

Geeta Vs. Mohan

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Court : Kerala

Decided On : Aug-16-1991

Reported in : I(1992)DMC121

Judge : Varghese Kalliath and; G.H. Guttal, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13

Appeal No. : M.F.A. No. 455 of 1988

Appellant : Geeta

Respondent : Mohan

Advocate for Def. : S. Sankarasubban, Adv.

Advocate for Pet/Ap. : P.K. Balasubramaniyan, Adv.

Disposition : Petition allowed

Judgement :

G.H. Guttal, J.

1. This appeal by the wife, Geeta is against the decree made by the District Judge, Thodupuzha on 28.3.1988 in H.M.O.P. No. 143/ 1987 under Section 13 of the Hindu Marriage Act whereby he dismissed the wife's petition for divorce. He held that the respondent, husband, Mohan did not treat her with cruelty. In this

judgment the petitioner and respondent are hereinafter referred as wife and husband respectively (W and H for brevity). The facts giving rise to this petition are briefly these.

2. W and H were married on 4.8.1984 according to the Hindu Religious rites. The W was working in a High School at Kavalattgadu and H was employed in Muscat in the Sultanate of Oman. The H was on 10 day's leave during which time the marriage took place. He had no house of his own and after staying for a day in the house of W's father, the parties lived in house of H's brother until 13.8.1984. The H left for Muscat from Cochin on 14.8.1984. The W accompanied him to Cochin Air Port. The W continued to live with her father while the H was in Muscat. On 20.10.1985 the H came back from Muscat, and stayed in the house of the W's father for a night. On the next day, that is to say on 21.10.1985 both W and H lived in the house of a cousin by name Bose. On 5.1.1986 they separated and thereafter never lived together. The H continued to live in India after the separation until 14.3.86 on which day he went to Muscat. The petition for divorce was filed in 1987. Thus, they lived together only for a short period of about 84 days.

3. What happened during these 84 days is important. According to the wife even before the marriage and during the courtship, she noticed that H was addicted to alcohol. The marriage of the parties was a result of a romantic prelude consisting of meeting at the bus stop, self introduction by the H that he was employed in Muscat and the invitation by the W to meet her father culminating in their marriage on 4.8.1984. The W has stated the following facts about the addiction of her husband to alcohol:

(a) even at the time of purchase of her wedding dress he was drunk.

(b) on the date of wedding he consumed alcohol.

(c) In his letter Ext. A8 written from Muscat the H justified his drinking alcohol.

(d) On the third day after the marriage they returned to the husband's house. The H went out of the . house in the evening promising to come back early but he returned home at 10.30 p.m. fully drunk and picked up a quarrel with his brother

and both W and H left the house. They took shelter in the house of Bose, the cousin of H.

(e) On 19.10.1985 the H who was living in his brother's house came to W's house at about 8.00 p.m. He was fully drunk. He could not talk or stand firmly.

(f) The H was always under the influence of liquor. He used to drink alcohol at frequent intervals. On one day with a view to prevent the drinking she threw away three bottles of liquor kept in the almirah. This infuriated H and therefore H physically beat her.

(g) On another day both W and H went to the school where W was teaching. It was planned that W would take a day's leave and both would spend the day together. H left the school promising to come back within half an hour. The W waited at the school in the hope that the H will arrive and both would spend some time together. But H did not turn up till 4.30 P.M. On enquiries made by her the W learnt that the H was in the house of Bose till 5.00 P.M. He lied down there after drinking toddy.

(h) On another day both of them went in a jeep to visit a friend of H. On their way, H stopped the vehicle and entered a club on the pretext of meeting a friend. But immediately after H left the Jeep a noise was heard from inside the club. W went there and found H lying there completely under the influence of liquor. (i) H visited the school of W on a number of occasions after consuming alcohol inviting comments by the colleagues of W.

4. On the basis of these events W has alleged that H is always under the influence of liquor. He drinks liquor, thinks of liquor and breathes liquor. She found that the person she married is a slave of alcohol. The substance of her case is that her husband drinks alcohol in the morning, afternoon, evening and night. The sober moments are few and far between. The incidents narrated by her caused immense injury to her mind making it impossible to live with him.

5. There is no controversy as to whether the H is addicted to alcohol to the extent alleged by wife. His letter Ext. A8 bears testimony to the truth of W's evidence

summarised at (a) to (i) in paragraph 2 above. We accept her testimony.

6. The behaviour of the H distressed the W. She had to leave the house of H's brother late at night. The incident at the school let her down in the estimation of other teachers. When he should have been waiting at the school to take her out he was lying drunk in the house of Bose. Does this behaviour constitute cruelty ?

7. The English concept of matrimonial cruelty has not been accepted in Indian jurisprudence. All that a spouse need to prove is that, the offending spouse has treated her in such manner that it will be harmful for her to live with him (Dr. N.G. Dastane v. Mrs. S. Dastane, AIR 1975 S.C. 1534). The idea of cruelty has been so enlarged that matrimonial cruelty is now 'the conduct of such type that the petitioner cannot reasonably be expected to live with the respondent [Dr. Kesharao Krishnaji Londhe v. Mrs. Nisha Londhe, I (1984) DMC 390 (FB) (Bom.)]=(AIR 1984 Bombay 413). This Court has also held that the test of cruelty is whether it would be impossible for the spouses to live together without mutual agony (Gangadharan v. Thankam) (1981 (1) KLT 352)=II (1988) DMC 349. Thus, danger to health, life or limb is no longer an essential constituent of cruelty. In a nutshell, cruelty is a course of conduct by the offending spouse which makes it impossible for the complaining spouse to live with him.

8. Countless factors enter the matrimonial relations which make cohabitation impossible. But a course of conduct alleged to be cruelty must be judged in relation to the surrounding circumstances which including the physical and mental capacity to endure and susceptibilities of the spouse. The course of conduct may consist of series of minor acts which, taken in isolation may not be serious but together they may be so injurious as to make matrimonial cohabitation impossible [Jamieson v. Jamieson, (1952) 1 All E.R. 875]. Again intention to injure the mind is not a necessary component of cruelty though intention may aggravate cruelty (Willians v. Willians, (1963) 2 All E.R. 994; [Gollins v. Gollins, (1963) 2 All E.R. 966].

9. In this case the H persists in drinking despite his knowledge that the W has remonstrated him. He persists in drinking knowing fully well that his drinking created humiliating situations for the W. He continues to be under the influence of

liquor with the knowledge that his conduct distresses his wife.

10. In our opinion, the conduct of H is so bad that the W should not be called upon to endure it. The H, a slave of alcohol, may not have intended to injure the mind of the W. As in *Gollins v. Gollins* he did not 'aim' his conduct 'at' his wife [*Gollins v. Gollins*, (1963) 2 All E.R. 966]. Nevertheless his persistent conduct is of such a nature that it is impossible for the W to live with the H.

11. Drinking alcohol by itself may not be more than a person's weakness resulting from diverse factors. But it becomes injurious to the W when the H, enslaved by alcohol, ceases to be a partner in life. His depressed state of mind, sulken isolation, and the denial to the W, the cherished companionship, are so distressing that matrimony becomes an empty shell without the substance of cohabitation. Thus the distress, pain, and suffering of the mind resulting from continuous drinking by the H transforms his individual weakness into such injury to the mind of a wife whose susceptibilities, broken aspirations and other circumstances of her life, make matrimonial life impossible. It is in such circumstances that drinking alcohol becomes matrimonial cruelty. It is for this reason that in *Rita (Smt. Rita v. Brij Kishore Gandhi)*, AIR 1984 Delhi 291) the Delhi High Court held that distress caused to the wife by husband's drunkenness, unaccompanied by insults, violence or injury to her health, amounts to cruelty.

12. Having regard to the law laid down in the cases referred to above and the growing concept of matrimonial cruelty we are of the opinion that drinking alcohol to the extent evident in this case, constitutes cruelty, by reason of the distress and injury caused by it to the mind of the wife.

13. The learned trial Judge has rejected the W's case that H physically assaulted her. We do not think it necessary to express any opinion about this aspect of the case.

14. In the result this appeal and the wife's Hindu Marriage Act O.P. No. 143 of 1987 are allowed. There shall be a decree of divorce as prayed by the wife. No order as to costs.

