

**Keshav Devi Mishra Vs. Pradeep Kumar Mishra**

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**Court :** Madhya Pradesh

**Decided On :** Jan-02-1991

**Reported in :** II(1991)DMC284

**Judge :** D.M. Dharmadhikari, J.

**Acts :** Hindu Marriage Act, 1958 - Sections 13(1) and 28

**Appeal No. :** F.A. No. 212 of 1988

**Appellant :** Keshav Devi Mishra

**Respondent :** Pradeep Kumar Mishra

**Advocate for Def. :** Nemo

**Advocate for Pet/Ap. :** N.K. Shukla, Adv.

**Disposition :** Petition allowed

**Judgement :**

**D.M. Dharmadaikari, J.**

1. This is an appeal by the wife under Section 28 of the Hindu Marriage Act, 1958 (in short 'the Act'), against the judgment and decree of divorce dated 13.10.1988 passed by Additional District Judge Sedhora, Camp Katni, for alleged grounds said to have been proved against the wife of desertion and cruelty.

2. The husband sought decree of divorce on pleadings inter alia that the parties were married on 1.5.1982 and they have a female child aged about three years. The allegations of cruelty against the wife are that she always ill-treated the husband and his parents and used to abuse them and assault the husband. It was also pleaded that in November 1983, the wife on the pretext of visiting her maternal uncle left with her father from the matrimonial home at Katni for Sagar and never returned thereafter. She took along with her all her clothes, ornaments and Rs. 5000/- in cash. The husband also alleged to have made attempts to bring her back, but she refused.

3. The wife contested the divorce proceedings. Apart from denying the allegations made against her by the husband she pleaded that after birth of a female child to her the behaviour of the husband and his parents was very much humiliating and of harassment. On the question of desertion her case was that before four-five days of Dusheharah of the year 1984, the husband left her at her father's place in Ashok Colony Katni and instructed her to return to the matrimonial home at Katni on the day of Dusheharah. The wife is alleged to have gone back to the matrimonial house on the Dusheharah day where the husband refused to receive her and after quarrelling and beating drove her out of the house. The wife also alleged that the husband has contracted a second marriage secretly with a lady by name Shakun of Gadarwara. In order to prove his case the husband got himself examined as P.W. 1 and denied that the wife did not know good cooking and on 15.8.1983 in the presence of Umadutta Tiwari (P.W. 2) said to be a friend of the father of the wife slapped the husband on his cheek. The husband also deposed that the wife has deserted him since November 1983 and her version that she was left at her parental house by the husband during Dusheharah of 1984 was denied. To support his case the husband examined Umadutta Tiwari (P.W. 2) who stated in his deposition that on the husband asking the wife to serve food to him on his visit, the wife slapped the husband in his presence and thereafter he tried to intervene and console the parties. On the issue of desertion Umadulla Tiwari (P.W. 2) stated that in November, 1983 on the request of the father of the wife he had come to the matrimonial home of the parties and brought the wife finally along with her ornaments and luggage to Sagar.

4. The wife denied all the allegations by examining herself as D.W. 1 and stated that on very trivial excuses and irritation in day to day domestic duties, she was ill-treated and beaten by the husband and his parents. She reiterated her version that a few days before Dusheharah of 1984 the husband left her at her parental house and thereafter refused to admit her to the matrimonial home. She also examined in support of her case Lakhanlal Tiwari (D.W. 2), one of her relations, who stated that he had gone along with her father to the husband's house and on her complaining of ill-treatment to her, the parents of the husband made a demand of Rs. 10,000/- and one luna motor bike.

5. The father of the wife Ambika Prasad (D.W. 3) also entered the witness box to support the case of the wife and stated that his daughter i.e. the present appellant was since the age of five years was brought up and educated by her maternal uncle Ramawatar Tiwari who also got her married. The father also deposed that the wife from her matrimonial home had sent letters Ex. D. 1. and Ex D. 2 to her maternal uncle Ramawatar Tiwari alleging ill treatment by the members of the family of the husband to the wife. The father of the wife also supported her version that it was the husband who ill-treated her and had left her at their place at Katni during Dusheharah of the year 1984.

6. In the state of above pleadings and evidence the trial Court believed the entire version of the husband regarding the alleged act of cruelty and desertion on the part of the wife. The trial Court placed heavy reliance on the testimony of Umadutta Tiwari (P.W. 2) in support of the findings that in his presence the wife had slapped the husband and to his knowledge she deserted the matrimonial home with all her ornaments and belongings in November, 1983.

7. Learned counsel appearing for the appellant wife in this appeal, in his first submission criticised the approach of the trial Court to the facts on record. The learned counsel argued that the testimony of Umadutta Tiwari was not worthy of credence. Particularly the counsel for the wife submitted that the trial Court gave scant regard to the material piece of evidence in the shape of two letters Ex, D 1 and Ex. D. 2 sent by the wife by post to her maternal uncle Ramawatar Tiwari, which amply proved that it was the wife who was the sufferer of the ill-treatment of

the husband and his parents.

8. The husband was noticed in this appeal but neither he nor any counsel engaged by him has appeared. S.P.C. was also sent to him for hearing of this case and inspite of that none appeared.

9. Having considered the submissions of the learned counsel for the appellant, I have formed an opinion that this appeal deserves to be allowed and the decree of divorce granted by the Court below has to be set aside.

10. Before I discuss the evidence led by the parties in the case, a few legal positions settled in relations to petitions for divorce on the alleged ground of desertion and cruelty covered by Section 13(1)(ia) and (ib) of the Act may be stated. The legal conception of cruelty as a ground of divorce is not mere trivial irritation and quarrels between the spouses in day today married life. To furnish as a ground of divorce the cruelty should be of a degree which may amount to a matrimonial offence. It should generally be a conduct of one party to the other which causes sufferings in body or mind in such a way as to render cohabitation harmful or injurious having regard to the circumstances of each case and keeping always in view the character, conditions of the parties, their status, environment, social values as also customs and traditions governing them'. So far as the assault by one spouse on the other is concerned, a single act of violence, if it is of a very grievous and inexcusable nature can by itself satisfy the test of cruelty, but an isolated, act of assault committed at the spur of the moment may not satisfy the test. Occasional out-bursts of feelings or emotions, exchange of hot words and irritating idiosyncrasies are well described as part of the lottery in which every spouse engages on marrying and taking partner of the marriage for better or for worse, the question in all such cases of ill treatment is whether one party to the marriage has treated the other with cruelty according to the ordinary sense of that word rather than whether the party charged was himself/herself a cruel man or cruel woman. The Court should apply the common sense and the ordinary standard of human conduct. It is now settled that the test for establishment of cruelty is that the conduct complained of must be sufficiently 'grave and weighty' or 'grave and substantial' to warrant the description of being cruel. Merely showing

that the parties are unhappy because of unruly temperament of a spouse or matrimonial wranglings would fall considerably short of the conduct which can amount to cruel treatment. Nor would it be sufficient to show that the other spouse is moody, whimsical exacting, inconsiderate and irascible. The acts complained of, if of minor nature and continued for a short time due to circumstances of the moment and causing no real danger to life or health or future happiness of wife or husband cannot amount to cruelty. They are just wear and tear of married life. [See Mulla on Hindu Law-15th Edition pages 788 and 789.]

11. Applying the above test of cruelty as a ground of divorce, I have to examine whether the conduct of the wife in the present case is such as to deserve a decree to the husband on the ground of cruelty. There is a general statement made in the petition as also in the deposition of the husband that the wife was unable to cook well and whenever told about it, showed great temper. The trial Court accepted the husband's version as supported by the witness Umadutta Tiwari (P.W.2) that the wife had on the issue of cooking food once slapped the husband on his cheek. Firstly it does not appear to me convincing that the wife was so aggressive as to slap her husband in the presence of visitors. In cross-examination, Umadutta Tiwari (P.W. 2) exaggerated his version by stating that not one slap but two slaps were given by the wife. It is also not natural that the husband did not react at all on being assaulted by the wife and did not report the matter to her parents or to other relations on that day or thereafter. I am, therefore, not prepared to believe the husband and his witness Umadutta Tiwari (P.W. 2) that any such incident of slapping did take place. That apart, as I have stated above, it does not satisfy the test of cruelty to furnish a ground of divorce. The other allegations of ill-treatment and abusing the husband are so general and vague that they have not to be taken into consideration as supporting the case of the husband of cruel treatment to him by the husband.

12. The next question is whether the decree of the Court in favour of the husband on the ground of alleged desertion of the wife is sustainable. In granting the decree on the ground of desertion, the trial Court has accepted the version of the husband on his own testimony and the testimony of Umadutta Tiwari (P.W.2) that the wife left the matrimonial home in November, 1983 with all her ornaments and

belongings with her father. Since I have disbelieved Umadutta Tiwari (P W. 2) as exaggerating the act of slapping of the husband by the wife, I also do not find his testimony trustworthy on the issue of desertion. In my opinion, the trial Court should have given due weight to the testimony of the wife and her father as supported by the two letters Ex. D. 1 and Ex. D. 2, which were written by the wife to her maternal uncle Ramawatar Tiwari that the wife was under constant tension and ill-treatment due to the husband's behaviour towards her and that of his parents. In letters Ex. D. 1 and Ex.D.2 there is a mention of the fact that the wife was under constant harassment by the husband and the members of his family who were forcing her to agree for divorce. These letters lend credibility to her version that it was the husband who has in fact deserted the wife by leaving her during Dusheharah of 1984. For grant of a, decree of divorce on the ground of desertion, it is settled that there should be intention on the part of the deserted spouse to bring cohabitation permanently to an end which is called 'animus deserandi.' So far as the deserted spouse is concerned, there should be absence of consent and absence of conduct on his part giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. In the present case except the fact that the wife has lived away from the husband for more than the statutory period, there are no circumstances or facts on record to infer animus deserandi on the part of the wife. The decree of divorce, therefore, both on the ground of desertion and cruelty is liable to be set aside.

13. Consequently, the appeal succeeds and is hereby allowed. The impugned judgment and decree of divorce is hereby set aside with costs. Counsel's fee Rs. 200/-, if certified.