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Pushpa Rani Vs. Krishan Lal

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Court : Delhi

Decided On : Apr-09-1981

Reported in : AIR1982Delhi107; ILR1982Delhi851; 1982RLR268

Judge : M.L. Jain, J.

Acts : Hindu Marriage Act, 1955 - Sections 13

Appeal No. : First Appeal No. 225 of 1980

Appellant : Pushpa Rani

Respondent : Krishan Lal

Advocate for Pet/Ap. : M.L. Lonial and; V.B. Andley, Advs

Judgement :

M.L. Jain, J.

(1) The respondent Kishan Lal led a petition against his wife Pushpa Rani for dissolution of their marriage under section 13 of the Hindu Marriage Act The husband alleged that they were married on March 10, 1974 and were living in the house of, and along with the family of, Hans Raj Juneja and his wife Bindra Devi whom the husband treated as his parents. He further alleged that the wife used to pick up quarrels with him and threatened to involve him in some criminal case. On July 28, 1976 at about 10.30 a.m. while he was in the bath room, she tried to

commit suicide by pouring kerosene oil on herself and setting herself to fire in the kitchen. On hearing her shrisks, he rushed to her rescue. He and Smt. Bindra Devi removed her to hospital, where she was looked after by June as. Moved by her entreaties, he agreed not to report the ture facts to the police, lor the sake of matrimonial happiness. But she resumed threatening him with dire consequences, and declared that she would not live with him. He was. thereforee, forced to leave her at the house of her parents on September 4, 1976. Since then she did not return to her matrimonial home.

(2) On July 4. 1977 she filed an application under section 125, Criminal Procedure Code . for maintenance alleging inter alias that the husband all the time danced attendance en Bindra Devi and bought presents for her and carried her to places of entertainment. In his reply of October 18, 1977 the husband charged that her brother used to visit her secretly and used to be closed with her for long intervals giving rise to the suspicion that she was having some extra-marital relations with him.

(3) The husband made the present petition on January 10, 1979 seeking divorce on the ground both of cruelty and desertion.

(4) The wife in her reply to the divorce petition, denied that she attempted suicide. Rather, the fire was accidental. She admitted that she was taken into the hospital by petitioner Krishan Lal. But she denied the claim of the husband that he was a sort of a son to the June as or that he was adopted or educated in their house. As a matter of fact, after the husband's father died. he left the family home and came to live with the June as. She repeated the allegation that the husband all the time danced attendance on Bindra Devi, brought clothes and presents for her and took her out to cinema shows and various other places o entertainment. He not only ignored the wife, but rather went out of way to insult, humiliate and even assault her on the slightest pretext, specially on the ground that she did not bring any dowry. She alleged that earlier also, once he left her at her parents house against her consent and when she returned on August 14, 1975 he made a condition that her parents will not visit her, and on July 27, 1976 when her mother happened to visit her, the husband got annoyed and started abusing her in the presence of the

mother and beat her. She denied desertion and cruelty.

(5) The learned trial Judge, after recording evidence gave no categorical (finding whether any attempt at suicide was proved or not and whether the fire was accidental. But he commented that the wife was ungrateful and denied the help which the husband and june as had extended to her at the lime of and after the occurrence. Her denial was an act of cruelty. She even imputed that there was an illicit relationship between him and Bindra Devi. She had only just hinted at it in her written statement but when the husband appeared in the witness box and deposed that he treated H. R. Juneja and Bindra Devi as his father and mother, the wife directly put him a suggestion that there was an illicit relationship between Bindra Devi and him. The husband denied it. Bindra Devi deposed that they were like parents to him. She had brought up the husband as her son; she was 47 years of age, her own eldest daughter was 29 years and her sons were aged 26 and 23 years respectively. She was questioned whether she had any illicit relationship with Krishan Lal. Bindra Devi fault hurt and took exception to this defamatory and scandalous question. She. even. wept. When the wife appeared as a witness, she improved her allegation and said that she herself had seen the husband closeted with Bindra Devi and. sleeping with Bindra Devi in a compromising position. This imputation was not a ground pleaded by the husband in the petition and it simply could not be thought of at that time. The trial judge held that the allegations could be taken note of even if not taken in the pleadings. He relied upon Parihar v. Parihar, , (delivered by me). The wife was not able to prove that the husband had illicit relations with Bindra Devi and that this was a false allegation made by her against his fidelity and against a person whom the husband regards as his mother and who was about 20 years older. The learned Judge was of the view that the facts elicited in cross-examination have to be taken into account in granting the relief. It was contended before him that in see. 125, Criminal Procedure Code . proceedings, it was the husband who had leveled a false charge of unchastity and in cost against the wife that she was carrying on with her own brother and it was by way of reaction that the wife exposed the husband. But the learned beige noticed that in his petition the husband did not talk of it and in his replication he denied that he ever made any charge against the wife, and maintained that he had no complaint as' far as the character of the wife was concerned. In his

examination-in-chief he did not repeat any such allegation and hi cross-examination when the question was put to him in this regard, he explained that he had not made any allegation of unchastity against the wife and by extra-marital relations what he meant was that she was encouraged by her brother in her estrangement with the husband. The learned trial Judge was, thereforee, of the view that the allegation having been withdrawn. it cannot be said that the husband had himself committed any cruelty. Rather, the charge of cruelty is established against the wife.

(6) As regards desertion, it was admitted that the wife was living away from the husband For more than two years. The learned Judge held that she did so without reasonable excuse and she was guilty of desertion as well.

(7) He passed a decree of dissolution on May 24, 1980. Hence, this appeal.

(8) As far as the allegation of attempted suicide and thereby intending to implicate the husband in a criminal case is concern- ed, I find that the allegation is not well founded. In the report that was made to the police of the occurrence, the wife had stated that she was working in the kitchen, her shin. accidentally caught fire and her husband ran to her rescue and extinguished. the fire. If it were a case of attempted suicide, them certainly, the husband, in the background of the strained relations between the two would have taken advantage of the occurrence but instead he told the police that the fire was only accidental. Even otherwise, there is no evidence to exclude the plea that it was in fact so. Respecting the second' ground of cruclty. there is no doubt that the wife his imputed illicit relationship between. the husband and Bindra Devi. But it is contended that since this count of cruelty was not taken in the picadinas either initially or by way of amendment, it cannot be takeninto consideration. The learned counsel for the appellant cited Mewa Singh v. Prem Kumar 1979 H.L.R. 565. where the were had made a false imputation of adultery in the petition im divorce, but it was held that it was only a casual reference and. had. no relevance to the petition. The learned counsel also distinguished Parihar v. Parihar (supra) by pointing cut that there was an averment of subsequent cruelty in the subsequent pleadings. But the allegation in the cross-examination cannot take the place of pleading. He relies upon Allam Gangadhar

Rao v. Gottapalli Gangarao, : AIR 1968 AP291 , according to which no relief can be granted on facts and documents' not disclosed in the plaint. One cannot be allowed to succeed on the cause which he had failed to set up. In Rameshwar and others v. Jot Ram and others, : [1976]1SCR847 , it was bold that rights of the party are determined by the facts as they exist in the date the action is initiated. The impact of subsequent happenings is that the relief may be moulded, varied or reshaped in the light of updated fact. but rights which have already vested in a party cannot be nullified or negated by subsequent, events save when there is a change in the law. When a cause, of action, is deficient but later events have made up the deficiency, court may permit amendment to make up the deficiency.

(9) I have considered these cases but they only state the general rule while it is equally well settled that there are exception to this rule and it is open to a court in exceptional cases to take into consideration events which may have taken place subsequent to the filing of the suit and grant relief on their basis where the relief as claimed originally in the suit may have become inappropriate by reason of altered circumstances and where this may appear to be necessary in order to shorten unnecessary litigation or to subserve the substantial interest of justice : Ram Dayal v. Maji Devdiji Air 1936 Raj 12, which I followed in Parihar v. Parihar (supra). Exceptions must be applied in matrimonial cases in order to subserve the interest of justice and not to compel the parties to begin another round of litigation on the basis of subsequent events and allow the precious period of their life to go waste. It must be so dene, depending, of course, on the nature of the case, because it is not only the parties which are concerned in the case but the court has a certain amount of duty and discretion to exercise. The relief entirely depends upon its satisfaction. That is why in Chand Narain v. Smt. Saroj, 1975 H.L.R. 494 a fact elicited in cross-examination though not pleaded, was considered as to constitute cruelty. In Kundan Lal Verma v. Kanta Rani 1979 H.L.R. 352 the husband in his suit for nullity and desertion pleaded an unjustified impotence against the wife, the wife i'n her written statement did not say that the false charge of impotence amounted to cruelty and further did not plead that a report of theft was lodged against her in the police but all this was proved on record. It was held that the wife was justified in her withdrawal from the society of her husband. I am, thereforee, of the view that the learned trial Judge was justified in holding that he could take into

consideration the allegation of adultery made by the wife at the time of cross-examination and in her deposition. It could not be in the knowledge of the petitioner at the time he filed his petition. But the question still remains whether the allegation amounts to treating with cruelty. Cruelty is willful and unjustified conduct of such a character as to cause danger to lite, limb or health bodily or mental , as to give rise to reasonable apprehension of such a danger. The question in all such cases is whether the acts or conduct of the party charged, were cruel according to the ordinary sense of that word. If has no esoteric or artificial meaning. Upon the story being fully told, if the man of ordinary prudence would describe the conduct of the cringe spouse as cruel, that should be held as cruelty, vide Parihar v. Parihar (supra). There is no proof of the wife's allegation except that she had deposed. Her witness Prakash Walk, RW3, did not support her. A false imputation of adultery is certainly a mode of treating with cruelty. But in order to reach a positive finding, one must have regard to the circumstances

(10) In Smt. Gurcharan Kaur v. Sardar Swaran Singh, 1978 H.L.R. 175, a false allegation of adultery and attempt at poisoning made by the wife was held not to amount to cruelty so as to entitle the husband to divorce because she was provoked lo hit back by the allegation in the plaint made by the husband that she had pre-marital pregnancy. In. Jarnail Kaur v. Sarwaii Singh, 1979 H.L.R. 415, the wife in her written statement alleged that the husband had illicit relationship with his brother's were. Husband did not file a replication controvert allegation. In examination-in-chief he uttered one sentence only that he had no illicit relations with his brother's wife. He did not say that the allegation had shocked or agonized him mentally. Divorce was refused. In Madanlal Sharma v. Smt. Santosh Sharma, 1980 H.L.R. 441, the court pointed out that Parliament nullified the effect of the decision of the Supreme Court in Dastane v. Dastane, : [1975]3SCR967 . It must now be held that the concept of cruelty under section 13(1) of the Hindu Marriage Act, 19SS must involvi' the same meaning as it is understood under the English Law. It involves a requirement higher than reasonable apprehension mentioned in section 10(l)(b) before its amendment. The wife in her written statement alleged adultery with the maid servant and repeated it in her deposition but no evidence was led to prove that it affected the health mental or physical of the appellant. Divorce was refused.

(11) In our case, when the direct allegation was made, the husband simply denied it and did not react to say that it had caused him mental anguish. It will be noticed that earlier the husband had. accused her of a worse type of adultery and if she retaliated by an equally false charge, she should be excused because after all she is a semi-literate girl of a poor man selling vegetables on the pavement. She is not wanted in her parent's house who are trying to persuade her to live in the matrim.onial home in spite of the hares attitude of the husband. Conditions in the parental house could be no better and she appeals, to be keen to make her home. She has no animus to desert her husband even though she was justified to do so when he charged her with incest and he himself left her at the door of her parents.

(12) Thus, neither desertion nor cruelty was established and the husband, was not entitled to a decree of dissolution.

(13) I accept the appeal, quash the order under appeal and dismiss the husband's petition. He shall apart from his, bear her costs throughout.

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