

Sandhya Mukhi Vs. Ashish Mukhi

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Court : Delhi

Decided On : Nov-13-2006

Reported in : I(2007)DMC122; 2009(93)DRJ505

Judge : S. Ravindra Bhat, J.

Acts : Hindu Marriage Act - Sections 9, 12(1), 13(1) and 13B(1); Contempt of Courts Act - Sections 2; Code of Criminal Procedure (CrPC) - Sections 482; Indian Penal Code (IPC) - Sections 107 and 151; Code of Civil Procedure (CPC) - Order 6, Rule 17

Appeal No. : CONT.CAS(C) 79/2006

Appellant : Sandhya Mukhi

Respondent : Ashish Mukhi

Advocate for Def. : party-in-person

Advocate for Pet/Ap. : Pramod Ahuja, Adv. and Party-in-person

Disposition : Petition dismissed

Judgement :

S. Ravindra Bhat, J.

1. In these proceedings, the petitioner wife (hereafter 'the petitioner') has sought initiation of contempt action against the husband(hereafter referred to as the Respondent) on the ground that the latter willfully, and deliberately violated the order of court, and the undertaking made in his statements made before this Court. The orders in respect of which contempt is alleged are dated 25.9.2002 and 15.1.2003 issued by this Court.

2. The facts essential to decide this petition are that the marriage between the parties was solemnized on 30.08.2001; no children were born out of the wedlock. The petitioner alleges that she was harassed for dowry and therefore, lodged a complaint on 29.5.2002 with the Crimes Against Women (CAW) cell, Kirtinagar, New Delhi. During the course of reconciliation process the Respondent allegedly beat the petitioner in CAW cell on 15.07.2002, which led to registration of FIR under Section 107 & 151, IPC against him, on the basis of the complaint dated 29.5.2002. Another FIR No.533/02 dated 18.09.2002 was registered with the Patel Nagar police station against the Respondent and his family members. The Respondent applied for anticipatory bail before the Addl. Sessions judge which was dismissed on account of non-recovery of dowry articles. Thereafter he approached this Court for anticipatory bail and in due course an verbal oral settlement was arrived at between the parties which was informed to the court on 19.09.02. On the strength of the statement, the court extended an interim protection for one week and on 25.09.02 the settlement arrived at was informed to the court and recorded.

3. The Petitioner further alleges that as per the compromise/settlement arrived between the parties, the respondent was to comply with the terms of the agreement and it was only thereafter his bail application was to be considered. The terms of compromise were;

1. The Respondent was to pay a lump sum amount of Rs. 2,50,000/- to the Petitioner;
2. Both parties were to file a joint petition for divorce by mutual consent;

3. After all the other terms were satisfied the Petitioner would agree for quashing of FIR so to resolve all disputes the parties.

4. On 23.07.2003 bail was granted in CrI. M(M).No.2674/2002. The order granting Bail is extracted below:

learned Counsel submits that petitioners (respondent in this case) have also participated in the investigation and nothing is to be recovered and that the petitioners (respondents in this case) have already paid Rs.2.5 lacs in terms of Settlement. Looking into the nature of allegations, in my view, no case for custodial interrogation is made out and in the facts and circumstances of this case in the event of petitioners arrest, they are ordered to be released on bail on each of them furnishing personal bond in the sum of Rs.10, 000/-with surety in the like amount to the satisfaction of the arresting officer/SHO

5. The order dated 25.9.2002 had specifically mentioned that divorce petition would be filed within one week i.e. 2.10.2002 but the petition was filed on 24.10.2002. Meanwhile, the matter in respect of Section 107 and 151 pending in the Court of the special executive magistrate was closed as per the order dated 14.10.2002 since the parties had entered into compromise.

6. The Petitioner further alleges that the respondent changed his statement regarding the separation period between the parties leading to the dismissal of the joint application for divorce by mutual consent, dated 24.10.2002, which was filed before the Additional District Judges. Again, when the matter came up for hearing before this Court both the parties were present in person in the Court; it is alleged that counsel for the Respondent stated that mutual divorce petition was likely to be filed shortly and so the matter was adjourned. Three different orders were issued on 23.4.2003, 15.5.2003 and 23.7.2003 but the respondent never came forward for signing of the joint motion. The extract of order dated 25.9.2002 is reproduced below:

Parties have informed that they have come to a mutual settlement of controversy in pursuance to the settlement a petition will be filed in the court of ADJ and the petitioner has agreed to pay a sum of RS.2.5lakhs to the complainant towards her

dowry, permanent alimony, stridhan and other claims and after the other terms of settlement are satisfied the complainant would agree to the quashing of FIR etc.

7. The court issued the following order on 15.01.2003:

Petitioner has handed over 2 demand drafts of Rs.1,25,000/- issued by Syndicate Bank towards full and final settlement of the claim. It is pointed out by the learned Counsel for the parties that mutual petition is likely to be filed shortly.

8. The Respondent is alleged to have complied with only one of the terms of the settlement i.e. of paying Rs.2,50,000/- and for the compliance of the rest of the terms the Respondent has not come forward. The petitioner stated that she has preferred a petition for divorce which is pending before the competent Court. The Petitioner alleges that the Respondent is enjoying the anticipatory bail from the Court after mentioning the fact that he had already made a payment of Rs. 2,50,000 to the Petitioner as per order dt.23.7.2003. The criminal case Under Section 498A/406 filed against the Respondent is still pending.

9. The Petitioner further alleges that the Respondent has willfully disobeyed the orders passed by this Court and has so committed contempt. The Respondent till the payment of Rs.2,50,000/- was not made, had been agreeing for filing of the joint petition and once the payment was made he was convinced that he can not be further arrested; therefore, so he backed out from his statement and the remaining terms of settlement made before this Court.

10. The Petitioner alleges that the respondent faked an identity and has filed a complaint against her mother regarding her assets questioning how being the sole breadwinner she managed to conduct her daughter's wedding in a grand way. The Petitioner alleges that the Respondent has also put pressure on the vigilance department and Income tax department of her mother's office to conduct an enquiry on the said matter.

11. The allegations in the contempt petition are denied by the Respondent. He states that the petitioner has filed a petition under section 12(1)(a) and 13(1)(i-a) of the Act for dissolution of marriage on the ground of impotency, and cruelty by way

of dowry harassment which are pending before the Additional District Judge. The Respondent made an application to the court seeking permission to be medically tested; the court granted him the permission and then a medical examination i.e. potency test was conducted at AIIMS. The respondent was declared to be potent. The respondent further states that he had filed an application bearing No.1951/03 under Section 482, Cr.PC. duly intimating this Court about his unwillingness for mutual divorce as well as his being pressurized for the same, he had also made an application to the court intimating that he would be filing an application for Restitution of conjugal rights.

12. The Respondent further states that his bail petition was heard on merits, as he had not concealed his intentions from the Court. He further states that the petitioner was aware that he was not interested in a mutual consent divorce since 15.5.2003 and prior to that date. He further states that the present contempt petition has been filed after the expiry of more than 2 years with no sufficient cause to explain the delay. He relies upon the order dated order dated 15.5.2003, which reads as follows:

The petitioner has already paid a sum of Rs. 2.5lakhs to the complainant .However, the petitioner -husband does not want to divorce his wife-the complainant. The complainant is not ready and willing to rejoin her husband.

It has also been alleged that pursuant to the orders, the parties did prefer a joint application for divorce, but that was dismissed by the competent court, as the mandatory one year period of separation before valid presentation had not lapsed. In these circumstances, no case for contempt has been made out.

13. Mr. Ahuja, learned Counsel submitted that the claim of the respondent that he filed application no. 1851/2003 under Section 482 Of Criminal Procedure Code, informing the court that he was filing the petition under Section 9 of the Act to save the marriage was done to mislead the court since after filing the petition he never appeared for the hearings which lead to the dismissal of the petition. The Respondent used the settlement order to his own advantage; by showing the order he was successful in getting the matter Under Section 107 and 151 of Cr. P.C closed against him. It was also submitted that there was a gap of three years

between the separation of the parties and the medical report of the Respondent. The Respondent before going in for Medical Check up requested for Amendment in his Written Statement by his application under Order 6 Rule 17 moved on 20.04.2004. He filed the original Written statement during November 2003 and the Amendment in Written Statement was sought when the trial had already commenced in Divorce Case. The same was admitted by the Court, by order dated 10.01.2005 to include the crucial facts that Respondent was under some medication prescribed to him by a psychiatrist during the separation period.

14. Counsel pointed out that when the respondent had filed several applications in various courts blaming petitioner for non-consummation of marriage and it was only then such facts were taken on record he moved application for his medical check up on 29.04.2005 in the absence of Petitioner. During the said Medical Examination the petitioner was not present there and Respondent concealed this vital fact from the Medical Board. Counsel submitted that the Respondent took the plea that since he has informed this Court about his unwillingness for divorce no Contempt is made against him. The court did not approve of his conduct and by its order dated 15.5.2003 sent the matter to Member Secretary, Delhi legal Services for an exercise of negotiated settlement and directed the Member Secretary to submit his Report for consideration on 22nd August 2003. While the exercise for Negotiated Settlement was continuing the Bail was granted to the Respondent on 23rd July 2003.

15. It was further submitted that the Bail was granted to the Respondent merely on compliance of only one of the terms of settlement order dated 25.09.2002 i.e. payment of Rs.2.5 Lakhs. The Petitioner cannot be left suffering on account of non-compliance of rest of the terms of the same order which in this case would mean that neither the recovery of dowry articles has been made nor other terms for mutual consent divorce are honoured and implemented.... The order, it is contended, has to be complied in toto and not in piece meal. Moreover, once the consideration and relief has been provided to the Respondent merely on the basis of the settlement order, such order became binding on both the parties in view of the Undertaking filed by way of Affidavit with the petition under Section 13B(1) Hindu Marriage Act which was in pursuance to the High Court order dated

25.09.2002. The order has been used to deny maintenance and any other future claim of the petitioner when the litigation is still pending between the parties. Counsel relied upon several decisions, including those reported as Ganpat Ram Raj Kumar v. Kalu Ram and Ors. : AIR 1989 SC2285 ; Rama Narang v. Ramesh Narang and Anr. 2006 IV AD (SC) 248, etc, in support of the contention that the respondent's conduct amounts to willful and deliberate contempt of the court's order.

16. The Respondent states that he had no intention of complying this Court's orders dated 25.09.2002/ 15.09.2002/15.01.2003 even while they made statement with regard to 'settlement'. He denies that it was only when statement with regard to compromise was made the interim protection was extended to him. The respondent states that the relief/ bail was granted genuinely on merits. It was also contended that the Court was apprised of his intention not to abide by the terms of settlement, as he was keen on salvaging the marriage. He submitted, that the petitioner cannot make a grievance about the issue, because at the material time, when the application/ petition under Section 482 was preferred, this position had been clearly indicated to the Court.

17. The respondent further submitted that the petitioner approached this Court by filing the present petition, only as a pressure tactic, since she has filed for divorce, and the proceedings are pending before the competent court. He also submitted that the parties had appeared before the Additional District court, by filing a joint petition for divorce, which was signed by the petitioner, and himself, but the court rejected the application, in view of the averments contained in the application, since the parties had not lived apart for the minimum period.

18. The above facts would show that on 25.9.2002, parties had indicated that a settlement had been arrived at by them. The statement was made in the course of certain criminal proceedings. Pursuant to the order, on 15.01.2003, the court recorded payment of half the agreed amount. The last order of note is the one dated 15-5-2003, which recorded the respondent's unwillingness to settle the disputes, even after paying the amounts agreed.

19. In *Kapildeo Prasad Sah v. State of Bihar* : AIR 1999 SC3215 , the Supreme Court held as follows:

For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been willful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of willful disobedience of the court's order has been made out. Whether disobedience is willful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the court's orders and its implications. Disobedience of the court's order strikes at the very root of the rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice.

10. In his famous passage, Lord Diplock in *Attorney General v. Times Newspapers Ltd.*² said that there is also

an element of public policy in punishing civil contempt, since administration of justice would be undermined if the order of any court of law could be disregarded with impunity.

Jurisdiction to punish for contempt exists to provide ultimate sanction against the person who refuses to comply with the order of the court or disregards the order continuously. Initiation of contempt proceedings is not a substitute for execution proceedings though at times that purpose may also be achieved.

11. No person can defy the court's order. willful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of the court's order must allege deliberate or contumacious disobedience of the court's order.

In *Ashok Paper Kamgar Union v. Dharam Godha* (2003) 11 SCC 1, the Supreme Court held as follows:

Section 2(b) of the Contempt of Courts Act defines 'civil contempt' and it means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of undertaking given to a court. 'willful' means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law.... This has to be judged having regard to the facts and circumstances of each case.

20. I am not persuaded with the submission of the petitioner that the respondent willfully, and with deliberate intention 'snatched' the order of bail. The circumstances of this case show that at the time when bail was granted, he had preferred the petition under Section 482, expressing his unwillingness to complete with the process of settling the disputes. The order admitting him to bail dated 23.07.2003 was issued in the presence of counsel for the petitioner. The court did not merely consider the settlement; it also went into the circumstances and concluded that the facts of the case did not warrant a custodial order.

21. It is no doubt true that the petitioner appears to have been put to hardship. The application for divorce by mutual consent, signed by her however, had clearly mentioned the last date when the parties had lived together. She had signed the document. The learned Additional District Judge was merely performing his duties, to ensure that the terms of the Hindu Marriage Act so far as they related to dissolution of marriage by mutual consent, were complied with; he dismissed the petition as not maintainable. The respondent for whatever reason, alleges a change in heart, which he duly intimated in the quashing of criminal proceedings, before this Court, even while complying with the terms of compromise relating to payment of amounts. Added to these are two other circumstances; the petitioner has approached the court for divorce, in separate substantive proceedings. More than two years lapsed from the date of the order which the respondent is alleged to have violated.

22. Having considered the overall factual matrix, I am of the opinion that this case is not fit for initiating contempt proceedings. The petitioners counsel sought to urge that in somewhat similar circumstances, this Court has admitted contempt proceedings, for failure to adhere to a settlement by another husband violating undertaking to agree to mutual consent divorce. Every order or judgment has to be read in the context of its facts; undue emphasis on some elements of similarity, would bind the Court to facts of the given case at hand. I am of the opinion that the facts of this case do not show that a similar course of action is warranted.

23. For the above reasons, the contempt petition has to be dismissed; notices are hereby discharged.

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