

Ramkishore Vs. Chand

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Court : Madhya Pradesh

Decided On : Sep-01-1988

Reported in : I(1990)DMC208

Judge : P.C. Pathak, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1) and 28

Appeal No. : First Appeal No. 135 of 1987

Appellant : Ramkishore

Respondent : Chand

Advocate for Def. : A.S. Baghel, Adv.

Advocate for Pet/Ap. : N.C. Jain, Adv.

Disposition : Appeal dismissed

Judgement :

P.C. Pathak, J.

1. The husband has filed this appeal under Section 28 of the [Hindu Marriage Act, 1955](#) (hereinafter called 'the Act') challenging the dismissal of his petition under Section 13 for divorce on the basis of cruelty.

2. The parties were married in the year 1981 and were blessed with a male child. The appellant claimed divorce on the ground that the respondent treated him with cruelty detailed below :

(a) After the appellant used to go on duty, the respondent indulged in such omissions and commissions which gave rise to all sorts of complaints and criticisms resulting in loss of his reputation at the hands of the neighbours;

(b) the respondent would not open the door of the house on his return from duty despite repeated calls;

(c) the respondent used to run away from the house without intimation for about 2-3 days; and

(d) in October 1981, January 1982 and while in village Chhindi at his father's place, the respondent attempted to commit suicide by setting fire to herself but the fire always put out. The respondent used to threaten that she would implicate the appellant and his parents, on criminal charges.

3. The learned trial Court held all the grounds as not proved and dismissed the petition. Hence this appeal.

4. Learned counsel for the appellant vehemently argued that the attempts by the respondent to set fire to herself and commit suicide with intent to implicate the appellant and other members of his family amounts to cruelty as held in Smt. Savitri Balchandani v. Mulchand Balchandani (AIR 1987 Del. 52) and Indubai v. Koutik (1981 M.P. Weekly Notes 23). There cannot be any quarell to the proposition of law but the question for determination is whether the appellant has proved the various instances alleged in the petition.

5. The requisit pleas lack in material particulars. It is not stated whether attempts were by use of kerosene oil or otherwise. It is only in the evidence that the appellant came forward with the details. However I am not rejecting his claims for want of particulars. The appellant as AW 1 stated that in October, 1981 at noon, when he knocked the door of his house, the respondent did not open the door initially but latter on when she opened the door, she started shouting and weeping

falsely accusing him that she was beaten. On the same day in the evening, when he returned from the office, he found that the lamps were not lit. Upon enquiry, the respondent started crying and also poured kerosene upon herself and with the help of burning coal she set fire to herself. The appellant extinguished the same. Similar attempt was by her in January 1982. Kalicharan (PW 2) is the appellant's father. He did not state anything about the alleged attempt to commit suicide by setting fire to herself at Chhindi. He stated that the respondent threatened to commit suicide by consuming poison. Pannalal (PW 3) stated that he attended a Panchayat in which the appellant made a complaint that the respondent used to set fire to herself. On enquiry, the respondent replied that the allegation was false. However at a later stage, she admitted her mistake and begged to be excused. Ramprasad (PW 4) also stated about the respondent's admission of her attempts. Babulal (PW 5) stated that on 9th January 1982 the respondent set fire to herself from an earthen lamp which was put out by the appellant. In cross-examination he stated that the respondent set fire to 'Sari' from a kerosene lamp.

6. The respondent as DW 1 denied all the allegations and stated that she never of her own tried to set fire herself. According to her, it was the appellant who made attempts to burn her by pouring kerosene oil and igniting her clothes with a match-stick. She however managed to extinguish the same.

7. Learned counsel for the appellant laid great stress on her admission before the Panchayat which was presided over by Ramprasad. There is no good ground, to reject the testimony of Ramprasad and other Panchas. The argument cannot be accepted. Pannalal (PW 3) admitted that the respondent denied the allegation made against her as false and incorrect. Babulal's statement as to the story of fire is altogether different. Even though the respondent allegedly set fire thrice, it is not stated that she ever got burn injuries or that the appellant ever got burn injury which putting out the fire. The parties resided in Pathakheda where the appellant is serving as L D.C. If at all she intended to commit suicide, nothing prevented her from doing so when the appellant had gone to office and she was all alone in the house. The allegations seem to be pure concoction. The sequence in which the incidents are said to have taken place, do not inspire confidence. The mode of setting fire whether by pouring kerosene oil or without it, is also contradictory. The

alleged admission made by the respondent in the Panchayat was not pleaded in the petition. Agreeing with the trial Court, It must hold that the appellant failed to establish the charge of the attempt to commit suicide by setting fire.

8. The counsel for the appellant next argued that the respondent used to run away from the house and also made reckless and false accusation of his illicit connection with the women of the neighbourhood. The pleas as also the evidence on this count, is so vague that no finding can be recorded on that. It is nowhere stated as to on what occasion, the respondent accused the appellant of having illicit connection and with whom. The learned trial Court has given installed reasons for holding this ground too as not proved and I am in agreement with his conclusions.

9. In view of the foregoing discussions, the appeal fails and is accordingly dismissed. Parties to bear their own costs.

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