

D.N. Sharma Vs. Usha Sharma

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Court : Delhi

Decided On : Nov-14-2003

Reported in : 2003VIIIAD(Delhi)516; AIR2004Delhi198; 108(2003)DLT673; I(2004)DMC105; 2004(72)DRJ73

Judge : S.K. Mahajan, J.

Acts : Hindu Marriage Act - sections 9 to 13, 13(1), 20 and 20(1); Code of Civil Procedure (CPC) - Order 7, Rule 1; Hindu Marriage Rules, 1979 - Rule 4(7)

Appeal No. : FAO 63/2000

Appellant : D.N. Sharma

Respondent : Usha Sharma

Advocate for Def. : Rohit Kumar, Adv.

Advocate for Pet/Ap. : Valmiki Mehta, Sr. Adv. and;P.K. Mishra Adv

Judgement :

S.K.Mahajan, J.

1. This appeal is directed against the judgment and decree of the Matrimonial Court whereby the petition filed by the appellant/ husband under Section 13(1)(ia) of the Hindu Marriage Act (in short referred to as `the Act') for dissolution of

marriage by a decree of divorce was dismissed. A few facts relevant for deciding this appeal are:-

The parties were married according to the Hindu rites and ceremonies on 9.5.1959. Two daughters were born from the wedlock of the parties. The parties are living separately since 8.1.1990. Alleging that the respondent had treated the appellant with cruelty, the appellant filed a petition under Section 13(1)(ia) of the Hindu Marriage Act (in short referred to as 'the Act') for dissolution of their marriage. It was alleged in the petition that the appellant was living with his father and brother in a Government quarter but immediately after the marriage respondent insisted upon separating from the joint family and was set to break the joint family of the appellant. It is alleged that as a result of rude behavior of the respondent the father of the appellant received such a shock that he passed away on 6.12.1959. The brother of the appellant also separated in or about 1964. It was alleged that the respondent used to neglect the petitioner and her brothers used to instigate her and it is alleged that the brother of the respondent used to stay with the parties for days together which used to create tension in the family; that the appellant had objection particularly to the respondent's brother Prem Nath Harsh living with them as his wife had died by burns under mysterious circumstances and he had married the real sister of his deceased wife; that another brother of the respondent namely, Kulbushan was a sub-Inspector in U.P. Police and he had been on occasions charge-sheeted by the Department and the respondent with his brother used to cause mental and emotional turmoil even on small matters shattering the peace of the house. It was also alleged that the respondent and her brother were brain washing the daughter of the parties to get her married in a rich family and when the appellant objected to the same an argument took place on the evening of 6th/7th January, 1990 and Prem Nath brother of the respondent in league with the respondent assaulted the appellant with a fist blow as a result of which appellant's two teeth were broken and he started bleeding profusely. It is submitted that instead of looking after the appellant the respondent asked her brother to flee away from the spot as a result of which the appellant was forced to ring up the Police Control Room and he was taken to the hospital and brother of the respondent was arrested. By the time the appellant returned from the hospital after getting treatment and stitches, the respondent had called her other brother

and threats were meted out to the appellant by the brother of the respondent. It was alleged that the petitioner could take no more insult and he told the brother of the respondent to leave his residence immediately at which the respondent packed her items in a huge iron trunk and leather suitcases and on 8.1.1990, at about 3-4PM the respondent Along with her brothers and daughter Manisha left the matrimonial home. The respondent is also alleged to have lodged a complaint against the appellant with the Crime against Women Cell making false allegations against the appellant that he wanted to marry another lady named Sushila Bist whom the appellant knew from the time he was studying in LLB. It was alleged that by making such allegations, the respondent had crossed all limits of decency. It was alleged that all the above acts of the respondent clearly amount to physical and mental cruelty inflicted upon the appellant by the respondent and he was thus entitled to a decree of divorce.

2. In the written statement, the respondent besides denying the allegations of assault etc. upon the appellant also stated that the appellant wanted to get rid of the respondent in order to marry another lady Sushila Bist with whom the appellant was having affair for the last almost 20 years and for whom the appellant not only used to misbehave with the respondent but also forced her to leave the matrimonial home Along with the daughter. It was also alleged that the report lodged by the respondent with the Crime Against Women Cell was true and she had rightly made allegations against the respondent about her having an affair with another lady, namely, Sushila Bist. It was also stated that the appellant was having an affair with Sushila Bist with whom he had even been going to hill stations secretly and was roaming with her openly. It was alleged that the appellant had even displayed his photographs with Sushila Bist in the drawing room and he had thrown to wind all norms of decency as he openly moved a around and even used to bring her home in later years in the presence of grown up daughters. It was alleged that the appellant was so engrossed with Sushila Bist that he totally neglected his family and started harassing them. It was also alleged that the appellant wanted to live with his mistress Sushila Bist after obtaining divorce and wanted to legalise her illegal deeds of secret marriage with the said lady.

3. In the replication filed by the appellant he denied having illicit relations with Sushila Bisht or that he had married her during his marriage with his wife. It was also stated that the respondent had sent false complaints against the appellant to the Prime Minister and the Home Minister alleging that the appellant was a corrupt officer and a person of loose moral and had married another woman and wanted to kill his wife and daughters and he, therefore, should be punished and on these complaints the Police investigated the matter but finding no truth therein, the same was closed. It was stated that the appellant had a status in the Ministry of Home Affairs as Director/Joint Secretary and false allegations made by the respondent against him to his employers had put the appellant in a state of shock and clouded the totally unblemished service of the appellant, besides causing mental shock, agony and cruelty to the appellant.

4. On the allegations of the parties, the Court framed the following issues:-

1. Whether the petition is not in accordance with the High Court Rules framed under the Hindu Marriage Act, as alleged in the preliminary objection of the Written Statement, if so, its effect? OPR

2. Whether the respondent after the solemnization of marriage has treated the petitioner with cruelty? If so, its effect? OPP

3. Relief.

5. While deciding Issue no.1 the Court observed that in accordance with Order 7 Rule 1 of the CPC and Section 20(1) of the Act read with relevant rules of the Hindu Marriage Act, Rules 1979, all petitions under Sections 9 to 13 must state the matrimonial offence or offences alleged or other grounds upon which the relief was sought, stating out with sufficient particularity the time and places of the acts alleged and other facts relied upon but not the evidence upon which they were intended to be proved, but the appellant had not mentioned any specific incident of cruelty by giving any place of occurrence except the incidence of 6th/7th January, 1990. The Trial Court was, therefore, of the opinion that the allegations made in the petition with regard to the relations between the parties over the period of 30 years of matrimonial life were vague and without any specific instance and the

petition not being in accordance with the High Court Rules, the appellant could not be granted any relief on the basis of the allegations of the previous matrimonial offences in the alleged petition.

6. While discussing and deciding Issue no.2 the Trial Court was of the view that even if the entire version of the incident of 6th/7th January, 1990 as stated by the appellant was accepted, the same did not show any cruelty by the respondent upon the appellant as she was only a silent spectator to the entire incident. It was held that there was some fight between the appellant and Prem Nath brother of the respondent in which the appellant was injured but that incident cannot in any manner be described as an act of cruelty by the respondent.

7. Referring to the allegations made by the respondent against the appellant about his having illicit relations with Sushila Bist, the Trial Court held that the allegations against the appellant regarding his having affair with Sushila Bisht were made in the written statement filed in 1992 and the respondent and her daughter who had also appeared as a witness, had supported the statement made in the written statement. It was held by the Trial Court that without going into the question whether the statement of the respondent and her daughter proved the allegations, it could not be said that the appellant had successfully disproved them and at the most the respondent might have failed to prove her allegations against the appellant. It was held that the appellant cannot get a decree of divorce on the ground of cruelty merely because the respondent had failed to prove her allegations. It was held that the appellant had come to the Court seeking divorce and onus of proof lie upon the appellant and it was for him to establish before the Court that the allegations made by the respondents were false. It was held that the appellant had not taken any steps to prove the complaints made by the respondent-wife with the Government and as such the appellant had failed to prove cruelty by the respondent even on that scope. The petition was accordingly, dismissed.

8. On behalf of the appellant it is contended that besides other allegations the appellant had given sufficient particulars of the incident which had happened on 6th/7th January, 1990 and had also given particulars of the complaints made by

the respondent not only with the Crime Against Woman Cell but also with the Prime Minister and the Home Minister making unfounded allegations against the appellant and these averments made in the petition and the replication were sufficient compliance of the provisions of Order 7 Rule 1 CPC, Section 20 of the Hindu Marriage Act and Rule 4 (7) of the Rules framed by the High Court. It is also contended by Mr. Valmiki Mehta, learned senior counsel appearing on behalf of the appellant that making of unfounded allegations in the written statement by the respondent about the appellant living in adultery with Sushila Bisht and making a complaint to the Crime Against Woman Cell and to the Prime Minister and the Home Minister levelling unfounded allegations about the appellant having illicit relations with the said Mrs. Sushila Bisht and having married her were per se indicative of the act of cruelty and were in themselves sufficient to dissolve the marriage between the parties by a decree of divorce.

9. The learned counsel for the respondent while not denying that complaints were made by the respondent wife against her husband levelling allegations of his having illicit relations with Sushila Bisht, has, however, contended that it was not for the respondent to disprove the allegations made in the complaint made to the Crime Against Woman Cell and to the Prime Minister and the Home Minister but it was for the appellant to prove his own case and he having failed to disprove the same, no case was made out for dissolution of marriage between the parties. It was contended that the appellant wanted to get rid of the respondent and it was not that she had left the matrimonial home on her own but she was thrown out of the same by the appellant. It is submitted that the allegations made by respondent in the written statement or in the complaint made in the Crime Against Woman Cell and in the complaint sent to the Prime Minister and the Home Minister did not in any manner amount to cruelty so as to entitle the appellant to the grant of divorce.

10. I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and have also gone through the pleading as well as the evidence recorded before the Trial Court. Besides other grounds one of the grounds urged by Mr. Mehta is that unfounded allegations repeatedly made by the respondent about the character of the appellant and about his having extra marital

relations with Sushila Bisht not only caused harassment and humiliation to the appellant but it also affected his mental health and he lost his reputation in the eyes of his colleagues as well as in the neighborhood and these acts of cruelty were sufficient to dissolve the marriage between the parties. The appellant in his petition has given detailed particulars of the incident that had happened on the midnight of 6th/7th January, 1990 and has also given particulars of the complaints lodged by the respondent with the Crime Against Women Cell and other authorities levelling unfounded allegations against him which according to the appellant amounted to cruelty. These particulars in my view are sufficient compliance of the provisions of the CPC and the Rules framed under the Hindu Marriage Act. In my opinion the Trial Court has taken a hypertechnical view of the matter by holding that the petition was not according to the High Court Rules. This finding of the Trial Court cannot, therefore, be sustained.

11. As already observed above, the respondent in her written statement had alleged that the appellant with a view to get rid of the respondent and in order to marry another lady Sushila Bisht with whom he was having an affair for the last about 20 years used to misbehave with the respondent. It was alleged in the written statement that the complaint made by her about the appellant having extra marital relations with Sushila Bisht was true but the appellant being in the Ministry of Home Affairs used his influence in the Police Department and got the matter closed. It was also alleged that the respondent was having an affair with Sushila Bisht with whom he had been going to hill stations secretly and when the respondent came to know about the same, he started roaming with her openly and even used to bring her home in the presence of the grown up daughters of the parties. She further stated that it was the appellant himself who had crossed the limits of morality and norms of Hinduism by having company of kept mistress and having secretly married her. She reiterated these allegations in her statement made before the Court. Even in the cross-examination of the appellant a question was put to him that Sushila Bisht did not marry because the appellant had relations with her. It was also put to him that Sushila Bisht was having children from him and one of her son was school going. Even the daughter of the parties when she appeared as a witness of the respondent stated that the appellant was having illicit relations with another woman, namely, Sushila Bisht and he used to

go out of station Along with Sushila Bisht and used to stay with her for a week or ten days. She also stated that Sushila Bisht was having children from the appellant. In her own statement, the respondent had stated that Sushila Bisht used to come and live with the appellant in her absence and she had gone out of station with the appellant eight or ten times. She admitted that she had made an application in the Ministry of Home Affairs and to the Home Secretary against the appellant. She, however, stated that she had correctly stated that the appellant was having relations with Sushila Bisht.

12. It is now well-stated that levelling disgusting allegations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship constitute grave assault on the character, honour, reputation, status as well as the health of the spouse. Such aspersions of perfidiousness attributed to the spouse would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law. Such allegations made in the written statement or suggested in the cross-examination and by way of cross-examination satisfy the requirements of law. It is, therefore, in this background that this Court is to examine whether the allegations made by the respondent not only in the written statement but also in the complaints made to the Crime Against Woman Cell and also made to the Home Minister and the Prime Minister as also in her own statement before the Court and the suggestions given to the appellant in his cross-examination, amounted to cruelty which may entitled the appellant to the grant of a decree of divorce.

13. As already observed above, the respondent has repeatedly made such allegations of the appellant having extra marital relations with one Sushila Bisht not only in her written statement but also in the complaint made to the Prime Minister and the Home Minister. Even suggestion has been given to the appellant in his cross examination that Sushila Bist had children from him. The daughter of the parties when she appeared as a witness on behalf of the respondent has also stated that Sushila Bisht had children from the appellant. The respondent in her own statement before the Court also reiterates her allegations of the appellant having illicit relations with Sushila Bisht and his going out eight to ten times and having slept with her. The respondent has, however, not been able to prove these

allegations. The Trial Court, in my opinion, has clearly misdirected itself by observing that it was for the appellant to prove that the allegations made by the respondent were false and it was not for the respondent to prove that they were true. It could not by any stretch of imagination be held that the party has to prove something in the negative. It is for the party who makes an allegation to prove the same. Allegations in this case were made by the wife against the husband and it was for her to prove them. She having failed to prove these allegations, in my opinion, such allegations by themselves clearly amount to acts of cruelty which would entitle the appellant to grant of decree of divorce.

14. It was held by the Supreme Court in *Vijaykumar Ramchandra Bhate Versus Neela Vijaykumar Bhate* : [2003]3SCR607 that where the spouse in the written statement makes allegations extensively with enumeration of instances and incidents against wife branding her as unchaste woman, keeping illicit relations - sexually and otherwise, with a neighbour's son, the same would clearly amount to cruelty even if the husband wanted to withdraw these allegations by amending the written statement. It was held that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra martial relationship constitute grave assault on the character, honour, reputation, status as well as the health of the wife. Such as persons of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards, would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. Such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law. On going through the relevant portions of such allegations, it is clear that no exception could be taken to the findings recorded by the Family Courts as well as the High Court. They are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.

15. In *G.V.N. Kameswara Rao Versus G. Jabilli* : [2002]1SCR153 it was held that making of false complaint and consequent loss of reputation and standing in society at the instance of one's spouse would amount to cruelty. In another judgment of the Supreme Court reported as *R. Balasubramanian Versus Vijayalakshmi Balasubramanian* : AIR 1999 SC3070 it was held that unfounded allegations of adultery against wife were serious allegations amounting to cruelty and entitles the wife to seek relief against the husband under the Act or otherwise.

16. In view of the aforesaid, in my opinion, writing letters to the authorities making slanderous allegations against the appellant, repeating the same not only in her own statement but also suggesting them to the appellant during the course of his cross-examination lends credence to the fact that the wife was persisting them to humiliate and wounding the feelings of the husband which have made impossible for him to live in the matrimonial home with the wife. These allegations are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial life causing profound and lasting disruption driving the husband to feel deeply hurt and reasonably apprehend that it was impossible for him to live with the respondent.

17. These allegations, without anything else, by themselves amount to the respondent treating the appellant with cruelty entitling the appellant to the grant of a decree of divorce. I, accordingly, allow this appeal set aside the impugned judgment and dissolve the marriage between the parties by a decree of divorce. In the facts of this case, however, I leave the parties to bear their own costs.