.e. under the Special Marriage Act or under the Hindu Marriage Act. Under this Indian Divorce Act, adultery must be there for the purpose of dissolution of marriage may be coupled with desertion and cruelty as a ground for and on behalf of the wife against the husband.

16. The vires of this Section 10 was challenged before a Special Bench in Kerala High Court and by a decision as reported in : AIR1995 Ker252 Ammini E.J. and etc. v. Union of India and Ors. A Bench of three Judges had held that Christian spouses are discriminated on the basis of religion when cruelty and desertion were not available to them for the purpose of dissolution of marriage, while the same was available to other religions.

17. In a given case, if the spouses, although governed by Christian religion but had entered into the marriage tie under the Special Marriage Act then such grounds would have been made available to them for dissolution of marriage for cruelty and desertion. This aspect was dealt with by the Special Bench at length and held that non availability of ground of dissolution of marriage on cruelty and desertion alone without the ground of adultery, is discriminatory to Christian spouses and as such ultra vires under Article 15 of the Constitution of India.

18. Similarly, I find that although Special Marriage Act and the Hindu Marriage Act have provided easy process of getting a divorce by the spouses on mutual consent, the same is not available under the Indian Divorce Act and it remained pragmatic and even after the change of Society no realistic approach was taken to make amendment in the Indian Divorce Act, perhaps due to the sense of sacramentalism as the marriage under the Indian Divorce Act are usually done in Church but the same make a discriminatory with other Indian citizens as contemplated under the Constitution of India and I feel that the Legislative authority must think in the light of the inclusion of dissolution of marriage by mutual consent between the Christian spouses also, when it is found that it is impossible to lead a conjugal life by Christian spouses for various reasons which may not be

available under the specific items or grounds contained for the purpose of seeking a decree of divorce otherwise the lives of young couple might go in vain and prove futile.

19. In the present case, in the above context, I find that although a joint petition has been filed withdrawing their various allegations against each other but they remained adamant to their attitude of dissolution of marriage and to some extent cruelty to each other. I have already mentioned above that desertion is there from both the sides. It may be in larger degree by the petitioner and lesser degree by the Opposite party but the fact remains that both the spouses have withdrawn themselves from the Society of each other intentionally and wilfully resulting in breaking of the marriage tie for all practical purposes. I have already mentioned that despite the joint petition, the petitioner and the Opposite party No. 1 could prove the ground of desertion against each other and to some extent cruelty to each other and when the grounds of desertion and cruelty remained, although, not available independently without the charge of adultery, yet on discriminatory ground as contained under Section 10 of the Indian Divorce Act, I held that present case is a fit one to grant the decree of divorce. Accordingly, the marriage solemnized between the spouses is hereby dissolved by a decree of divorce making the parties free to lead their independent lives of their own choice and to choose their partners in life and good wishes shall remain for both the spouses from this Court.

20. In the circumstances of the case, no cost is awarded to either of the parties, but as undertaken by the parties, they should discharge their undertakings as mentioned in the joint petition itself without fail.