

Inder Mohan Tiwari Vs. Manju Tiwari

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Court : Delhi

Decided On : Mar-29-1985

Reported in : AIR1986Delhi155; 28(1985)DLT58; 1985(9)DRJ90; 1985RLR513

Judge : D.R. Khanna, J.

Acts : [Special Marriage Act, 1954](#) - Sections 27

Appeal No. : First Appeal No. 267 of 1983

Appellant : Inder Mohan Tiwari

Respondent : Manju Tiwari

Advocate for Pet/Ap. : J.D. Jain and; C.L. Behl, Advs

Judgement :

D.R. Khanna, J.

(1) The parties were married on 9-2-1981 under the provisions of the Special Marriage Act. At that time they were both employed in a private concern, known as A.M.D. Corporation. Connaught Circus, New Delhi. Manju Tiwari, the wife, is four years older to Inder Mohan Tiwari, the husband.

(2) According to Inder Mohan Tiwari, as per averments made in the petition for divorce which he later brought under Section 27 of the Special Marriage Act on 30-

3-1983, he fell victim to tactics and sexual invitations on the part of Manju Tiwari and was hooked into marital ties with her. Her irresistible influence was, according to him, of such nature which rendered him in a position as to not understand her true intentions. This marriage he entered into without the consent and against the wishes of his parents.

(3) After the marriage the parties resided at C-50, East of Kailash, New Delhi till March, 1982. During this period the petitioner alleges that he was subjected to a great deal of mental torture and extravagant demands, humiliations and insults. He was also said to have been castigated a number of times in presence of his friends. The petitioner claims that he was expecting that after the marriage they would shift to his parents house in Green Park Extension, New Delhi, but the respondent declined.

(4) On 26-6-1982 a daughter named Priyanka was born to the respondent out of the wedlock in the All India Institute of Medical Sciences. There one A.K. Bahri whom respondent described as her uncle, behaved towards him in highly humiliating and insulting manner, and the respondent would also join him. From the hospital, the petitioner contends that he was shocked to find that the respondent decided to go with the child to Bahri's residence in C-89, East of Kailash, New Delhi, and refused to join the petitioner. On 30-6-1982 when the petitioner went to the place where the respondent and A.K. Bahri were residing in order to see the child, the doors were closed against him and he was hit by A.K. Bahri and the police was called and a case under Section 107/151 Cr.P.C. lodged against him. He was detained at the police station till 1.00 P.M. next day. That case was ultimately dismissed by the court on 22-10-1982 on the failure of A.K. Bahri and respondent to appear as witnesses against him.

(5) It has next been alleged that in July, 1982, the respondent left for Chamba (Himachal Pradesh), but later joined him at C-78, East of Kailash, New Delhi, where they lived from 15-9-1982 to 30-9-1982. Her cruel behavior, he alleges, continued. From there the respondent again joined A.K. Bahri at his house. As such the petitioner states that he joined his parents with a heavy heart in November, 1982. During that course he contends that he prevailed upon the

respondent to join him at his parents' house where she came and stayed for a fortnight and then again started insulting and humiliating the petitioner and his parents. Finally she left on 21-12-1982 when the petitioner could not satisfy her demand of Rs. 500.00.

(6) The petition for divorce was moved on 20-5-1983 in the trial court.

(7) The respondent initially made appearance during the trial and moved a petition for grant of interim maintenance under Section 36 of the Special Marriage Act. However, she failed to make appearance in Court when required to do so by the Additional District Judge, and was awarded some costs. She subsequently absented during the course of proceedings, and, therefore, ex-parte evidence was recorded.

(8) During the course of this ex-parte evidence, the petitioner appeared as witness and deposed in support of the averments made in the petition. According to him, he was subjected to a great deal of mental torture because the respondent never agreed to live within his means, and her demands for clothes and gold etc. continued. She also used to loose temper and insult him without any rhyme or reason, and did so even in presence of his friends. He next deposed how after the birth of the child the respondent went with A.K. Bahri against his wishes and then was not allowed to see his child. That A.K. Bahri also hit him when he had gone to see his child at his house, and called the police and got a case under section 107/151 Cr.P.C. registered which was later dismissed vide copy Ex.P. 2. Later the respondent joined him for about a fortnight in September, 1982, but again went and joined A.K. Bahri at his house. In the middle of November, 1982 when the petitioner had shifted to his parents' house, she joined him there for a fortnight but she continued treating him and his parents in a disgraceful manner and picked up quarrels without any cause. On 21-12-1982 she demanded Rs. 500.00 and when the petitioner could not comply at that very moment, she went in a fit of rage and starting abusing him He then had to leave the house without taking his break-fast. On the same day, the respondent according to him, left the house after taking away the clothes and jewellery. Ever since then she is said to be living with her brother at Chamba along with the daughter, and has not joined him in spite of his

best efforts. The petitioner has also deposed that after 8/10 days of her leaving his house she lodged another report against him with police station Hauz Khas and he was summoned there.

(9) The trial court after considering this evidence, rejected the petition holding that no case for divorce was made out. The petition was held to be vague and based on false allegations. Feeling aggrieved, Inder Mohan Tiwari has now moved the present appeal before this Court.

(10) During the course of hearing of this appeal, the propriety of ascertaining whether reconciliation could be effected, was considered. The respondent at present is said to be employed in District Chamba, and is drawing more than Rs. 1000.00 per month. A number of adjournments were taken from her side by her counsel to produce her in Court, but on all the occasions she failed to make appearance. This Court, therefore, made a note on 27-2-1985 that the respondent was avoiding to make appearance, and had adopted a sort of recalcitrant attitude. Her non-appearance in the proceedings was considered to be not in good faith.

(11) After hearing the parties and considering the evidence led before the trial court and the circumstances of the case, I am unable to sustain the dismissal by the Additional District Judge of the petitioner's application for divorce. The respondent had not cared to contest the proceedings in that court, and had chosen to remain ex-parte. There was thus the unrebutted statement of the petitioner who mentioned how he was subjected to two police reports, and the respondent chose to go to the house of A K.. Bahri against his wishes after the birth of the child. The petitioner had chosen to marry the respondent although she was elder to him in age. This was besides against the wishes of his parents. To an extent he was said to have been infatuated by the respondent who happened to be employed in the same office where he was. The petitioner has further deposed how he was insulted in the presence of others and once A.K.. Bahri hit him also. Ex.C-2 which is the copy of the order of the criminal court, shows that in the proceedings under Section 107/151 Cr.P.C. the respondent was as well a witness against the petitioner along with A.K. Bahri, but both of them failed to make appearance to

give evidence. Constantly insulting the other spouse and humiliating him in presence of others does amount to cruelty. Requiring the other spouse to live beyond his' means unmindful of the financial strains it may result, and not desisting from extravagances though requested by the other spouse, can as well amount to cruelty in certain circumstances. Matrimonial life is for homogeneity and companionship. In the course of the same fortunes and limitations of each other have to be shared. To induce the other spouse to live beyond means and invite indebtedness can hardly be considered as conducive to congenial married life. Persistency in this regard can be termed as lacking feelings for the welfare, happiness and security of the other spouse. Callous attitude in this behalf can amount to cruelty.

(12) From the side of the respondent it has been urged that even in an ex-parte case, the petitioner must establish his case, and that if the evidence brought does not establish cruelty the petition should be rejected. It has also been contended that in case the two spouses start living together after acts of cruelty, they should be treated to have been condoned. In support reliance has been placed upon A.B. Manual v. Mrs. Libyan Margaret Manual and another, : AIR1970 Mad178 ; Smt. Bijoli Choudhury v. Sukomal Choudhury, : AIR1979 Cal87 ; Sm. Sulekha Bairagi v. Prof. Kamal Kanta Bairagi and another, : AIR1980 Cal370 ; Dr. Keshav Rao Krishna Ji Londhe v. Mrs. Nisha Londhe, : AIR1984 Bom413 ; and Krishna Rani v. Chuni Lal Gulati, 1981 H.L.R. 16

(13) There is no gain-saying that an ex-parte case need not essentially succeed. It may fail on its inherent infirmity. However, the facts and circumstances brought out above show that the respondent did adopt an attitude of disregard to his feelings and self-respect, and he was insulted before others as well. He was also twice reported against at the police station. The respondent has showed complete disregard to the present judicial proceedings and though allowed opportunities to make appearance, has ignored them. The course of conduct of the petitioner shows that when he took her to his parents' house, it was not in the nature of condensation of ill treatment extended by the respondent towards him, but as a last endeavor to make a success of the married life and enable the respondent to see reason. This he failed to do. No condensation can, therefore, be essentially

inferred.

(14) It is unfortunate that in these proceedings and before the trial court, the respondent failed to make appearance and put forth her case. What has kept her back is not discernable. Of course, her counsel did say that she was not feeling secured in coming to Delhi. He was informed that appropriate arrangement for her security could be directed. She has still chosen to remain absent. The averments in the petition as well as the deposition in the court have, of course, been generalised and no specific instance has been clearly brought out. At the same time even in the absence of any particular serious incident causing the break down of matrimonial life, a continuous insolent, inclusive and generative treatment to the other spouse stretching over substantive span of matrimonial life can result in cruelty. I am in the circumstances not inclined to reject the unrebutted testimony of the petitioner specially when the respondent for reasons best known to her, has failed to contest this petition.

(15) What has lastly to be considered is the relief which may be granted in this petition to the petitioner. The parties were married on 9-2-1981. That was not long back. Thereafter they lived together intermittently and on one occasion the respondent had even joined the petitioner at his parents' house. She left by the end of December, 1982, and the present petition was brought within about six months in May, 1983. The petitioner has stated that he made efforts thereafter to bring back the respondent but without result. It cannot, therefore, be said that the marriage has inextricably broken down which should justify the grant of divorce straightaway under Section 27 of the Special Marriage Act. Under Section 27-A in any proceedings under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the ground mentioned in clause (h) of sub-section (1) of Section 27, the Court may, if it considers it just to do having regard to the circumstances of the case, pass instead a decree for judicial separation. The divorce in present case is not being sought under clause (h) of Section 27(1). It is under clause (d) In the circumstances, keeping in view the totality of circumstances, I am inclined to the view that this is a fit case in which a decree for judicial separation is passed instead of the decree for divorce. That would enable the parties to join together in the matrimonial life if they

so choose.

(16) The result, therefore, is that while allowing this appeal partly, I grant a decree for judicial separation in favor of Inder Mohan Tiwari and against Manju Tiwari.

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