

Mukesh Kumar Vs. Kamini Gupta

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Court : Delhi

Decided On : Mar-07-1984

Reported in : AIR1984Delhi368; 1981RLR55

Judge : N.N. Goswamy, J.

Acts : Hindu Marriage Act - Sections 13

Appeal No. : Matrimonial Case Appeal No. 2 of 1980

Appellant : Mukesh Kumar

Respondent : Kamini Gupta

Advocate for Pet/Ap. : G.L. Rawal,; Sunil Agrawal and; R.K. Sharma, Advs

Judgement :

N.N. Goswamy, J.

(1) [PARTIES were married on 6.6.71. They have 4 daughters, born in 1972, 1975 & twins in 1976. They frequently quarrelled and the petitioner alleging that respondent had often been rude and mis-behaving with him and his parents sued for divorce on the ground of cruelty. His plea was that Respondent. falsely accused him of being a womaniser and drunkard. Wife denied allegation of cruelty. About levelling charges of being a womaniser and drunkard, she tried to justify saying that the same was made bonafide.] After giving above in detail, judgment

proceeds :

(2) The allegations of crudities at Item Nos. I to Xv, Xvii, xviii and Xix above need not detain me long, because in the petition as also in the statement on oath made by the petitioner as Public Witness . 1 and his father as Public Witness . 2 various other persons have been named in whose presence these cruelties were allegedly committed. All those persons were cited as witnesses, but for reasons best known to the petitioner, they were not produced and the evidence is confined to these two Witnesses only. Most of allegations relate to ill-treatment of the respondent with the mother of the petitioner and in presence of his sister. P.W. 2 that is, the father of the petitioner has in terms admitted that he was never abused by the respondent and she used to abuse and ill-treat the mother of the petitioner. Neither the mother of the petitioner nor his sister, who were admittedly available, have been produced to prove the allegations. In the absence of the same, it is not possible for me to rely on the evidence of the petitioner and his father.

(3) The allegations at Item No. Xvi, which relate to the character assassination of the petitioner by the respondent are rather serious and arguments were confined to these allegations.

(4) The learned counsel for petitioner cited various cases at the bar for the proposition that allegations about the character of the petitioner leveled by the respondent amount to mental cruelty. As against that counsel for respondent cited cases to the effect that if allegations leveled are either correct or bonafide believed to be true by the wife, same do not amount to cruelty. Both these propositions are correct and it is unnecessary to refer to those cases. The law is well settled that an unreasonable allegation of adultery against a spouse by the other spouse amounts to cruelty. However, if it can be shown that the spouse reasonably believes that the other spouse is committing adultery, it may offer him or her a good defense. The burden of proving that the allegations are bona fide or reasonable will necessarily be on the spouse making such allegations.

(5) The petitioner in his petition has cited so many incidents wherein, he was accused of being a womaniser and a drunkard. In particular, he has mentioned the meetings of 3rd July, 1978 and 9th July, 1978 wherein he was accused of being a

Womaniser by the respondent. In his statement made on oath also, he has deposed that he was being accused of being womaniser and a drunkard at various occasions and in particular, he has mentioned the two meetings. He was put to a very lengthy cross-examination running into over 60 pages, but not even a suggestion was put to him that the respondent never accused him of being a womaniser or a drunkard. On the other hand, specific questions were put in the cross-examination to the effect that he used to come home while drunk and in the absence of his parents, he used to bring girls of ill-repute despite the respondent's objections and, in particular, a suggestion was put that he had brought the girl named, Rupa to the house on 3.2.74. In the cross-examination, the respondent has put all possible questions to justify her belief that the petitioner was a womaniser and drunkard. She has gone to the extent of suggesting that he used to even beat his parents besides beating her. Normally, I would have accepted the contention of the learned counsel for the respondent that paragraphs 55 and 59 of the written statement could not be taken to be admissions and acted upon as such, but considering those admissions along with the material on record, which I have already mentioned above, I do not find any escape from the conclusion that the respondent had admitted having accused the petitioner of being a womaniser and a drunkard. She has however tried to justify by putting various questions to the petitioner in cross-examination and in her own statement. In her own statement also she has categorically deposed that she discovered soon after her marriage with the petitioner that the petitioner was going about with other women and was a drunkard. In particular, she narrated the incident of 3.2.1974 and stated that in her presence, the petitioner brought one girl, named Rupa, to the house. According to her, the said Rupa was a cabaret dancer. She further stated that in her presence, the petitioner had liquor with Rupa and he wanted to indulge in sex with her, which the respondent could not see and left the room. In cross-examination, she admitted that she had accused the petitioner of being a womaniser at various occasions. She however stated that the accusations leveled by her were correct. She also stated that she had seen the petitioner with another girl, named Mamta and she had also heard that the petitioner was carrying on with a third girl, namely, Alka. She went to the extent of saying that the petitioner had re-married with Alka and after making her pregnant, he had left her. According to

her, the father of Alka had promised to support her and appear as a Witness to depose to the marriage of the petitioner with Alka. She further stated that she had discovered that the petitioner was indulging with other women even prior to his marriage. While dealing with the meetings of 3rd July, 1978 and 8th July, 1978, she did not say that she did not accuse the petitioner of being a womaniser. It is true that the respondent had also said that Alka was one of the employees of the petitioner in his establishment and the petitioner was called upon to produce the register of employees which he did not produce, but from this fact alone, it cannot be presumed that the petitioner was carrying on with said Alka. Besides this there is nothing on record to show that the respondent bona fide believed that the allegations against the petitioner as leveled by her had any basis or that she was justified in levelling such allegations. She was also given an opportunity to add to her list of witnesses so as to produce Alka's father, but she was, unable to serve any such person. The allegations, in my opinion, are reckless and have no basis. Admittedly, the petitioner was being accused of being a womaniser on many occasions, which would necessarily cause mental injury to the petitioner and it is difficult for any reasonable person to live with a spouse, who repeatedly keeps on taunting the other spouse and levelling such unfounded allegations as have been leveled by the respondent. The contention of the learned counsel for respondent was that the allegations which have been admitted by the respondent were leveled much prior to 1978 and the parties having lived together after that period in Ashok Vihar's house, it should be presumed that the same had been condoned. The petitioner has no doubt admitted that the parties were residing together at Ashok Vihar's house after that incident also and were having sexual intercourse, but this by itself does not mean that the petitioner had condoned the cruelties committed by the respondent. The petitioner has further admitted that till he left the respondent on 19.6.1978, he kept on loving the respondent. This statement by itself may amount to condensation, but if subsequent acts are taken into consideration, i.e., the allegations leveled in the two meetings referred to above, the same are revived. The two meetings were admittedly subsequent to the parties having lived together. In those two meetings, as I have already said, the respondent leveled charges of the petitioner being a Womaniser and drunkard in presence of his parents and other respectable persons who were present in the

meetings. I have no reason to disbelieve that the respondent has rightly admitted in her w/s that she did accuse the petitioner of being a womaniser and drunkard. She has failed to prove that the said allegations were bona fide or she reasonably believed them to be true.

(6) The incident of Rupa seems to be only imaginary. Admittedly, the building where the respondent was residing with the petitioner and his parents has more than 20 flats. Most of the flats were occupied by the Judicial Officers and Colleagues of the Petitioner's father. The families residing were well known to each other. In particular the Judicial Officer who was residing in the opposite flat is a near relation of the parties. In this situation, it is unlikely that the petitioner would bring a girl of the type suggested to The flat. Moreover, the respondent herself is not so simple and is rather of aggressive nature and I cannot possibly believe that she would keep quiet and let the petitioner stay with another girl in the same house in the night. There is also no evidence to prove that the petitioner's father was on leave and the family was away to Simla on the day the incident allegedly took place. The story seems to have been invented by the respondent in order to malign the petitioner.

(7) The Respondent also sought amendment of the written statement to incorporate a plea to the effect that during the pendency of the petition, the petitioner had re-married with one Alka Sayal. An additional issue was framed and opportunity was afforded to the respondent to prove the allegation. However, besides her bald statement, she failed to lead any further evidence, though she had stated that the father of said Alka Sayal would be produced as a witness. Finally, this allegation was not pressed for want of evidence.

(8) In the circumstances, the accusations normally amount to cruelty and the petitioner is entitled to a decree for dissolution of marriage u/s 13 of the Hindu Marriage Act. The marriage between the parties, in any case, has broken down irretrievably. Considering the allegations leveled by the parties against each other, it has become practically impossible for the parties to live together.

(9) For the reasons recorded above, petition is allowed and the marriage between the parties is dissolved by a decree of divorce in favor of the petitioner and against

the respondent. In the circumstances, there will be no order as to cost.

(10) The respondent has also filed an application for custody of the four minor daughters. That application was considered by me and by order dated December 20, 1982, I had noticed that the respondent herself was living in a Women's Hostel and in these circumstances, it was not possible for her to maintain the daughters. During the course of arguments, the respondent suggested that the children could remain with her parents who were willing to keep them. The children are admittedly school-going children and are studying in good schools. They are being looked after by their grand parents who are in a position to afford the expenses for education and maintenance of the children. The children are also having the company of their father. At this stage to take out the children from the custody of the petitioner would be to deprive them of the company of their father as also the mother, because, admittedly, the mother is residing in the hostel and it is not proper that the children should be kept in the hostel where the respondent is residing. It will be open to the respondent to move a proper application for custody of the children when and if she decides to reside in any house where it is possible for her to keep the children with her and she can afford the expenses to maintain the children. For the present the custody of the minor children cannot be given to the respondent because that would be against the interest of the minor children.

(11) During the pendency of the proceedings, the respondent had filed an application under Section 24 of the Hindu Marriage Act for the grant of maintenance pendente lite and litigation expenses. The learned Additional District Judge, who was seized of the matter awarded Rs. 100.00 per month as maintenance pendente lite and Rs 300.00 towards litigation expenses. After the case was transferred to this court the respondent filed a fresh application under Section 24 of the Act. After considering the said application, I enhanced the maintenance from Rs. 100.00 to Rs. 200.00 per month and litigation expenses from Rs. 300.00 to Rs. 2000.00. Even after that order, the Supreme Court gave liberty to the respondent to file a fresh application u/s 24 and accordingly, a fresh application was filed. No fresh material was brought in the said application except the averment that the petitioner was continuing with his business and had wrongly made a statement in this Court that he had closed down his business. The

averment, prima facie, seems to be correct, because in order to provide whether the petitioner had re-married, the respondent had filed an application for the appointment of a local commissioner. The local commissioner went to the business premises where the petitioner was admittedly carrying on the business originally. The said business premises continue in a new name, and the new name is associated with the name of the eldest daughter of the parties. The business happens to be the same, the premises are also the same and the local commissioner was unable to get the accounts books from the person, who allegedly stated that he was carrying on the business and petitioner had nothing to do. From the facts, it appears that the petitioner is in fact carrying on the same business, but under a different name and in collusion with another person. It was stated that the business was not owned by him. However, all these facts could require investigation by evidence and cannot be decided in the absence of the same. Liberty is given to the respondent to file an application in this Court u/s 25 of the Hindu Marriage Act for permanent alimony. Since the main petition stands disposed of, it is not necessary to pass any further orders in the application u/s 24 of the Act.