

Ramesh Kumar Vs. Kalpana

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Court : Madhya Pradesh

Decided On : Oct-16-1992

Reported in : I(1993)DMC13

Judge : G.C. Gupta, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 97

Appeal No. : F.A. No. 122 of 1991

Appellant : Ramesh Kumar

Respondent : Kalpana

Advocate for Def. : K.K. Pandey, Adv.

Advocate for Pet/Ap. : P.S. Das, Adv.

Disposition : Appeal dismissed

Judgement :

G.C. Gupta, J.

1.The appellant-husband feels aggrieved by the judgment and decree dated 30th April, 1991 passed by Shri V.K. Choudhary, II Additional District Judge, Chhindwara in Civil Suit No. 78-A/89 dismissing his application for divorce under

Section 13 of the Hindu Marriage Act and challenges legality and validity thereof in this first appeal filed under Section 28 of the Act.

2. That the parties are legally married husband and wife is not in dispute. They were married on 8-7-1987 and lived together upto 17-3-1989, when the respondent was sent to her parents by order of the S.D.M. passed under Section 97 Cr.P.C. The application was moved on the ground that the respondent had treated the appellant with cruelty and hence he was entitled to a decree for divorce. Instances of cruelty are mentioned in paras-2 and 3 of the application. In para-2 of the application, it is mentioned that the appellant came to stay at Chhindwara in July. 1988 and started living in a rented house at Lalbagh. While, he was on his training duty at the B.T.I., the respondent used to go out of the house, after locking the same and used to return late. She also used to refuse to go to appellant's parents' home at village Ikalbihri. In para-3 incident dated 2-2-1989 is mentioned and it is alleged that on that date also the respondent had locked the house and was absent. Since this was objected to by the appellant, the respondent used violence against him. In para-4 of the application, it is alleged that the respondent has not behaved well with the members of his family, without specifying any incident or the person with whom the respondent has not behaved well.

3. The respondent in her written-statement denied these allegations and submitted that she had never been away from the house in the night, as alleged. She also denied having used force against the appellant. On the contrary, she alleged that the appellant had used force against her, causing injuries on her left hand, as a result of which, she had to take treatment in the hospital. She has also explained as to how she was unlawfully detained in the appellant's house on 15-3-1989 and was beaten by the members of the family. That is how, proceedings under Section 97 Cr.P.C. had to be started, as a result of which, she was recovered from the house. She has also complained that she had lodged a report with the police and had suffered miscarriage as a result of the beating. Both the parties gave their own statements and adduced witnesses to support their aforesaid case.

4. The learned Additional District Judge, on examination of evidence of the witnesses, held that the cruelty, as understood in law, is not established. That is how the application was dismissed and the matter is before this Court in this appeal.

5. It is true that cruelty, in order to furnish a ground for divorce, has been given its wide meanings, but that does not mean that any stress of married life would amount to cruelty. Though acts or conduct of the parties amounting to cruelty cannot be classified, it certainly does not include normal wear and tear of marriage life. In *J.L. Nanda v. Smt. Veena Nanda*, AIR 1988 SC 407, the Supreme Court was of the opinion that incompatibility of temperaments of the parties resulting in petty quarrels and troubles would not be included within this definition. In the instant case, even if all the allegations of the appellant, as made in the application, are to be accepted, it would not, in the opinion of this Court, amount to cruelty.

6. The first allegation of the appellant is that the respondent used to lock the house in his absence and used to go away. This seems to have taken place at Chhindwara. Admittedly, the respondent's parents live at Chhindwara. There is no allegation that the respondent had any illicit relationship with any one and, therefore, she used to go away from the house. It is, therefore, reasonable to hold that the allegations relate to her going either to her parents or some other place like market, etc. Even if she returned late, causing little inconvenience to the appellant, the same would not amount to treating the appellant with cruelty. It will be natural for the respondent to go and meet her parents and other members of the family, when the appellant is not at home and she has nothing to do. The appellant cannot take any offence against this attitude or behaviour. The incident of violence dated 2-2-1983 may amount to an incidence of cruelty, though a single instance of the type would not be sufficient to justify dissolution of marriage. The evidence, however, is not of the type, on the basis of which this allegation could be said to have been properly proved. The statement of Hafeez (P.W. 2) would indicate that the appellant had first slapped the respondent and thereafter the respondent had used force. Possibility of use of force to save herself from further assault, in such a situation, cannot be ruled out. This would, therefore, not be sufficient to justify decree on the ground of cruelty.

7. A perusal of the entire material on record gives the impression that the appellant has felt offended by the approach of the respondent's parents to the S.D M. by making an application under Section-97. Cr.P.C. If the respondent was being really assaulted and illegally detained, there would be enough justification for the respondent's relations to initiate such proceedings. The respondent cannot be forced to stay in the appellant's house, even when she is treated with indignity and violence. In such a situation, the appellant should have done some introspection to bring about a situation where both of them could live happily. It appears that he has been harbouring a wrong notion that Courts are willing to dissolve marriages, even on the ground of normal stress of married life which impression is patently wrong.

8. The appeal is held to be devoid of substance and dismissed with costs. Counsel fee, Rs. 250-00,

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