

Mrs. Rekha Vs. Pramod Kumar

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SooperKanoon Citation : sooperkanoon.com/757256

Court : Rajasthan

Decided On : Feb-10-2003

Reported in : RLW2003(4)Raj2131; 2003(3)WLC179

Judge : N.P. Gupta, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1), 13(2) and 23

Appeal No. : S.B. Civil Misc. Appeal No. 115 of 1998

Appellant : Mrs. Rekha

Respondent : Pramod Kumar

Advocate for Def. : T.N. Prasad, Adv.

Advocate for Pet/Ap. : S. Saruparia, Adv.

Disposition : Appeal dismissed

Judgement :

Gupta, J.

1. This appeal has been filed by the wife against the judgment of the learned Additional District Judge No. 1, Chittorgarh dated 4.12.1997 passed in Civil Misc. Case No. 154/92 dismissing the wife's petition for dissolution of marriage.

2. Brief facts of the case are that on 14.7.92 the appellant submitted the petition under Section 13 of the Hindu Marriage Act (hereinafter to be referred to as 'the act') seeking dissolution of marriage on the ground of cruelty, and desertion for last eight, years.

3. The brief allegations are that the marriage of the parties was solemnized on 12.12.1997 according to Hindu rites, thereafter the appellant went to the matrimonial home some four times, and lastly lived there in the year 1984, when the appellant's father left her to Nimbaheda, at that time, the respondent manhandled her, and tried to kill her by pouring kerosene, the appellant's watch was broken, her documents regarding education were set ablaze, in that process the appellant had to come out of the house, and go to Narayangarh. The husband followed her, and gave out that he does not want this lady as wife, so let her remain at that place (Narayangarh) only. It is then alleged that thereafter about 5-7 days later, the appellant's uncle Ram Singh came to Narayangarh, to whom the appellant's father in law gave out that she may be married anywhere else, as they are not prepared to keep her as their 'Bahu', whereupon, the appellant's uncle took her to Nimbaheda, and since then tried to invoke good offices but to no avail. It was also alleged that the respondent used to level wild allegations, and harassed the appellant. It was also alleged that about an year back the appellant's cousin (son of Bhua) came to mediate, to whom also, the husband clearly gave out that he has already made it clear years and years back that he is not prepared to keep her as wife, then they should have remarried her with anybody else, so much so that if they are not able to get any other boy then Himmat Singh himself should have kept her. It was also alleged that at the time of marriage both spouse were minor, therefore, the marriage is void and since the marriage was not consummated, the wife is entitled to the decree for divorce.

4. To this, the respondent filed a reply controverting the allegations about cruelty and desertion. It was contended therein that the parties did have conjugal relations, she was living with the respondent at Nimbaheda, and was visiting his parental village Narayangarh. The allegation about the physical maltreatment in the year 1984 was denied, allegation about pouring kerosene etc. were all denied, and it was alleged that all these allegations have been falsely leveled to harass,

and humiliate the husband. The respondent volunteered to be ready to keep her, and alleged that he never created any dispute. The allegation about the respondent's parents having told the appellant's uncle Ram Singh to get her remarried any-where-else was also refuted, and it was contended that the appellant received education at Chittorgarh with the consent of respondent, and his family members. The allegation about demand of dowry was denied, it was pleaded that the appellant has received higher education, and is serving in the Government as Teacher, while the respondent is a less educated, and carries on tailoring job, therefore, entertaining a superiority complex qua the husband, false allegations are leveled against him maliciously, and to harass, so also with intention to spoil the matrimonial life, which she is not entitled to. The respondent clearly gave out that he always was, and is ready to keep the appellant as his wife, and that it is the family members of the appellant, who, for their own personal interest, on account of the appellant having received higher education, and got government job, that they do not want her to come to the respondent. According to the husband he had sacrificed hey days of his life in order to educate the appellant, and he has never uttered anything bad to any of the relation of the appellant. The allegation about non consummation of marriage was also denied. Regarding ornaments it was pleaded that all Stridhan of the appellant is with her only, so much so that even the ornaments given by the respondent's parents are also with the appellant. In the end it was prayed that the application be dismissed.

5. Learned trial Court framed three issues. The first related to cruelty, second related to desertion, and the third was regarding relief.

6. During trial the appellant examined four witnesses including herself and exhibited two letters Ex.1 and 2, while the respondent examined three witnesses including himself and also exhibited two documents Ex.A-1 and A-2.

7. The learned trial Court after hearing the arguments dismissed the petition for dissolution of marriage by the impugned order. It was held by the learned trial Court that, the allegation about attempt to pour kerosene in the year 1984 cannot be believed. After appreciating the evidence led by the appellant, in conjunction with the letters Ex.A-1 and A-2, which have been admitted by PW.3 (uncle of the

appellant) to have been written by him, it has been held that the appellant has failed to prove any cruelty. Then while deciding issue No. 2 it has been found that, it has come in evidence that the appellant was living at her father's house for the purpose of receiving education, and the letter Ex.A-1 and A-2 written by Ram Singh are sufficient to negative desertion. It was also found that prerequisite condition of desertion is that the matrimonial home should have been deserted without any cause, while as a matter of fact the husband never had the intention to desert, rather he is always anxious to keep her, and it is the wife who has developed a feeling of hatred against the husband, in view of her having obtained higher education, and having got government job, and therefore, even if it is found that the matrimonial life has been irretrievably lost, still in view of the judgment of this Court in Uma Shanker v. Rajeshwari (1), it does not furnish a ground for divorce.

8. Assailing the impugned order it is contended by the learned counsel for the appellant that the trial court has gone wrong in dismissing the petition for divorce. It is contended that, from the evidence led on behalf of the appellant it is clearly established that the respondent is guilty of consistently treating the appellant with cruelty. It was also contended that, in any case during trial the false allegation of adultery has been leveled against the appellant, when she was suggested in cross examination dt. 21.10.93 that it is on account of her being in employment that she wants to leave the respondent, and marry with other (paramour). According to the learned counsel, even this tantamounts to cruelty within the meaning of Section 13(1)(ia) of the Act, and on the basis of the following judgments :-

(1) Smt. Pushpa Rani v. Krishanlal (2)

(2) Nemai Kumari v. Mita Ghosh (3)

(3) Swayam Prabha v. A.S. Chandra Sekhar (4)

(4) Madan Mohan Kohli v. Smt. Sarla Kohli (5).

it was contended that even in absence of pleading, and issue, this could be taken as a subsequent event, and since leveling such allegation tantamounts to cruelty,

a decree for divorce should have been passed. Another submission made was that the parties are living separately since 1984, i.e. about 19 years, and from the totality of the circumstances, including the fact that it was a case of child marriage, the husband is time and again suggesting in chastity, the educational and mental level of the spouses is wholly and fundamentally different, and it is a case of irretrievable break down of marriage, so much so that the marriage has remained a dead shell, and therefore, in view of the judgments of Hon'ble the Supreme Court in G.V.N. Kameshwar Rao v. G. Jabilli (6) and V. Bhagat v. D. Bhagat (7), the matrimonial tie should have been ordered to be dissolved. Regarding desertion it was contended that it is clear from a look at the statement of the respondent that he had deserted her, inasmuch as he had admitted that he does not remember as to in what standard the appellant was studying in the year 1984, 86, 87, or 88, he does not know as to wherefrom she took B.Ed. training, or where she was living for pursuing studies, he did not see any of the marks sheet of any of the examinations, nor did he see any of her testimonials. This, according to the learned counsel clearly shows that the respondent was not at all concerned with the appellant, and the finding on issue No. 2 should have been recorded other way round, and a decree for divorce should have been passed.

9. On the other hand, learned counsel for the respondent supported the impugned order, and contended that the learned trial court has rightly appreciated the evidence of the parties. According to the learned counsel the respondent had adopted a magnanimous attitude, by allowing his wife to pursue her studies in view of her being of tender age, sacrificed his prime time of life, and spent his earnings to educate her, so that she may grow, and come up as a good citizen, and this magnanimity of the respondent is now sought to be used by the appellant to curse the respondent, by attempting to take away the matrimonial life. It is contended that is more than clearly established on record that, it is only in view of the wife having obtained higher education, and having got a government job, that she has developed a superiority complex qua husband, and therefore, she is finding, rather cooking up excuses, so as to get rid of the respondent, by hook or by crook. In such circumstances, the conduct of the appellant clearly tantamounts to taking undue advantage of her own wrong, and the decree of dissolution of marriage should not be granted. Replying the contention about the marriage

having been reduced to a dead shell, it is contended that the contention is wholly misplaced. The respondent has always been trying to rehabilitate the matrimonial home, even during the pendency of the present appeal, in compliance of the order of this Court dt. 11.5.99, and 26.7.99, the respondent appeared before this Court on 14.9.99, but then the appellant did not turn up. Then on 27.9.99 again it was clearly noticed by this Court 'Thus from the conduct of the appellant it is clear that she is not interested in reconciliation.' Then on 28.10.99 the appellant appeared and took a definite stand of not joining the husband. Thus, according to the learned counsel, it is the appellant, who is exclusively on her own account, out and out to break the matrimonial tie, despite all positive efforts of the respondent, and therefore, she cannot be allowed to invoke the theory of irretrievable break down of marriage, and request the Court to grant a decree of divorce on that ground.

10. I have heard learned counsel for the parties, have perused the record very closely, and have also gone through the various judgments cited by the learned counsel.

11. Though no issue has been framed but then since there was a pleading in the divorce petition, I may deal with the contention taken in divorce petition in para 8, viz. that at the time of marriage both the spouses were minors, therefore, the marriage is void, and since after their attaining majority, the marriage has not been consummated, as for the last 8 years there is no conjugal relations between the spouses, the wife is entitled to a decree for dissolution of marriage.

12. Suffice it to say that on the face of language of Section 13(2) (iv), of the act, for obtaining a decree of dissolution of marriage on this ground the first and foremost requirement is that the wife should have repudiated the marriage after attaining the age of 15 years. In her statement the wife has given out her date of birth to be 6.6.68, and thus she completed 15 years in the year 1983, and even according to her she was living in the matrimonial home till September, 1984, when she alleges to have been physically maltreated by the husband, and even thereupon, according to her, she went to her in-laws' place at Narayangarh, obviously with a view to invoke their good offices to make the husband behave properly. This conduct is clearly antithesis of repudiation of marriage on attaining the age of 15

years. It is a different story that even in her statement she has not uttered a word about her having repudiated the marriage.

13. Coming to the grounds of divorce as pleaded in the divorce petition viz. Cruelty, and desertion, taking up the ground of cruelty first, I may at once observed that there is a glaring inconsistency between the pleading and proof, rather significant admissions made by the appellant, and by her witnesses during trial, clearly negative the ground of cruelty.

14. In this regard, coming to the pleadings, all that has been pleaded is, viz. in para 2 she has pleaded that in the year 1984 the appellant's father left her at Nimbaheda last time when the husband gave physical beating to her and attempted to kill her by pouring kerosene, her watch was broken, and her papers relating to educational qualification and clothes etc. were set ablaze, and when the husband tried to kill her, she came out of the house, and went to her in-laws' place at Narayangarh. That very day the husband reached Narayangarh, and told his parents that he does not want this lady, let her remain here (Narayangarh) only. Another allegation made is in para 3 to the effect that after 5-7 days the appellant's uncle Ram Singh came to Narayangarh, he was given out by the respondent's father that the appellant may be got remarried any where else, as they did not want her as their 'Bahu' whereupon her uncle brought her to Nimbaheda, and tried to invoke the respondent's good offices, whereupon the husband tried to fight, and given out that she may be married anywhere else, and also that he would also remarry, whereupon the appellant's uncle brought her to Chittorgarh, and since then she is living at Chittorgarh. Then in para 4 it has pleaded that husband leveled my tqywy allegations, and was making demand of dowry every time, and used to harass and humiliate her. Then in para 6 it has been pleaded that when the appellant's cousin (father's sister son) Himmat Singh went to Nimbaheda, to invoke the good offices, the respondent clearly gave out that he does not want this lady, and when this was given out many years ago why she had not been remarried, if no other match is available in the community he (Himmat Singh) himself may keep her as his wife. It is interalia on this basis, contended that the appellant has been treated with cruelty.

15. Now, I proceed to examine as to what is the evidence to substantiate all these contentions, and whether the appellant has maintained the stand

16. It may at once be observed that it is not in dispute that Ram Singh A.W.-3 is uncle of the appellant. This Ram Singh has clearly admitted to have written the two letters Ex.A-1 and A-2, and has admitted them to be his holograph letters. Then a look at these two letters does show that Ex.A.2 is of August, 1990, is an inland letter addressed to the father of the respondent, while Ex.A-1 is a post card dt. 8.2.91, addressed to the father of the respondent. In Ex.A-2 it has been conveyed that it was a matter of great pleasure to have received the letter. It was communicated that the recipient would be glad to learn that their daughter in law Rekha had been educated upto B.Ed. which is a matter of great pride for the family of the addressee. This letter also expresses a gratitude for the long sacrifice made by the addressee's family, and requested to stand by for 3-4 months more, as the writer of the letter is attempting to find some suitable job for the appellant, and the God will bless her. It was also communicated that on her getting the job the addressee would be intimated, thereafter the addressee should sent Kanwar Saheb (respondent), so that he would sent Rekha (appellant). Then Ex.A-1 recites to have received a post card for taking away Rekha to matrimonial home, to which it was replied that it is after spending huge money that she has been educated, and got trained, and now they are making efforts to see that she gets appropriate job, it was expected that the God will be pleased and with the blessings of addressee she would get. some job within two months, and therefore, it was requested that addressee should not take trouble to come right now, and that information will be sent as soon as she gets job, thereafter the addressee may come and take her. It is significant to note that the whole tenor of these letters show that they are written in wholly congenial atmosphere and in the circumstances where the relations between the spouses were very very smooth. Nothing has been shown on the side of the appellant as to, how did the respondent, or his family members react to these letters. Thus on the face of it, it clearly negatives story of the appellant having been given physical beating by the respondent in the year 1984, or the respondent having attempted to kill her by pouring kerosene, so also it negatives all the pleadings relating to cruelty as noticed above. That apart in the statement of the appellant all that she has

deposed is that, last time she had gone in the year 1984 at which time her father left her at Nimbaheda, thereafter she deposed that the behavior of the respondent was not good. He used to administer beating, hurl abuses and level baseless allegations. It is in this sequence, she has deposed that on one occasion the respondent attempted to set her ablaze by pouring kerosene, all her educational papers were burnt, her watch was broken, and clothes were burnt. Then she has deposed that her husband used to beat her, and after giving beating she was turned out of the house. Thereupon she went to Narayangarh. What is significant to note here is that according to the pleading when the respondent tried to kill her, she went out of the house and went to Narayangarh, while according to the evidence pouring kerosene was a different incident, and it was the husband who gave beating and turned her out, thereupon she went to Narayangarh. Likewise she has clearly admitted to be in possession of all papers relating to her education, which negatives the theory of the papers having been set ablaze. Be that as it may, it cannot be lost sight of, that the incident is said to be of the year 1984, and the petition for divorce had been filed as late as in the year 1992, during all these years the appellant was pursuing her studies, and it is only after she got a job that, the present proceedings have been initiated. It is not the case of the appellant that immediately, or soon thereafter any action was taken by her, or on her behalf, to vindicate her position, in view of this matrimonial offence. Likewise the things have been attempted to be improved during evidence, inasmuch as, in witness box she has deposed that when the appellant's uncle brought the appellant to Nimbaheda and tried to convince the respondent, who is said to have given out that he does not want an educated lady. This obviously means that this must have been given out in the year 1984 itself, while according to the appellant she had passed 10th standard in the year 1984, and had passed 11th standard in the year 1986, and thereafter she had done graduation, and also acquired qualification of B.Ed. It is not shown as to, how did she react on the Husband giving out to be not desirous to have an educated lady. Obviously if the appellant was pursuing education despite disliking of the husband, she could have moved for dissolution of marriage right at that time itself, or would have invoked the good offices of the other social circles to persuade the respondent, either to agree to her pursuing the studies, or for dissolution of marriage. Likewise she has then

deposed that the husband used to beat her on the pretext that if he is given Rs. one lac then he would execute the document of dissolution of marriage, and he used to taunt on the pretext that her father has not given 2-4 lacs of rupees. Suffice it to say that there is no pleading in this regard. So far as the allegation about the appellant's cousin Himmat Singh having gone to respondent, significantly the best person being Himmat Singh had not been produced on the side of the appellant, and no reason has been shown as to why he has not been produced. The matter does not end here, inasmuch as a look at the statement of PW.2 Madan Singh who is senior father of the appellant, being the elder brother of the father of the appellant, shows that in cross-examination he was put a question as under :-

Q.izeksn js[kk ls de i<+k gS

And the answer completely puts the cat out of the bag inasmuch as the answer given is.

^^izeksn tkfgy gS A vkSj blh otg ls js[kk mldslkFk ugha jguk pkgrh gS A**

17. This in my view is more than sufficient to show that the shoe pinches somewhere else, viz. that in view of her having obtained high education she feels the husband to be ^^tkfgy** and therefore, does not want to live with him, and obviously with that object, wants to get rid of him by a decree of dissolution of marriage, and therefore, it has to be concluded that it is with intention to achieve this objective that the appellant is cooking up stories, as may suit her convenience from time to time, which ex-facie appear to be false in view of Ex.A-1 and A- 2.

18. Taking up the argument about appellant having been treated with cruelty pending trial, two fold contentions were raised, firstly being that, as deposed by PW.1 and 2 Mohan Singh and Madan Singh that the appellant was described as ^^ckalM+h** and ^^os';k**] and other limb of contention is, on the basis of suggestion made to her in cross-examination about her contemplating to marry with other ^^vkf'kd** in view of her having got a job.

19. Coming to the first aspect, suffice it to say that, it has nowhere been pleaded in the divorce petition that she was ever called as ^ckalM+h** or ^os';k**]. Even in the witness box she has not stated a word about it, and irresistible conclusion is that, the witnesses who are close relations of the appellant are trying to outsmart the appellant herself, and therefore, they cannot be believed. It is also significant to note that this thing has not at all been suggested even to the respondent while he was in witness box, though very many other suggestions have been made, inasmuch as he has not at all been suggested that the appellant used to be called as ^ckalM+h** or ^os';k**] whether by him, or his family members. Thus, this contention cannot be accepted.

20. Then coming to the second aspect, true it is that a suggestion was made in cross examination which has been denied by the appellant. True it also is that in certain circumstances leveling a false allegation of adultery may amount to cruelty, but then this is not an absolute rule of thumb. Taking up the cases relied upon by the learned counsel for the appellant, being Pushpa Rani's case wherein reliance has been placed on para-9, on the basis of head note, to the effect that

'False charge of adultery made by wife at time of cross- examination and in her deposition-False charge can be considered to establish cruelty even though it was not taken in pleadings.'

21. However, a look at the body of the judgment shows that it was clearly ruled in that case that it is in exceptional cases to take into consideration events which may have taken place subsequent to the filing of the suit, and grant relief on their basis, where the relief as claimed originally in the suit may have become inappropriate, by reason of altered circumstances, and where this may appear to be necessary in order to shorten unnecessary litigation, or to sub-serve the substantial interest of justice.

22. Reference has also been made to judgment of this Court in Parihar v. Parihar (8), therein it has been held that exceptions must be applied in matrimonial cases in order to sub-serve the interest of justice, and not to compel the parties to begin another round of litigation on the basis of subsequent events, and allow the precious period of their life to go waste. It has been further held that

'it must be so done depending, of course, on the nature of the case, because it is not only the parties which are concerned in the case but the court has a certain amount of duty and discretion to exercise. The relief entirely depends upon its satisfaction.'

23. Likewise it is significant to note that, there is absolutely nothing even whispered by the appellant, to the effect that making this false suggestion has caused any mental anguish to the appellant. To invoke the considerations as invoked by the learned Judge of Delhi High Court in Pushpa Rani's case, as is clear from the pleadings, that it is the appellant who is out and out to get rid of the husband on account of the hatred developed by her, simply because the husband sacrificed his hey years in educating her, by leveling false allegations of cruelty, though even according to her the husband is ^{^^tkfgy**}. If in the spirit of retaliation, even if a false suggestion has been made to the wife, he simply has to be excused, as the respondent never had any animus to desert the wife, or to finish matrimonial home. Likewise on the face of the clear language of Section 23, before granting a decree for dissolution of marriage there is required to exist a satisfaction with the Court on various aspects detailed therein, and such satisfaction should arise from the surrounding circumstances, as appear from the case itself. Then even leaving apart the aspect of satisfaction, the larger question does also exist, as to whether in the circumstances of the present case, rather totality of circumstances, making of this one suggestion does at all tantamount to cruelty, as contemplated by Section 13(1)(ia) of the Act? The answer to this question is readily available in various judgments of Hon'ble the Supreme Court, in V. Bhagat v. D. Bhagat (supra); cited by the learned counsel for the appellant and in N.G. Dastane v. S. Dastane (9). In Bhagat's case wherein it has clearly been held as under :-

'16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not

necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must be had to the context in which they are made.'

24. In *N.G. Dastane v. S. Dastane* (supra) it has clearly been held by Hon'ble the Supreme Court in para 3-4 as under :-

'34. We do not propose to spend time on the trifles of their married life. Numerous incidents have been cited by the appellant as constituting cruelty but the simple trivialities which can truly be described as the reasonable wear and tear of married life have to be ignored. It is in the context of such trivialities that one says that spouses take each other for better or worse. In many marriages each party can, if it so wills, discover many a cause for complaint but such grievances arise mostly from temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage. We will therefore have regard only to grave and weighty incidents and consider these to find what place they occupy on the marriage canvas.'

25. Then Hon'ble the Supreme Court in *G.V.N. Kameshwara Rao's* case has held in para 12, as relied upon by the learned counsel for the appellant, that

'The Court has to come to a conclusion whether the acts committed by the counter-petitioner amount to cruelty, and it is to be assessed having regard to the status of the parties in social life, their customs, traditions and other similar circumstances. Having regard to the sanctity and importance of marriages in a community life, the court should consider whether the conduct of the counter-petitioner is such that it has become intolerable for the petitioner to suffer any longer and to live together is impossible, and then only the court can find that there is cruelty on the part of the

counter-petitioner. This is to be judged not from a solitary incident, but on an overall consideration of all relevant circumstances.'

26. Since in view of what has been found above all other circumstances invoked by the appellant are not acceptable, this sole circumstance of making false suggestion of adultery during cross-examination, even on parameters considered by Hon'ble the Supreme Court in para 12 above, cannot be held to be tantamounting to cruelty on an overall considerations of all relevant circumstances of the present case.

27. There is yet another aspect having bearing on the, contention regarding cruelty, that the appellant in her statement has deposed as under :-

^eSaus ch, ikl djus ds ckn nks ckj i= fy[k djizeksn dks cqyok;k Fkk A ;g ckr 91 dh gS A-----eSaus izeksn dks lkFk lkFkjgus ds fy, cqyk;k Fkk A**

this obviously means that till. 1991 she had not taken cognizance of the alleged matrimonial offence of cruelty, said to have been committed by the husband, and was ready and willing to live with him. In that view of the matter since there is nothing pleaded, or proved, or even sounded, that after 1991 the respondent committed any cruelty, the appellant cannot claim a decree of dissolution of marriage on the ground of cruelty.

28. Thus, in my opinion, learned trial court cannot be said to be in error in deciding issue No. 1 against the appellant.

29. Coming to issue No. 2, the whole thrust of the contention is that the appellant was turned out of the matrimonial home in the year 1984, and since then there has been no resumption of cohabitation. Pleadings in this regard are largely the same, as have been recapitulated while dealing with the question of cruelty. Additionally in para 11 it has been pleaded that the cause of action accrued to the appellant in the year 1984, on account of the appellant having been turned out from the matrimonial home, and since then is regularly accruing on account of non-resumption of conjugal relation.

30. Needless to say that desertion does include animus deserendi, as a sine qua non, an intention to desert the matrimonial home permanently. Being conscious of this requirement the appellant has tried to built up the case of her having been turned out of matrimonial home by attempting on her life, and then the husband having taken the stand about being not prepared to keep educated lady, and so on. While as found above two letters Ex.A-1 and A-2, and the statement of PW.2 Madan Singh, clearly speaks an otherwise state of affairs Over and above all this, a look at the statement of the appellant herself, when she has deposed as under :

^eSausch, ikl djus ds ckn nks ckj i= fy[k dj izeksn dks cqyok;k Fkk A ;g ckr 91 dh g SA----- eSaus izeksn dks lkFk jgus ds fy, cqyok;k Fkk A vizkFkhZ vc eq>s iRuhds :i esa vc ;fn j[kus dks rS;kj Hkh gks rks eSa mlds lkFk iRuh ds :i esaa vcugha jguk pkgrh gwa A ;g xyr gS fd esjs vc vizkFkhZ ds lkFk ugha jgus dk dkj.kxjhch vkSj vf'k{kk gks A**

31. This shows that in the year 1991 she was ready to live with the husband. This if considered in the background of Ex.A-1 and A-2, leaves no manner of doubt till then there was no animus deserendi, and in view of the statement of PW.2, that the appellant does not want to live with the respondent because the respondent is ^tkfgy** it is clear that if at all there is any desertion, then it is at the hands of the appellant, and not the respondent, and thus the appellant cannot contend that the respondent is guilty of matrimonial offence of desertion.

32. Taking up the last contention, about the marriage having been irretrievably broken down, and the matrimonial tie, having been reduced to a dead shell, in support of which reliance has been placed by the learned counsel, on two judgments of Hon'ble the Supreme Court in G.V.N. Kameshwara Rao's case and V. Bhagat's case.

33. Suffice it to say that this ground is also not available to the appellant in the circumstances of the present case, inasmuch as, the facts of those cases were entirely different. In V. Bhagat's case in para 20 Hon'ble the Supreme Court had granted the decree 'having regard to the peculiar facts and circumstances of this case', and by 'cutting across the procedural objection to give a quietus to the matter'. Even for this Hon'ble the Supreme Court had taken into account the

circumstance, viz. that according to the husband the wife was living adulterous life, and therefore, the husband was trying to obtain a consent divorce, when that could not be materialised, the petition was filed. In reply the wife alleged the husband to be 'suffering from mental hallucination' and that he was having a 'morbid mind... for which he needs expert psychiatric treatment', and further alleged that the husband was suffering from 'paranoid disorder', so on and so forth. Then a laxity was given regarding the standard of cruelty required to be proved as a matrimonial offence entitling the petitioning spouse to divorce, and it was held that, what is cruelty in one case cannot amount to cruelty in another case, it is a matter to be determined in each case having regard to facts and circumstances of that case. Likewise in Kameshwar Rao's case in para 18, though referring to the circumstances of relationship between the spouses being irretrievably broken, taking into account the totality of sequential conduct of the spouse, the educational level of the spouse, viz. the husband was double Doctorate holder, working in United States, while the respondent being post graduate in Home Science, and working as lecturer, and noticing the fact that the marital life of the party ran into rough from the very beginning of their stay in United States, ultimately resulting into filing of divorce petition, wherein the Family Court found the cruelty to have been established, which was reversed by the High Court, and Hon'ble Supreme Court held that

'The married life of the appellant and respondent started in 1979 and right from the very beginning, the parties were under severe mental stress. Both the parties mutually tried to put the blame on each other. In 1982, the appellant, the respondent and their daughter returned to India. The respondent, however, refused to accompany the appellant back to the United States, and according to the appellant, she threw that visa and other papers at him and joined him in the United States only in 1983 and the subsequent evidence shows that the respondent had not willingly joined the appellant. She came back to India with her daughter in 1985. Though the appellant stated that the appellant's nephew, Ramu received her, she refused to talk to him and left with her own relatives. The respondent has denied these facts. However, it is important to note that the appellant has alleged that he did not know the whereabouts of the respondent and his child, at least for some period, after they returned to India. This is evident from the fact that the

appellant wrote two letters to his daughter and these letters had to be redirected to the address of the appellant. She was staying at Araku Valley, which was evidently not known to the appellant. The appellant stated that he suffered severe mental torture and, only after some searching inquiry, he could come to know that she was staying with her sister at Araku Valley. The appellant along with his two relatives went to Araku Valley to persuade the respondent to join the society of the appellant, but the very entry of the appellant and his relatives to the house was prevented by the respondent and later, only at the intervention of her sister, Suryakantham, they were permitted to enter the house.'

34. Then it was also found that the wife had filed a criminal complaint before the police, alleging that she was beaten by the appellant and his mother, the appellant and his mother were called to the police station, and they had to be there for more than 10 hours, which according to Hon'ble Supreme Court showed the innate lack of self-control, which had driven the respondent to this inexorable conduct. But the humiliation and agony suffered by the appellant and his mother, considering their status in life and the social circumstances, was too much. It is in this sequence that Hon'ble the Supreme Court held that this irretrievable break down could safely be termed coming within the purview of Section 13(1)(ia) of the Act, and therefore, the appellant was held entitled to a decree for dissolution of marriage under Section 13(1)(ia) of the Act. Thus, Kameshwar Rao's case is of no help to the appellant.

35. That apart the requirement of Section 23 cannot be given a go-by and if the totality of circumstances of the case are considered for the purpose of arriving at the requisite satisfaction, as contemplated by Section 23, I am satisfied, on the other hand, that it is the appellant who is taking undue advantage of the situation, and therefore, cannot be allowed to invoke the so called consideration of irretrievable break down, to have a decree of divorce.

36. Coming to V. Bhagat's case, in para 20 Hon'ble the Supreme Court has held that

'It is abundantly clear that the marriage between the parties has broken down irretrievably and there is no chance of their coming together, or living together

again. Having regard to the peculiar features of this case, we are of the opinion that the marriage between the parties should be dissolved under Section 13(1)(i-a) of Hindu Marriage Act and we do so accordingly. Having regard to the peculiar facts and circumstances of this case and its progress over the last eight years- detailed hereinbefore- we are of the opinion that it is a fit case for cutting across the procedural objections to give a quietus to the matter'.

37. Thus, Hon'ble the Supreme Court has proceeded to cut across the objections, to give a quietus to the matter, by directing that the marriage should be dissolved under Section 13(1)(ia) of the Act, having regard to the peculiar facts and circumstances of that case.

38. My predicament is that recently Hon'ble the Supreme Court in Delhi Administration v. Manohar Lal (10), has clearly propounded the legal position as under :-

'We have carefully considered the submissions of the learned counsel appearing on either side. Apparently, the learned judge in the High Court was merely swayed by considerations of judicial comity and propriety and failed to see that merely because this Court has issued directions in some other cases, to deal with the fact situation in those other cases, in the purported exercise of its undoubted inherent and plenary powers to do complete justice, keeping aside even technicalities, the High Court, exercising statutory powers under the criminal laws of the land, could not afford to assume to itself the powers or jurisdiction to do the same or similar things. The High Court and all other courts in the country were no doubt ordained to follow and apply the law declared by this Court, but that does not absolve them of the obligation and responsibility to find out the ratio of the decision and ascertain the law, if any, so declared from a careful reading of the decision concerned and only thereafter proceed to apply it appropriately, to the cases before them.'

39. Laying down this proposition Hon'ble the Supreme Court has proceeded to peruse the previous judgments which had been relied upon by Hon'ble the Supreme Court for passing the order impugned therein, and held as under :-

'We could not find from the decision reported in 1997(9) SCC 101 (supra) and 2000(9) SCC 151 (supra) any law having been declared or any principle or question of law having been decided or laid down therein and that in those cases this Court merely proceeded to give certain directions to dispose of the matter in the special circumstances noticed by it and the need felt, in those cases, by this Court to give such a disposal. The same could not have been mechanically adopted as a general formula to dispose of as a matter of routine, all cases coming before any or all the courts as a universal and invariable solution in all such future cases also.'

40. Similarly Hon'ble the Supreme Court in Haryana Financial Corporation v. Jagdamba Oil Mills (11), has clearly ruled as under :-

'Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems, nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes.'

41. The net result of the aforesaid discussion is that the appeal has no merit, and the same is, therefore, dismissed with cost. Costs are assessed at Rs. 3000/-.

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