

Bhim Sen Sharma Vs. Krishna Devi

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Court : Delhi

Decided On : Feb-17-1983

Reported in : 23(1983)DLT461

Judge : N.N. Goswami, J.

Acts : Hindu Marriage Act - Sections 13(1)

Appeal No. : F.A.O. No. 326 of 1981

Appellant : Bhim Sen Sharma

Respondent : Krishna Devi

Advocate for Def. : Santosh Jain, Adv.

Advocate for Pet/Ap. : C.L. Joseph, Adv

Disposition : Appeal dismissed

Judgement :

N.N. Goswamy, J.

1. This appeal by the husband is directed against the judgment dated November 4, 1981 passed by the learned Addl. District Judge, Delhi whereby his petition under Section 13(1)(ia) of the Hindu Marriage Act, was dismissed.

2. The appellant filed a petition for dissolution of marriage by a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act. It is alleged in the petition that the marriage between the parties was solemnised in June 1962 at village Nagta, Tehsil Palampur, District Kangra according to Hindu rites and ceremonies. After the marriage the parties lived together in District Kangra and thereafter shifted to Delhi. A male child was born out of the wedlock in the year 1967 in District Kangra. The said child was deformed and of unsound mind who later expired in the year 1972 at New Delhi. It is further alleged that since the inception of marriage between the parties, the respondent was of quarrelsome nature and continued to quarrel with the appellant. Even on the first night when the matrimonial obligation was supposed to be performed, the appellant could not perform the act of cohabitation although the respondent was 17 years of age at that time. This act of the respondent created mental agony to the appellant. The respondent also warned the appellant not to have sexual relation with the respondent for at least one year following the day of marriage. The appellant, for the first time, cohabited with the respondent at Delhi in 1965 after a long period of their marital life. The respondent lived with the appellant for six months and conceived during that period. The child was born in November 1967 and the respondent remained at her parents house for about one year. During that period also the attitude and behavior of the respondent towards the appellant, his parents, brothers and sisters was cruel. The appellant, however, tolerated the misbehavior of the respondent in order to safeguard the status and reputation of the family. After the birth of the child, the respondent completely neglected the appellant and brought an end to the matrimonial relations and obligations with the appellant. Though the respondent lived with the appellant for about a year at Delhi after the death of the child her treatment towards the appellant was insulting and taunting. Thereafter the parties lived together at Delhi from November 1978 to May, 1980. During this period, the behavior of the respondent was very cruel and inhuman towards the appellant. She had developed the habit of abusing and cursing the appellant. Not only this, the respondent used to make remarks against the character of the appellant. The respondent declared that the appellant had illicit relations with his elder sister in spite of the fact that the appellant respected and regarded his elder sister as his mother. The respondent also went to the extent of charging the

appellant having illicit relations with the wife of the appellant's younger brother. It is further alleged that whenever the appellant took out the respondent for shopping etc. she used to insult him and misbehaved in the presence of other persons. It is alleged that the misbehavior of the respondent had reached such a stage when it had become impossible for the appellant to live with her due to tension created in his mind.

3. Notice of the petition was issued to the respondent-wife. She was duly served but did not put in appearance. However, from the record, I find that she had addressed a memorandum to the Court wherein she had denied the allegations contained in the petition and had leveled counter charges against the appellant. The said memorandum could not be taken into consideration and as such the respondent was proceeded ex parte.

4. In support of his case, the appellant examined himself as PW 1. He divided the acts of cruelty in two parts. The first part is from the date of marriage till about 1967 when they initially lived together. The second part is between the period 1978 to 1980. While describing the cruelties from the first period, the appellant has deposited to all those acts of cruelty which he has alleged in the petition. During the period 1978 to 1980 he deposed that the respondent used to abuse and quarrel with other members of the family. He also stated that the respondent used to refuse to accompany the appellant to social gatherings and whenever she accompanied she used to insult him there. He also stated that whenever the respondent was taken to the market she insulted the appellant at the shop and shouted there. As a result thereof, the appellant suffered mental shock and torture.

5. The learned trial Judge, in my opinion, was right in holding that the earlier acts of cruelty i.e. before 1978 even if proved, stood condoned inasmuch as admittedly the parties lived together and cohabited from 1978 to 1980 i.e. for a period of about two years. The acts of cruelty during the earlier period would be revived if it is proved that she committed any further acts of cruelty during the period 1978 to 1980. According to the evidence, the only acts of cruelty, are (a) she insulted and quarreled with other members of the family (b) she insulted the appellant whenever he took her to social gatherings or to the market. Unfortunately for the

appellant, these are mere allegations and it would not have been difficult for him to prove the said allegations by producing independent evidence of other members of the family or of the shopkeepers or persons with whom they attended social gatherings. The mere evidence of the appellant without there being specific dates and time, cannot be taken to be true even at its face value. The Rules framed under the Act as also form prescribed, make it mandatory for the petitioner to state the acts of cruelty in separate paragraph with dates and time. The requirement has admittedly not been fulfilled in the present case so much so that not even a single date or time is stated in the petition or in the evidence. In the absence of the same, the mere general allegations in the petition and in the statement of the appellant cannot be taken to have been proved. The learned Addl. District Judge, therefore, in my opinion, was right in coming to the conclusion that the allegations have not been proved.

6. For the reasons recorded above, I do not find any merit in this appeal which is dismissed. In the circumstances, there will be no order as to costs.

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