

N. Sreepadachar Vs. Vasantha Bai

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Court : Karnataka

Decided On : Dec-03-1969

Reported in : AIR1970Kant232; AIR1970Mys232; ILR1969KAR690

Judge : M. Santhosh and ;K. Bhimiah, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 10(1); [Evidence Act, 1872](#) - Sections 3; Mulla's Hindu Law;

Appeal No. : Misc. First Appeal No. 25 of 1968

Appellant : N. Sreepadachar

Respondent : Vasantha Bai

Advocate for Def. : K.S. Chandrashekhar, Adv.

Advocate for Pet/Ap. : K.R. Karanth and ;K.R.D. Karanth, Adv.

Judgement :

Santhosh, J.

1. This is an appeal filed by the husband against the order of the learned First Additional Civil Judge, Mysore, rejecting the petition filed by him for judicial separation under Section 10(1)(b) of the Hindu Marriage Act.

2. The appellant's case is that he was married to the respondent on 3-7-1953. After living for a short while in Hubli, he was transferred to Mysore in April 1954, and thereafter, they were residing in Mysore City. The respondent had a very irritable temper and a foul tongue. She quarrelled with the appellant over trivial matters and on account of her quarrels and abuses, the appellant had to spend sleepless nights many a time. The respondent used to abuse the appellant in the foulest language and used to behave towards him in public most insultingly. She used to subject him to humiliation and shame in the eyes of the public and make him a laughing stock in the locality and feel very miserable. She used to hold out threats of committing suicide and the appellant had to keep himself constantly watchful in order to prevent her from committing suicide. The respondent had expressed many a time that she would feel very happy by getting the insurance and Provident Fund amounts if the appellant dies early. As a result of the respondent's abuses and temper the appellant found it impossible to live with her and he was obliged to quit the house on 30-9-1961 in sheer desperation and disappointment. It was harmful and injurious to live with the respondent because of the ill-treatment. The appellant prayed that the Court may be pleased to grant him a decree for judicial separation.

3. The respondent denied the allegations made by her husband. She stated that her husband was not paying her sufficient money to run the household. She complained that the appellant was coming to the house at odd hours and some times late at night. In spite of the inhuman conduct of the appellant, she behaved like a dutiful wife. She accused her husband of carrying on propaganda among his friends and relatives that she was mentally unsound. She has maintained that it was the appellant who was behaving in inhuman manner towards her and that she has been a dutiful wife. She contended that there are absolutely no grounds for granting a decree for judicial separation and prayed that the petition may be dismissed with costs.

4. In support of his case, the appellant examined himself and 6 witnesses. The respondent examined apart from herself, 4 witnesses on her behalf. The learned Civil Judge held that the appellant had not made out his case and dismissed the petition. He was of the opinion that the various incidents of ill-treatment referred to

by the husband had not been proved and the witnesses examined by the appellant were all interested and no reliance could be placed on their evidence. He was of the view that the incompatibility of temperament had resulted in serious differences and disharmony between the parties and this was not a sufficient ground for getting the relief of judicial separation.

5. Sri K. R. Karanth, learned counsel appearing for the appellant, has contended that the learned Civil Judge has not appreciated the evidence properly. He argued that there is absolutely no reason to reject the independent and disinterested evidence of P. W. 1 Deva Rao, in whose premises the parties resided as tenants from 1955 to 1958. He is an elderly gentleman and a retired official not in any way related to or interested in the appellant. P. W. 1 has deposed to 5 different incidents of misbehavior on the part of the wife when the parties were residing in a portion of his house. The respondent herself has admitted that some of those incidents had taken place, but has denied that the incidents had taken place in the manner alleged by her husband and P. W. 1. It is also pointed out that there is no reason whatsoever to reject the evidence of P. W. 3 Muddaveerappa, a person belonging to a different community; altogether. It is also urged by Sri Karanth that the documentary evidence produced on behalf of the appellant fully supports his case, Exhibit P-1, a letter written by the respondent's mother, shows that the respondent's mother herself has written that her daughter has no sense and she has been behaving stupidly,

It is argued that the tone and the tenor of the letter, Exhibit P-2 written by the respondent stating that she does not care and is not afraid of her husband and that she would set the police on him, clearly shows what type of a woman the respondent is. Sri Karanth has also relied on Exhibit D-1, a letter written by the appellant to the respondent's father wherein he has stated that he had brought to his notice several times, the worst behaviour of his daughter but nothing had been done in the matter and that it was impossible for him to stay with his wife because of her behaviour and if he continued to stay, a major disaster was sure to happen. It is argued by Sri Karanth that the evidence let in on behalf of the appellant makes out clearly a case of cruelty in law entitling the appellant to a decree for judicial separation. Sri Karanth has strongly relied on two decisions of this Court viz., (1)

Siddagangaiah v. Lakshamma, AIR 1968 Mys 115 and (2) Gangamma v. Hanumanthappa, (1965) 1 Mys LJ 683 in support of his contention that the incidents narrated by the appellant would amount to legal cruelty. Sri Karanth has also cited before us some English decisions and also decisions of the various High Courts and also passages in Mulla's Hindu Law and Raghavachariar's Hindu Law.

6. Sri N.S. Chandrashekhar, learned counsel appearing on behalf of the respondent, has argued that the evidence let in on behalf the appellant was interested and discrepant and the learned Civil Judge was right in not accepting the same. He contends that the evidence at best only shows that the respondent was temperamental but incompatibility of temperament would not constitute cruelty as per Section 10(1)(b) of the Hindu Marriage Act. It is the duty of the appellant to prove either harm or injury has been caused to him. He has relied on certain passages in Mulla's Hindu Law, at pages 660, 661, 665 and 666 in support of his said contention that the allegations relied on by the appellant would not constitute cruelty in law entitling the husband to get a decree for judicial separation. Sri Chandrashekhar has also stressed that it is well settled that there should be strict proof in matrimonial proceedings and that it is for the appellant to prove beyond all reasonable doubt the various charges made by him.

It has also been stressed that the parties, during the short period of 9 years of their marriage, had six children, though the respondent protested against frequent pregnancies, the husband refused to abide by her request and imposed his wishes on her. It is argued that this clearly shows that the appellant was not a quiet and docile husband which he pretends to be, It is also stressed that when the respondent had given birth to her last child, the appellant left the respondent and his children and went away. This shows the cruel and callous attitude and the mind of the appellant, Sri Chandrashekar has cited before us (1954) 3 All ER 159: (1949) 1 All ER 247 and (1950) 2 All ER 398, in support of his contentions.

7. The two points that arise for determination in this case are:

(1) Whether the appellant has proved by satisfactory evidence, the various incidents narrated by him?

(2) If so, whether the incidents referred to above, would amount to cruelty as mentioned in Clause (b) of Sub-section (1) of Section 10 of the Hindu Marriage Act?

8. When examined as P. W 5. the appellant has narrated the various incidents wherein his wife ill-treated him, abused him and insulted him in public. He has stated that in 1960 he and his wife were returning after a visit to Dasara Exhibition at Mysore, his wife abused him, caught him by his collar and threatened him in the crowded bus. He has also stated that his wife even refused to cook food for him and that he had to take leave and cook food and serve her; when he served food to her she stated that the food was not prepared well and threw the rice plate on his head. He has also stated how on a number of occasions, the respondent threatened to burn herself and report to the police that he had set fire to her. He has also stated that case when they went to his father's house for some betrothal ceremony, as he did not accede to her request to take her to her parents' house before the completion of the ceremony, she got into a fit of temper and refused to take food and left the place. When he tried to stop her, she broke her bangles and scratched his wrist and went away. After some hours, on search by his relation, she was found in the railway station and was brought home by P. W. 2. He has also narrated that once when he had used the hot water which she had prepared for her oil-bath, she abused him in the presence of P. W. 3 and asked him to prostrate before her and beg her pardon.

9. The various incidents mentioned above have been corroborated by the witnesses examined by the appellant on his behalf P.W. 1 Deva Rao has corroborated the evidence of appellant with regard to what had happened in the bus during Dasara. He has also stated that the respondent threatened that she would pour oil and burn herself so that her husband might come to trouble. He has further stated that the wife was ill-treating the husband and making him cook food, serve her meals and when served, refused to take meals on the ground that it was badly prepared. He has further stated that once there was an accident and the train had run over a person; the respondent stated why that accident did not happen to her husband so that she could get the insurance and provident fund amounts. He has also stated that the wife used to say that 40 to 50 persons like

her husband, who was only a Supervisor, were working under her father, who was an Executive Engineer. P.W. 3 Muddaveerappa has corroborated the petitioner's evidence about the incident with regard to hot water-bath taken by the appellant. He has also stated that once when the appellant was starting to go out for work. His wife caught hold of him by the neck and stated that he should not go out. Later, when he remonstrated she allowed him to go, but refused to permit him to take the chain and crow-bar which he had to take for his work, P.W, 2 Narayanachar has spoken to the scene created by the wife in the appellant's father's house at Bangalore, when she refused to take food and walked out of the house, how they all searched for her, and how he discovered her in the railway station and brought her home.

10. There is considerable force In the contention of Sri Karanth that there was no justification for the learned Civil Judge to reject the evidence of P.W. 1 Deva Rao. The reason why the learned Civil Judge rejected the evidence of P.W. 1 is that he was very much interested in the appellant and had narrated certain incidents which the appellant himself has not stated. The learned Civil Judge also thought that it was the duty of P.W. 1, who was an elderly man of 63 years, to have advised both the husband and wife not to quarrel. There is nothing on record to show, that P.W. 1 was in any way interested in the appellant. The respondent herself has admitted that there was no enmity between herself and P.W. 1. There is absolutely no reason why an elderly gentleman like P.W, 1, who was in no way connected with the appellant should come and depose falsely against the respondent, against whom he had no ill-will- Though during the course of the cross-examination of P.W. 1, an attempt was made to question the fact that the parties were living in his house, the respondent herself has admitted that they were living in the house of P.W. 1,

According to P.W. 1, the parties were living in a portion of his house for about 3 years. Hence it is only natural that P.W. 1 should know about the quarrels between the husband and wife. It may be mentioned that the appellant ceased to be a tenant of P.W. 1 after 1958. There is not even a suggestion that P.W. 1 was in any way interested in the appellant. With regard to the criticism that P.W. 1 stated certain matters which the appellant himself did not state, it may be pointed out that

those, incidents relate to the observations made by the respondent about getting the insurance and provident fund amounts which obviously were made when the appellant was not present. Though P.W. 1 is an elderly man, one cannot expect him to interfere in the quarrels between a husband and wife, particularly when the evidence discloses that the respondent is not a lady of mild temper. There is nothing in the evidence of P.W. 1 to show that he is an unreliable witness or he had come to depose falsely to help the appellant. It is difficult to believe that he would concoct the various incidents referred to by him.

11. Similarly, there is no reason to reject the evidence of P.W. 3 Muddaveerappa merely on the ground that he and the appellant were working together for some time as Surveyors. His evidence also clearly shows how the respondent was treating her husband. The learned counsel for the respondent argued that this witness is obviously giving false evidence, because he has stated that the appellant was living in a house behind Ganesha Talkies, The appellant has not stated anywhere that he was living in any such house while he was in Mysore. But, it may be pointed out that it has been suggested in cross-examination to the appellant that on a number of occasions, he used to go home late in the company of P.W. 3. There is nothing in the evidence of P.W. 3 to indicate that he was giving false evidence,

12. The documentary evidence produced in the case by the appellant lends strong support to his case. In the letter, Exhibit P-1. the mother of the respondent herself has referred to her daughter as not having the least sense and being stupid. Exhibit P-2, a card dated 11-10-1961 written by the respondent in her own hand, shows what type of a lady she is, She has stated therein that she doesnot care for the notice sent by her husband. She has also stated that she was not afraid and the people in the street are helping her. She has also threatened the appellant that if he does not return home early, she would set the police- on him. In Exhibit P-1, dated 4-10-1961, a letter written by the appellant to his father-in-law, shortly after he left the respondent, he has stated that he had several time brought to his notice the Worst behaviour of the respondent and that no action had been taken by him for mending his daughter's behaviour. He has also stated that 'it is highly impossible to stay at home with her even a minute' because of her conduct, and

that her wild behaviour had made him desperate in life, and if he continued to stay with her in the house some major disaster was sure to happen for which he did not want to give room. The documents referred to above written long before the parties contemplated any proceeding lend assurance to the truth of the version put forward by the appellant before the court,

13. In the evidence given by her, the respondent has only denied the various incidents of misbehaviour referred to by the appellant and his witnesses. The witnesses examined on her behalf have gone very much further than the respondent herself and have stated that the relations between the husband and wife were very good and cordial. R.W. 1 Vasantharaj is the respondent's sister's husband. R.W. 2 Vedamurthy is the husband of the aunt of the respondent, R.W. 3 Indira Bai is the aunt of the respondent. R.W. 5 is the sister of R.W. 3. These are all interested witnesses and their evidence that the appellant and the respondent were living very cordial and amicable life cannot be accepted.

14. The evidence of the various incidents of misbehaviour by respondent has been corroborated by the independent witnesses, P.Ws. 1 and 3. The evidence of these two witnesses is satisfactory and there is no good reason to reject their evidence. The learned Civil Judge was therefore not right in thinking that the appellant had not proved his case by satisfactory evidence.

15. The next question for consideration is whether the abovesaid acts of the respondent amounts to cruelty as per Clause (b) of Sub-section (1) of Section 10 of the Hindu Marriage Act, which will be referred to hereinafter as the Act. It is well settled that cruelty need not be only physical, but there can be mental cruelty. At page 662 of Mulla's Hindu Law (13th Edition), In his commentary under Section 10 of the Act, dealing with mental cruelty, this is what the learned author observes:--

'The language of the Clause is comprehensive enough to apply to cases of mental cruelty. It was formerly thought that actual physical harm or reasonable apprehension of it was the prime ingredient of this matrimonial offence. That doctrine is now repudiated and the modern view has been that mental cruelty can cause even more grievous injury and create in the mind of the injured spouse reasonable apprehension that it will be harmful or unsafe to live with the

otherparty. The principle that cruelty may be inferred from the whole of facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence is of greater cogency in cases falling under the head of mental cruelty.'

16. While considering this question, It is unnecessary to discuss the various English decisions starting from the leading case *Russel v. Russel* (1897 AC 395) cited by both the counsel for the appellant and the respondent, as we have the benefit of two Bench decisions of this court by which we are bound, wherein, after discussing the law on the subject, this court has laid down what constitutes cruelty as per Clause (b) of Sub-section (1) of Section 10 of the Act.

17. In AIR 1968 Mys 115, *Somnath Iyer, J.* (as he then was) held down that wilful and unjustifiable interference by one spouse in the sphere of the life of the other, is one species of cruelty in the same way in which rough or domineering conduct or unnatural sexual practice or disgusting accusations of unchastity or adultery, and some times even studied unkindness or persistent nagging can in a proper case be regarded a cruelty. Cruelty about which the Act speaks is not restricted to acts of physical violence and may extend to behaviour which may cause pain and injury to the mind as well and so renders the continuance in the matrimonial home an agonising ordeal.

17-A. In (1965) 1 Mys LJ 683, *Kalagate and Govinda Bhat, JJ.* have held that false imputation made by the husband against his wife that she is living in adultery amounts to cruelty. At page 686, their Lordships have observed as follows:--

'The word 'cruelty' as it appears in the clause is not confined to the conduct, which would be a danger to life, limb or health only. The test of cruelty is that conduct which would cause a reasonable apprehension in the mind of the wife that it would be harmful or injurious for her to live with her husband. The words 'harmful' and 'injurious' are generally used and are not qualified by the words 'to life, limb or health', therefore, 'harm' and 'injury' may relate to the mind of the wife also. Thus not only physical but mental cruelty is recognised. As laid down by the majority in *Russel v. Russel*, 1897 AC 395, the words 'it will be harmful or injurious for the petitioner to live with the other party' seem to recognise the test of impossibility of

discharging the duties of married life. Therefore, if the husband falsely imputes unchastity to his wife, then such imputation must necessarily wound the feeling of the wife. Character of chastity of a woman is a precious thing to her and she would always be anxious to save the same and every respectable woman would feel offended if a baseless allegation is made regarding her chastity or character. In our opinion, therefore, the false imputation made by the husband against his wife that she is living an adulterous life amounts to such cruelty as to cause reasonable apprehension in her mind that it will be harmful or injurious for her to live with the husband. In such circumstances, we must hold that it would be impossible for the wife to discharge her marital obligation to her husband;

It may be pointed out that in the said decision the wife had not stated that the allegation made by her husband had caused reasonable apprehension in her mind that it was injurious or harmful to live with her husband. On the contrary, in the said case, the wife had volunteered to live with the husband. Her case was that the husband had made false allegation against her. The Court refused to grant the decree prayed for by the husband for restitution of conjugal rights on the ground of cruelty by the husband.

18. In *Kondal Rayal Reddiar v. Ranganayaki Ammal*, ILR 46 Mad 791 = (AIR 1924 Mad 49) their Lordships have observed as follows:--

'Under the Indian Law, cruelty, in the legal sense, need not necessarily be physical violence, a course of conduct, which, if persisted, it would undermine the health of the wife is a sufficient justification for refusing to the husband a decree for restitution of conjugal rights.'

19. In *Soosannamma v. Varghese Abraham*, AIR 1957 Trav-Co 277, their Lordships have pointed out that if a spouse is subjected to conduct insults, abuses and accusation of adulterous conduct, that would make a state of married life impossible to be endured and would cause a very unhappy and miserable state of existence. This was cruelty of a worse kind than physical violence. At page 279, their Lordships have referred to an English Case in *D' Aguilar v. D' Aguilar*, (1794) 1 Hag Ecc. 773, wherein the wife alleged that her husband spat upon her; Lord Stowell said that nothing could be more gross cruelty.

20. In *Serah Abraham v. Pyli Abraham*, AIR 1959 Ker 75, their Lordships have pointed out that the general rule in all questions of cruelty is that the whole matrimonial relations must be considered and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusation or taunts. Their Lordships have also pointed out that though the Indian Courts originally construed legal cruelty in the strict sense, there has come about a gradual change and the tendency has been in favour of the view that any conduct of the husband which causes disgrace to the wife or subjects her to a course of annoyance and indignity amounts to legal cruelty. The harm apprehended may be mental suffering as distinct from bodily harm, for, pain of mind may be even more severe than bodily pain and a husband disposed to evil, may create more misery in a sensitive and affectionate wife by a course of conduct addressed only to the mind than if, in fits of anger, he were to inflict occasional blows upon her person,

In *Umri Bai v. Chittar*, : AIR 1966 MP205 , their Lordships have pointed out that the legal concept of cruelty has varied from time to time, not in theory but in application, according as the social and economic conditions changed. They have pointed out that Clause (b) of Section 10(1) applies as well to cases of mental cruelty, which may cause even more serious injury than physical harm and create in the mind of the Injured such apprehension as is contemplated in this section. The question of cruelty must be determined from the whole of facts and the matrimonial relations between the spouses. It has to be determined as a cumulative effect of all the circumstances.

21. In *Anjani Dei v. Krushna Chandra*, : AIR1954 Ori117 , their Lordships have observed as follows:--

'To establish legal cruelty, it is not necessary that physical violence should be used. Continuance should be used. Continuous ill-treatment, cessation of marital intercourse, studied neglect and indifference on the part of the husband are all factors which may undermine the health of a wife. xx xx xx Where a husband habitually insults his wife and behaves towards her with neglect and studied unkindness, so as to impair her health, he is held guilty of cruelty. Where evidence of physical violence is not per se sufficient to warrant a finding of cruelty, the court

is bound to take into consideration the general conduct of the husband towards the wife and if this is of a character tending to degrade the wife and subjecting her to a course of intense indignity injurious to her health the court is at liberty to pronounce the cruelty proved.'

22. At, page 983, this is what is stated in Raghavachariar's Hindu Law, Principles and Precedents (5th Edition):--

'Verbal abuse and insults; the continual use of abusive and insulting words spitefully indulged in to bring shame and mental agony to the other spouse which will tend to undermine the health of that spouse may in the circumstance of any particular case amount to legal cruelty. More trivial incidents which are merely the wear and tear of married life do not constitute cruelty. Thompson v. Thompson, (1957) 1 All ER 101' Again, at page 984 of the same book, it is stated as follows:-- 'Refusal to speak; Where one of the spouses though living under the same roof refuses to speak to the other for a considerably long time and on that ground the other spouse becomes wretched and worried, such conduct may be a ground for holding that there has been cruelty on the part of the spouse who refuses to speak. This conduct must no doubt be taken along with other circumstances of the case to come to the conclusion that cruelty has been established.' Again, at page 986, it is stated as follows: 'Cruelty by words -- It is implicit in law in order to find cruelty proved, it is not necessary to find physical violence-Cruelty by words, by talk, or by conduct other than violence may be cruelty nonetheless and possibly may even be more dastardly cruelty than the cruelty of blows,'

23. From the various incidents held proved, it is clear that the insulting conduct indulged in by the respondent in the public against her husband would undoubtedly cause mental agony and pain, and prove harmful and injurious to the health of the husband. Abusing the husband in public in a bus and catching hold of his collar, making the husband cook food for her and when he served the food, throwing the plate on his head on the ground that the food was not properly prepared and insisting on his asking her forgiveness, threatening to burn herself and to give a false complaint to the police so that her husband may come to trouble, when he was starting to the office with his colleague, catching hold of his

neck and preventing him from taking the instruments used for his work, stating before others that her husband may be killed in an accident so that she may get his insurance and provident fund amounts, all these would make it impossible for the husband to live with his wife,

There can be no doubt that such continuous conduct on the part of the wife would undermine and impair the health of the husband. This kind of abuses and quarrels made him spend sleepless nights many a time. Because of such insulting behaviour of the wife in public, the husband had to face humiliation and shame in the eyes of the public and he was a laughing stock of the locality. From the evidence on record, it is clear that the respondent treated the appellant with such cruelty as to cause reasonable apprehension in his mind that it would be harmful or injurious for him to live with her.

24. Before we part with this case, it is necessary to mention that the charge made by the wife at a late stage of the case that the appellant was moving with one Kamala has not been proved. The learned Civil Judge himself has not relied on this aspect of the case. It is therefore unnecessary to discuss the Same.

25. The appellant, for the reasons mentioned above, has, by satisfactory evidence, established the charge of cruelty against the respondent. The appeal is therefore allowed and the order passed by the learned Civil Judge dismissing the appellant's petition is set aside, and a decree for judicial separation as prayed for by the appellant is granted. There will be no order as to costs.

26. Appeal allowed.