

G. Padmini Vs. G. Sivananda Babu

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Court : Andhra Pradesh

Decided On : Nov-11-1999

Reported in : 2000(2)ALD258; 2000(2)ALT259; II(2000)DMC760

Judge : S.V. Maruthi and ;E. Dharma Rao, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 10(1), 13(1) and 23

Appeal No. : AAO Nos. 733 and 734 of 1997

Appellant : G. Padmini

Respondent : G. Sivananda Babu

Advocate for Def. : Mr. M.R.K. Chowdary, Adv.

Advocate for Pet/Ap. : Mr. P.M. Gopal Rao, Adv.

Judgement :

ORDER

S.V. Maruthi, J

1. These two appeals are disposed of by this common judgement. In both the appeals the wife is the appellant. The husband filed OP No.79 of 1991 for divorce on the ground of adultery, desertion and cruelty, while the wife filed OP No.89 of 1991 for restitution of conjugal rights.

2. The husband is a bank officer and the wife is a graduate coming from a wealthy family. The marriage between husband and wife was performed in the year 1981 and she joined him in 1981 and they lived together till July, 1981. Thereafter she left her marital home for her parents house. When the wife went to Vizianagaram in November, 1981, where the husband was posted, he did not allow her to enter the house on account of mental torture and agony caused to him. Therefore, the parents took her to Ongole and she lived there till June, 1985. There was a mediation pursuant to which the wife joined the husband in February, 1988 at Bhopal. During her stay with her husband from 1988 to 1991 she was all the time abusing him in filthy language and calling him impotent. Thereafter she left in the month of May to her parents house and in June she wrote to him stating that she was pregnant. Having come to know that the wife became pregnant, he filed OP No.79 of 1991 in October, 1991 for divorce on the grounds of cruelty, desertion and adultery.

3. The wife denied all the allegations in her counter-affidavit. On the other hand, she alleged that husband and his relations namely parents and sisters ill-treated her and her husband used to come in drunken condition and she was treated cruelly by them.

4. The averments in OP No.89 of 1991 are more or less similar. The husband examined himself as PW1 and also examined PW2 and PW4. The wife got herself examined as RV1 and also RW2 her brother. The husband filed Bx.A1 to A5 while the wife filed Ex.B1 to B4. On behalf of the Court Bx.X1 to X3 were marked. On the basis of evidence adduced, the learned Judge found that there is no adultery or desertion. On the other hand, he found that the allegation of mental cruelty under Section 13(1)(ia) of the Hindu Marriage Act (hereinafter called as the Act) is established and granted divorce. He dismissed the petition filed by the wife for restitution of conjugal rights. Aggrieved by the same the present appeals are filed.

5. The main argument of the learned Counsel for the appellant is that the Court below mainly relied on Ex.A1 under which the wife wrote a letter to her brother-in-law namely brother of her husband complaining that her husband is incapable of becoming father and therefore the said letter caused mental cruelty to the

husband. However, the appellant gave birth to a child thereafter and therefore the respondent is deemed to have condoned the cruelty caused to the respondent under Ex.A1. The contents of Ex.A1 cannot be treated as wild allegations as it is based on Ex.B1 letter dated 14-4-1976. Ex.B1 dated 14-4-1976 being a letter addressed by Tata Memorial Research Institute under which the husband was advised to undergo treatment. PW1 also admitted that the contents of Ex.A1 letter do not amount to attributing impotency to him. Even assuming that it amounts to causing mental cruelty, a single instance in a long married life cannot be taken to have caused mental cruelty by the appellant. The appellant has not published Ex.A1 letter, so the husband cannot take advantage of his own wrong. The Counsel submitted that the learned Judge proceeded on the assumption that the appellant has not informed about her pregnancy to her husband, which is wrong, as PW2 brother of PW1 informed about the pregnancy of the wife to the respondent.

6. The Counsel for the respondent reiterated the grounds on which the learned Judge granted divorce. The question, therefore, is whether Ex.A1 dated 12-1-1991 caused mental cruelty warranting grant of a divorce.

7. Before considering whether Ex.A1 caused mental cruelty warranting a divorce between the parties, it is necessary to refer to a judgement of the Supreme Court in Dr. N.G. Dastane v. Mrs. Dastane, : [1975]3SCR967 , on which the learned Counsel Sri K Srinivas on behalf of Mr. P.M. Gopal Rao Counsel for the appellant relied upon. The learned Judges of the Supreme Court while considering the scope of cruelty under Section 13(1)(ia) of the Act pointed out that under Section 10(1)(b) harm or injury to health, reputation, the working career or the like, would be an important consideration in determining whether the conduct of the respondent amounts to cruelty. It is not necessary as underlie English law, that cruelty must be of such a character as to cause 'danger' to life, limb or health as to give rise to a reasonable apprehension of such a danger. Therefore what the Courts must determine is not whether the petitioner has proved the charge of cruelty having regard to the principle of English law, but whether the petitioner proves that the respondent has treated him with such cruelty as to cause a reasonable apprehension in his mind that it will be harmful or injurious for him to

live with the respondent. It was also held that 'Neither Section 10 of this Act which enumerates the grounds on which a petition for judicial separation may be presented nor Section 23 which governs the jurisdiction of the Courts to pass a decree in any proceeding under this Act requires that the petitioner must prove his case beyond a reasonable doubt. Section 23 confers on the Courts the power to pass a decree if it is 'satisfied' on matters mentioned in clauses (a) to (e) of the section. Considering the proceedings under this Act are essentially of civil nature. The word 'satisfied' must mean 'satisfied on a preponderance of probabilities' and not 'satisfied beyond a reasonable doubt'. Section 23 does not alter the standard of proof in civil cases. The observations referred to above are followed in the case of V. Bhagat v. Mrs. D. Bhagat, : AIR 1994 SC710 . It was held that 'mental cruelty in Section 13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor reasonable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. From the above decisions it is clear that cruelty does not necessarily mean danger to life, limb or health. It is enough if one of the parties to the marriage entertains a reasonable apprehension that it is harmful or injurious to him or her to live with other. The proof that is required for establishing that there is a reasonable apprehension that it is harmful or injurious to one spouse to live with the other need not be beyond all reasonable doubt, it is sufficient if preponderance probabilities establish that one of the spouses entertains a reasonable apprehension that it is harmful or injurious to live with the other. The incidents on which the appellant relied to establish the charge of cruelty had to be

grave and weighty. From the judgement Dr. N.G. Dastane v. Mrs. S. Dastane (supra), it is clear that cruelty under Section 13(1)(ia) need not necessarily be physical cruelty, it can also be mental cruelty. The conduct which inflicts upon the other party such mental pain and suffering as would make it impossible for that party to live with the other. Making allegations which cause intense mental pain and anguish amounts mental cruelty. The proof required in such cases is not proof beyond reasonable doubt and it is sufficient if preponderance of probabilities establishes the mental cruelty.

8. It is not necessary to refer to other judgements relied on by the learned Counsel namely Janumnpalli Venkata Laxmana Rao v. Janumupalli Bharathamma, 1989 (2) ALT 315, T. Yadagiri v. Smt Bhagyavathi, : 1995(3)ALT778 , Sinl. Togari Chandrakala v. Togari Venkatesh, : 1993(3)ALT733 . All the above judgements have reiterated what the Supreme Court has laid down in its judgements namely V. Bhagathi v. Mrs. D. Bhagathi and Dr. N.G. Dastane v. Mrs. S. Dastane (supra).

9. In the light of the above, we have to examine whether the contents of Ex.A1 letter satisfy the criteria laid down to establish that the respondent suffered mental cruelty. Ex.A1 letter is written by the appellants to her brother-in-law i.e., the brother of the respondent, on 12-1-1991. The appellant admitted that she has written the said letter Ex.A1 in Telugu which was translated into English. It says 'when getting your brother married none of you considered his fitness to lead matrimonial life physically and mentally and thus ruined my life. I am writing about my anguish to you considering you as a person like my father. Your brother though physically capable is deficient. Till today I did not complain to you anything. I now discovered the medical examination papers of 1978 pertaining to your brother. Since then I felt shock and pain. But still I reconciled mentally and came to you. He does not feel like talking to or live with the wife like other males. When questioned he becomes aggressive and quarrels and insults. All the troubles are due to his pain and I wish you to recognise the said. Even before marriage it appears that the doctor told him of the doubt that he has in procreation of children. There are papers also to that effect. It is an injustice done to me as a lady. Atleast if I am treated with affection these matters may be adjusted but all of you are blaming me'. A reading of the letter indicates that she was complaining of the capability of

the husband to have children or to lead matrimonial life and the letter was written to her brother-in-law. It is something unheard of a wife writing a letter about the impotency of her husband to the brother-in-law. The brother-in-law stands as an outsider to the institution of marriage. If there is any difficulty about the impotency of the husband, she should have discussed with him and sorted it out instead of disclosing it to a third party, who is an outsider to the institution of marriage. The very letter complaining about the capacity of the husband to bear children in our view causes mental cruelty and anguish to the husband. Writing a letter to a third party amounts publishing and the publication in this case is about the impotency of her husband, which in our view creates intense mental agony and anguish. We have called the parties and interviewed them in the chambers. The appellant is willing to join the respondent but the respondent is firm in his attitude and he is no longer interested in living with her inspite of our best efforts, in addition, the appellant left the matrimonial house in 1988 and thereafter she did not join him. Having regard to the nature of accusation made against the respondent by the appellant, which in our view, causes mental pain and suffering, it would not be possible for the respondent to live with the appellant, and having regard to the facts that both are living apart from 1988, and nearly eleven years have elapsed, it is neither desirable nor possible for the respondent to live with the appellant.

10. In addition in Ex.A2 dated 6-6-1991 the appellant informs the respondent about her pregnancy and in that she says that she herself was surprised when the lady doctor told her that she was pregnant.

11. Therefore, in our view, the letter under Ex.A1 written to a third party, who is an outsider to the institution of marriage, causes mental cruelty to her husband and it satisfies the requirement of Section 13(1)(ia) of the Act. As pointed out by the Supreme Court whether a particular Act amounts to cruelty depends on facts and circumstances of each case and tight jacket formula cannot be laid down in determining whether a particular Act amounts to cruelty or not. Since we are of the view that Ex.A1 letter caused mental cruelty, the trial Court is justified in granting divorce to the petitioner, the husband.

12. The learned Counsel for the appellant contended that even assuming that Ex.A1 caused mental cruelty, the letter is dated 12-1-1991 and thereafter a child was born in August or September, 1991 and the OP was filed in October, 1991. The very fact that the child was born indicates that the cruelty was condoned by the husband. In support of his contention he relied on the following passage in Dr. N.G. Daslane v. Mrs. S. Daslaie (supra):

'Therefore, evidence showing that the spouses led a normal sexual life even after a series of acts of cruelty by one spouse is proof that the other spouse condoned that cruelty. Intercourse, of course, is not a necessary ingredient of condonation because there may be evidence otherwise to show that the offending spouse has been forgiven and has been received back into the position previously occupied in the home. But intercourse in circumstances as obtain here would raise a strong inference of condonation with its dual requirement forgiveness and restoration. That inference stands uncontradicted, the appellant not having explained the circumstances in which he came to lead and live a normal sexual life with the respondent, even after a series of acts of cruelty on her part.'

13. It is difficult to accept the contention of the learned Counsel that the birth of child after Ex.A1 dated 12-1-1991 amounts to condonation of cruelty. The simple reason is that there is no evidence when the husband came to know of this letter. Though in the petition a reference is made to it, in the absence of any evidence that the husband came to know of this letter only in January, 1991 itself, it is difficult to hold that there is condonation of mental cruelty by the husband on account of the birth of a child.

14. The contention of the learned Counsel that the allegation made in Ex.A1 does not amount to wild allegation as it is based on Ex.B1 letter written by Tata Memorial Centre, Cancer Research Institute under which the treatment was prescribed to the husband for his potency. It is true under Ex.B1 dated 14-4-1976 the Doctors from Tata Memorial Centre, Cancer Research Institute prescribed certain treatment to the husband. However, the fact that there is some deficiency in her husband, cannot be pointed out by the wife to an outsider. She could have settled the matter with her husband.

15. In view of the above finding, we are of the view that the contents of Ex.A1 letter amounts to mental cruelty. We confirm the decree for divorce passed by the trial Court. The appeals filed by the appellants are dismissed. As regards maintenance the parties are directed to approach the appropriate Court.

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