

Suman (Smt.) Vs. Arvind Kumar

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Court : Rajasthan

Decided On : Dec-14-2006

Reported in : 2007(2)WLN258

Judge : Prakash Tatia, J.

Appeal No. : S.B. Civil Misc. Appeal No. 486/2001

Appellant : Suman (Smt.)

Respondent : Arvind Kumar

Judgement :

Prakash Tatia, J.

1. Heard learned Counsel for the parties.
2. This appeal is against the divorce decree dt. 19.04.2001 passed by the Court of Additional District Judge No. 2, Hanumangarh in Civil Misc. Case No. 94/1996. By the divorce petition, the applicant/respondent sought divorce against the non-applicant/appellant on the ground of cruelty.
3. Brief facts of the case are that the marriage of the appellant wife and respondent husband took place on 09.07.1989. Out of the wedlock, one daughter was born to the appellant on 05.08.1991. According to the allegation levelled by the respondent husband, the appellant was of cruel nature and she was more

inclined towards her mother and father rather than the respondent and the respondent's family. She never treated the respondent's house as her own house. It is also submitted that a gold ring and Rs. 4,200/- were given to the respondent by the appellant's parents at the time of ceremony before marriage but immediately after marriage, the appellant took the said gold ring and Rs. 4,200/- and gave it to her parents. It is also stated that the appellant used to hand over substantial part of the respondent's income to her mother and father. According to the respondent, he tried to live with the appellant but the appellant's mother and father also started misbehaving with the respondent and also started abusing him, which caused serious mental cruelty. Out of this mental torture, the respondent started living with his wife and daughter separate from the parents. It is further submitted by the respondent in the divorce petition that thereafter, the respondent who was doing business, joined the service and still the appellant used to give money to her mother and father. Appellant's brother Rajkumar was of the age of 30 years and was unmarried and he used to come down to the house of the respondent and put hurdles in the respondent's married life. Not only this, but the respondent and her family members put pressure upon the respondent for living with the appellant's parents. It is also alleged that from August, 1994 to October, 1994, the respondent had to run away from his house and the appellant went to her mother and father. The appellant thereafter started giving threats of launching false cases and also started claiming her share in the property. However, with the efforts of one Rajkumar, the matter was settled at the time and the appellant and the respondent both started living in village Sangaria. After few days only, the appellant started misbehaving with the respondent. From Sangaria, the respondent used to go to Hanumangarh because of his service and during respondent's absence, the appellant used to go to Ganganagar and she again started giving some threats. It is also alleged that the appellant used to beat her daughter mercilessly and ultimately, on 26.08.1995, the appellant took her ornaments and clothes etc. and went to her parents' house. On the next day, the respondent fell sick and an operation of his leg was conducted and at that time, neither the appellant nor her family members came to see the respondent.

4. The divorce petition originally was filed on 26.10.1995. Subsequently, a criminal case was launched by the appellant against the respondent and his family

members on 26.12.1995 under Sections 406 and 498A IPC. In the said case, the respondent was arrested on 01.01.1996 and he remained behind bars till 05.01.1996 when he was released on bail. The respondent and his family members could get the bail orders only from the High Court. According to the respondent, by this, the appellant ill-treated the respondent and his family members and it caused serious mental agony to the respondent and his family members.

5. The appellant submitted reply to the divorce petition and denied the allegations levelled by the respondent. According to the appellant, her behaviour with the respondent and his family was very good and she gave all respect to her father-in-law and mother-in-law. The appellant submitted that in fact, the parents of the respondent were not happy with the dowry given by the appellant's parents and, therefore, they started harassing the appellant and also put pressure upon the appellant for bringing more dowry. The respondent and his parents started beating the appellant. The appellant further submitted that in August, 1995, she was turned out by the respondent and his parents after giving severe beating to her. It is also alleged by the appellant that her stridhan and ornaments were kept by the respondent. The appellant further denied that the appellant and respondent lived in village Sangaria or the appellant's brother Rajkumar ever interfered in the life of appellant and respondent. It is also stated that the respondent was never in service. She stated that though she was turned out by the respondent and his family members on 26.08.1995 but on 27.08.1995, the appellant and her parents immediately went to the Nursing Home where the respondent was admitted. The appellant also served the respondent in his this operation recovery period. In the additional pleas, the appellant submitted that the respondent put pressure upon the appellant for bringing Rs. 50,000/- in cash from her parents for which the appellant denied looking to the financial position of her parents. On 26.08.1995, the appellant was turned out and the respondent told that she will come only after she brings Rs. 50,000/- from her parents. The appellant and her parents tried to settle the matter and, therefore, a panchayati was organised wherein Shriram, Sant Lal Singhal and Subash Sharma were there and they took the appellant to the house of the respondent on 08.10.1995. Those persons tried their best to make the respondent and his family members understand but the respondent and

his family member refused to accept the appellant. Therefore, the appellant is living with her parents. She admitted that she submitted a report to the police on 23.12.1995 upon which case under Sections 406 and 498A IPC was registered against the respondent and his parents.

6. In the trial Court, three issues were framed in the light of the pleadings of the parties.

7. The respondent gave his statement as AW-1 and produced witnesses AW-2 Sridut Sharma, AW-3 Ram Kumar, AW-4 Ramesh Chandra - brother of the respondent, AW-5 Ram Kumar-close relative of the respondent and AW-6 Laxmi Devi-mother of the respondent. The appellant gave her statement as NAW-1 and produced witnesses NAW-2 Madan Lal, father of the appellant, NAW-3 Shriram, who according to the appellant was the member in the group of panchas who took the appellant to the house of the respondent for settlement.

8. The trial Court held that the appellant successfully proved the case of mental cruelty and, is therefore, entitled to decree of divorce in his judgment and decree dt. 19.04.2001. Hence, this appeal by the appellant - wife of the respondent.

9. Learned Counsel for the appellant vehemently submitted that this is a case of no evidence and further, the trial Court committed serious error of law in holding that launching of criminal case by the appellant against the husband was an act of cruelty by the appellant against the respondent husband. It is submitted that for protecting rights and for getting punishment for erring person, if action is taken by the spouse, that itself cannot be treated as act of cruelty. It is submitted that there was reason for launching criminal case by the appellant against the respondent and respondent's parents. The case was registered by the police against the husband and his parents under Sections 406 and 498A IPC. The police arrested the respondent and there was reason for his arrest. Therefore, the police, an independent agency, also was the view that the respondent was guilty. It is also submitted that so far as allegations of cruelty are concerned, it is clear from the evidence of the respondent and his witnesses that they failed to give evidence with respect to any specific instance of misbehaviour of the appellant. It is also submitted that from 09.07.1989 till 1995, the appellant lived with the respondent

and there was no allegation that during this long period, she took any steps which may have caused any mental torture of the respondent. It is also submitted that the respondent failed to give any evidence on any of the allegations levelled in the divorce petition.

10. According to learned Counsel for the appellant, normal wear and tear and some quarrel during married life cannot be a ground for divorce. Learned Counsel for the appellant in this regard relied upon the following decisions:

(1) Judgment delivered by the Division Bench of this Court in the case of Smt. Pushpa Devi v. Prahlad Sahai Sharma reported in RLW 1992 (1) 534.

(2) Judgment delivered by the Hon'ble Apex Court in the case of S. Hanumantha Rao v. Section Ramani reported in 1999 DNJ (SC) 200;

(3) Judgment delivered by the Division Bench of this Court in the case of Ren Prakash v. Sneha Lata (Mst.) reported in RLW 2000 (3) 1911;

(4) Judgment delivered by the Gauhati High Court in the case of Smt. Bina Rani Banik v. Pradip Kr. Banik reported in AIR 1999 Gauhati 139; and

(5) Judgment delivered by the Division Bench of Allahabad High Court in the case of Smt. Renu v. Sanjay Singh reported in AIR 2000 Allahabad 201.

11. Learned Counsel for the respondent husband vehemently submitted that the appellant and the respondent are living separate since December, 1995 and almost 10 years are about to pass. The conduct of the appellant is apparently clear. The allegation against the appellant is of her being of cruel nature. She launched a false criminal case against the respondent and his family members after the divorce petition was filed by the respondent. There was no reason for her filing criminal case in the month of December, 1995 when admittedly, she was not living with the husband from August, 1995. The respondent remained behind the bars for 5 days because of the act of the appellant and, therefore, there is no possibility of reconciliation between the parties and they can live together. It is also submitted that the marriage has broken down irretrievably. According to learned Counsel for the respondent, in such a situation, the Appellate Court may not

interfere in the findings recorded by the trial Court while granting decree for divorce. Learned Counsel for the respondent also submitted that as per the law laid down by the Hon'ble Supreme Court in the case of G.V.N. Kameswara Rao v. G. Jabilli reported in 2002 WLC (SC) Civil 153, the act of cruelty does not imply damage to life or limb. It is also submitted that in case of mental cruelty, there is no damage to the life or limb of the spouse but it makes the life miserable and may be more miserable than any damage to the limb of sufferer. The Hon'ble Supreme Court in the case of Durga Prasanna Tripathy v. Arundhati Tripathy reported in 2005 (2) WLC (SC) Civil 461. On finding that there is no chance of reunion or reconciliation as the parties were living separate since past 14 years, reverse the judgment of High Court and upheld the decree of trial Court for divorce. The Hon'ble Supreme Court took the same view as was taken in the case of G.V.N. Kameswara Rao (supra) in the case of A. Jayachandra v. Aneel Kaur reported in 2005 (1) WLC (SC) Civil 237 and held that cruelty is not confined merely to physical violence but it extends even to mental cruelty which has to be viewed in social bearing and environment of the parties and proof beyond reasonable doubt is not required in civil cases. The Hon'ble Apex Court held that cruelty in marital field is something more than ordinary wear and tear of married life. The concept of irretrievable broke down of the marriage which is not the ground under Section 13(1) of the Hindu Marriage Act appears to have been recognised by the Hon'ble Supreme Court and, therefore, in a recent judgment delivered in the case of Naveen Kohli v. Neelu Kohli reported in : AIR 2006 SC1675 , the Hon'ble Supreme Court observed that it will be against the interest of both the parties as well as against the interest of society to refuse to grant decree of divorce in the cases where the marriage has broken down irretrievably. The Hon'ble Apex Court in the case of Praveen Mehta v. Inderjit Mehta reported in 2002 WLC (SC) Civil 667 held that the mental cruelty can cause more grievous injury and reasonable apprehension in the mind of injured spouse that it would be harmful to live with the other party.

12. I considered the submissions of the learned Counsel for the parties and perused the record and statements of all the witnesses as well as the judgments cited.

13. It is not in dispute that the marriage of the appellant and the respondent took place on 09.07.1989 and out of this wedlock, a female child was born on 05.08.1991 and that they are living separately since August, 1995. The allegation of the respondent against the appellant of causing mental cruelty is mentioned above in detail.

14. The respondent gave his statement and he was thoroughly cross examined by the appellant. The respondent stated that the appellant used to misbehave with the respondent's mother and used to abuse his mother in filthy language. Normally, she did not remain in the house and whenever the friends and relatives of the respondent came to the house of the respondent, the appellant never cooperated with him and she used to tell that she is not servant and, therefore, the respondent may make arrangements of tea and breakfast of his guests. She also stated that she married the respondent under the impression that the respondent is graduate whereas he is engaged in business of only iron beating, iron work like cooler etc. When the respondent complained before the appellant's parents, they told that the girl is educated and she will live with full comforts. The respondent stated that because of behaviour of the appellant, he started living at Sangaria in his parental house separate from his parents and his parents remained at Hanumangarh. At Sangaria also, the behaviour of the appellant remained the same and she used to abuse him before his friends also. The respondent also stated that his brother-in-law off and on visited his house and caused disturbance in their life. In sum and substance, the respondent gave his statement in support of all the allegations which he levelled in the divorce petition. In the cross examination, nothing came out so as to cast doubt upon the credibility of the witnesses. However, the respondent admitted in his cross examination that his sister and brother-in-law never complained that the behaviour of the appellant was not good with them and he also state that they used to come only at festival times. He also admitted that his wife never took accounts from him about his expenditure. In cross examination, the respondent stated that his wife used to take away money from his pocket but he could not give the dates and amounts.

15. From the questions which were put to the respondent in cross examination, it appears that about very minor things, the questions were asked to the respondent.

From these statements, learned Counsel for the appellant tried to show that except the respondent, admittedly, none of the relatives of the respondent had any grievance about the behaviour of the appellant and, therefore, the allegations of bad behaviour of the respondent is absolutely false allegation.

16. The arguments of the learned Counsel for the appellant, may it be attractive, but is devoid of any force because of the reason that what is important was how the appellant and the respondent were living together or how the behaviour of the appellant was with the mother and father of the respondent. It is not necessary that the lady in house will project herself to be cruel before all of her in-laws relations.

17. The respondent's statement is corroborated by the statement of AW 2 Shridutt Sharma who stated that the respondent is known to him since last 17-18 year and he gave his statement about specific instance of appellant's refusing to give tea to him. Another witness of respondent is AW 3 Ramkumar, a classmate of the respondent. He also gave his statement about specific instance of not giving tea to him by the appellant on demanding by the respondent. The allegation of such nature may not be very important in view of the judgments relief upon by learned Counsel for the appellant wherein it has been held that there may be some ifs and buts and normal wears and tears and even some quarrel in married life cannot be treated to be act of cruelty but for normal behaviour, if small things are taken together, they may make the life of anybody miserable. The statements of AW4 Ramesh Chandra, brother of the respondent and AW 6 Laxmi Devi, mother of the respondent as well as AW 5 Ramkumar are statements coming from the family members and relatives. These statements are also with respect to the behaviour of the appellant.

18. The appellant in her statement before the Court below denied all the allegations which were levelled by the respondent against her about her misbehaviour with the family members and friends of the respondent etc. but in cross examination, she stated that her mother-in-law used to beat her and she levelled false allegation of theft against the appellant. She was not giving meals to the appellant and used to keep kitchen in lock and because of that reason, the

appellant was levelled with allegation of theft of meals and of money. Those allegations were levelled by her mother-in-law and sister-in-law. In cross examination, she also stated that her husband respondent told her that since beginning, he was not liking her but when she was asked to give the names of the respondent's friends, she could not give the name of any friend on the plea that the respondent's friends used to sit in the room whereas the appellant remained busy in the household works, therefore, she is not knowing which of the friends of the respondent used to come to the house of the respondent and appellant. In sum and substance, from evidence of the appellant, it is not clear that according to her what was the reason for the respondent to turn her out. The allegation of demand of dowry appears to be quite vague. The appellant in her cross examination also admitted that she launched a criminal case under Section 498A IPC after the respondent filed the divorce petition. Initially, she stated that she also filed a petition for restitution of conjugal rights but in further cross examination, she admitted that she did not file any petition for restitution of conjugal rights, therefore, the act of filing of criminal case under Section 498A IPC is subsequent act of the appellant and has been filed during the pendency of the divorce petition.

19. Appellant's father NAW 2 Madan Lal in his statement stated that for 2-3 months only, the relations of appellant and respondent were normal and thereafter, the appellant was thrashed to bring dowry. Despite this fact, it appears that no action was taken by the appellant and her family members till the divorce petition was filed by the respondent. Appellant's father in cross examination even stated that he has no knowledge whether the respondent remained behind the bars or not in the criminal case filed by the appellant. He also stated that the dowry was demanded by the respondent and that demand was made in the year 1995 and during panchayati.

20. NAW 3 Sriram Agarwal is close relative of the appellant who stated that he was member of the Panchayati for settlement of dispute between the appellant and respondent wherein dowry issue was also discussed. He further stated that appellant's mother-in-law demanded dowry. In cross examination, he narrated few other instances of demand of saree etc.

21. In the totality, from the evidence of the appellant, it is not coming out that any efforts were made by the appellant or his family members for settlement of dispute as according to them, there was panchayati and that was on one occasion. In view of the above, preponderance of probabilities are also not in favour of the appellant on the issue that she had reasonable cause to live separate from the respondent.

22. Assuming for the sake of argument that there is a possibility of only some quarrels or not of good behaviour of the appellant at a particular time but if all things are taken together along with the fact that the respondent was arrested in a criminal case initiated by the appellant after her leaving the house of the appellant and that too after about two months from the respondent filing divorce petition and in that case, the respondent was arrested and remained behind bars for 5 days, then it appears that the relationship of the parties has reached to the position where reunion is not possible. There are allegations and counter allegations and it is not a case where there is only fault of the respondent husband and, therefore, it is not a case of giving benefit to the respondent of his own fault, then it will not be in the interest of the parties that the finding of the Court below be reversed and the divorce petition filed by the respondent be dismissed. Had it been a case of giving some benefit to the wrong doer, this Court would have interfered even in the appellate jurisdiction but this is not a fit case where there can be interference so as to keep the namesake relation of husband and wife, between the respondent and the appellant alive in a case where there is no chance of reunion between them. It is also true that launching of criminal case to protect a right by the wife against the husband itself cannot be a ground to hold that the wife has committed cruelty against the husband because of the simple reason that the law has been enacted for the benefit of weaker Section of the society but when in the garb of that statutory benefit, process is abused, the Court can look into the facts and all surrounding circumstances for the purpose of deciding divorce petition where there is no conviction of any person and preponderance of probabilities are given preference.

23. The Division Bench of this Court in the case of Smt. Pushpa Devi (supra) held that wife's demand of living separate from the husband's parents may not be justified but that does not amount to cruelty and nor merely because the marriage

was not successful, it can be treated to be a case of cruelty.

24. In the case of S. Hanumantha Rao (supra), the Hon'ble Apex Court held that removal of Mangalsutra by wife at the instance of husband and filing of complaint by the parents of wife with Women Cell for reconciliation and where neither husband nor husband's family members were harassed and husband sought anticipatory bail out of panic, then those acts are not cruelty by wife against husband.

25. In the case of Ren Prakash (supra), the Division Bench of this Court specifically recorded that the conduct of the husband was not fair to his wife and it was also held that the husband himself committed cruelty on the wife and divorce has been sought on trivialities which Division Bench held were only reasonable wear and tear of married life. It was also held that the decree for divorce under Section 13(1)(1-a) can be passed only on grave and weighty incidents on the ground of cruelty.

26. In the case of Smt. Bina Rani Banik (supra), there were vague allegations and that too with respect to behaviour of wife towards husband, husband's mother and husband's brother and those grounds were not found sufficient for grant of divorce decree.

27. In the case of Smt. Renu (supra), the Division Bench of Allahabad High Court observed that the only ground on which decree for divorce was sought was misbehaviour by the wife with parents and other members of husband and that was not found sufficient.

28. The judgments relied upon by learned Counsel for the appellant clearly demonstrated that when there are trivial allegations about behaviour of spouse which may not be palatable to the other party to the marriage, then on such grounds, decree for divorce cannot be granted. For proving cruelty, strong and weighty grounds are needed and the marriage is not so fragile that it can be broken down because of some minor disputes. The facts of the present case clearly show that the judgments relied upon by learned Counsel for the appellant cannot be of help to the appellant as they are not applicable to the present facts as discussed

above.

29. In view of the above discussion, I do not find any merit in this appeal.

30. It would be just and proper to mention here that the appellant shall be free to move any application for grant of maintenance under Section 25 of the Hindu Marriage Act before the Court below so that in case, any case is made out for periodical maintenance or lumpsum maintenance, the Court may decide the claim of the appellant after taking evidence because of the reason that sufficient evidence is not available on the record of this file for award of maintenance in favour of the appellant or there are no sufficient pleadings about entitlement and non-entitlement of maintenance. Consequently, the appeal of the appellant is dismissed.

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