

Devakumar Vs. Thilagavathy

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Court : Chennai

Decided On : Oct-17-1994

Reported in : AIR1995Mad116

Judge : Srinivasan and; S.S. Subramani, JJ.

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

Appeal No. : C.M.A. No. 980 of 1990

Appellant : Devakumar

Respondent : Thilagavathy

Advocate for Def. : C.P. Pattabhiraman, Adv.

Advocate for Pet/Ap. : Mrs. B. Vijayalakshmi, Adv.

Judgement :

ORDER

S. S. Subramani, J.

1. Petitioner in M. O. P. No. 127 of 1990 before the Family Court, Pondicherry, is the appellant herein.

2. The petition filed by the appellant was one for divorce.

3. The relevant facts are as follows:-- The appellant and the respondent were married on 22-2-1988 at Pondicherry in accordance with the custom prevalent in their community. It is the case of the petitioner that within five days after the marriage, the respondent attempted to commit suicide by swallowing a diamond earring. According to him, the said act on the part of the respondent was due to her hatred towards the appellant. According to him, the respondent did not like the appellant and she has told about, the same to him several times. It is her habit to abuse and insult every member of the family. The conduct of the respondent, according to the appellant, amounts to cruelty. The appellant, due to mental agony and desertion is not in a position to co-habit with the respondent. In paragraph 3 of the petition, the appellant has also alleged that the respondent has deserted him for over two years, and she is in such a state of mind that no reasonable and prudent man would ever live with her as husband.

4. A detailed counter is submitted by the respondent. She denies the acts of cruelty and also desertion. According to her the marriage was conducted at Pondicherry and the same was performed by the appellant's family. At the time of marriage her father gave jewels and other ornaments apart from household vessels etc. It is further stated by her that during the first night, she felt some difficulty in the sexual act, which she narrated to her sister-in-law a few days later. This was declared by the sister-in-law as if the respondent was unfit to have marital life. The respondent has further averred that her sister-in-law and other family relations of her husband used to insult and abuse her and were in the habit of using filthy language. Even within two or three days after the marriage, the mother-in-law and sister-in-law used to scold her and ill-treat her. That was the reason why she was compelled to swallow diamond earring. She became unconscious thereafter and was taken to hospital where she was treated as an in patient for more than ten days. She was discharged from the hospital with an advice that she must take bed rest for 1-1/2 months. The appellant thereafter took the respondent to her house. It is further contended by her that there was some sort of settlement between the parties and the appellant and the respondent thereafter lived together happily for a few months. During this time also, the sister-in-law used to go over there and exploiting her position, wanted ornaments and cash to be brought from her house. It was the greed of the sister-in-law and other

family relations of the appellant that is responsible for the unhappiness in the married life. In fact, she also alleged that on 18-3-1983, the appellant and the respondent went and registered the marriage with the Registrar of Pondicherry. He had even made preparations for obtaining French Nationality, According to the respondent, the allegations in the petition are not true and she is not prepared for a divorce. She wants the marital alliance to continue and she undertakes to live as an obedient wife as before if the appellant is prepared to resume the conjugal union.

5. Before the Court below, the appellant got himself examined as P.W. 1 and the respondent as R.W. 1, Ex. A.1 and Ex. B.1 were marked. On the basis of the evidence, both oral and documentary, the court below had entered a finding that the allegations in the petition are not true and there are no grounds made out for divorce. It is against the said decision of the Family Court, the appellant has come up in appeal before this court.

6. The only point that requires consideration is, whether the allegation of cruelty or desertion alleged by the appellant in his petition is true.

7. In the petition, it is stated in paragraph 1 as follows :

'Ultimately on the fifth day from the marriage, that is on 27-2-1988 she fell unconscious. Medical tests established that she had attempted suicide by swallowing the diamond ear-ring. In spite of such a shock, agony and constant cruelty to this petitioner, the petitioner and his parents were in the hope that she would change her mind. But it was not to be as evidenced in her conduct of remaining in her parents house for well over two years now.'

It is this averment that we have to consider and find out whether it is true and whether the conduct of the respondent amounts to cruelty. For that purpose we have to go through the evidence of P.W. 1 According to us, the deposition of the appellant is sufficient to hold that what all he has stated in his petition is without any bona fides. In the petition, it is also stated that they lived only for five days as man and wife. In the deposition, the appellant says that they were residing for about six months in his house. During the period of six months she was not having

proper conjugal life. It is his case that at midnight she used to wake up and talk something. When she was questioned, it is his case, the respondent was not giving proper reply. Hence the appellant thought of sending her to her parent's house. P.W. 1 further says. 'So I went along with the respondent to her house and left her in her parent's house. Then I returned to my house. When I returned back, I decided not to live with her because of her strange habits.' It is clear from the above evidence that the alleged cruelty is not proved in this case; nor the respondent is responsible for the separate living. It is the appellant himself who has taken her to her house, and refused to live with her. His evidence shows that he did not want to continue the marital alliance.

8. In the deposition of P.W. 1 he has further stated that the respondent told him that she has no liking for him and therefore there is no purpose of keeping the respondent as his wife. The statement cannot be believed for a moment. It is admitted that the appellant and the respondent lived together for a few months. If we go by the circumstances under which the marriage was conducted there could not have been any misunderstanding between the parties since it is an arranged marriage. The marriage was conducted at Pondicherry, at the appellant's instance, and at their expenses. If the respondent had no liking for the marriage, she, being old enough to express her opinion, would not have consented for the marriage at all. Even now, the respondent asserts that she is prepared to live with her husband and she never accuses her husband for the unhappiness in the family. She only finds fault with her in-laws and their greedy nature in demanding ornaments and cash from her house. She never says that she is not affectionate towards her husband. A reading of the entire deposition of P.W. 1 will show that she is an affectionate wife and she wants to continue the marital alliance. The statement of P.W. 1 is false and we cannot believe the same. The case that was put forward by the appellant in the original petition, is entirely different from what he deposed as PW 1.

9. The respondent has produced Ex. B.1 letter written by the appellant to her father. A reading of that letter is sufficient to show that the statements made by the respondent are true. In that letter, the appellant has wanted his in laws to look after his wife properly and he has also said that he is prepared to pay any amount for

the treatment. The letter Ex. B. 1 was written immediately after she was discharged from the hospital after she consumed the diamond ear-ring. A reading of that letter will also imply that the appellant was aware of the circumstances under which his newly wedded wife was compelled to swallow a diamond ear-ring and the persons responsible for the same. It is further shown that the respondent was in her father's house with her husband's consent, and also on the request of her husband, and not against his wish. He also wanted his wife to be there in her father's house, for treatment. The said direction by the appellant itself is sufficient to hold that the appellant's case of desertion by his wife is incorrect and false,

10. The only act of cruelty that is urged in the petition is the attempt to commit suicide by swallowing diamond ear-ring. The wife has explained the circumstances under which she had to swallow it. The lower court had the opportunity to watch the demeanour of the witness respondent and appreciate her evidence. The lower court has fully believed the statement of the wife. Normally a newly wedded wife will not commit suicide unless she is driven to do so by force of circumstances especially when she has consented to the marriage. Taking that as a circumstance in favour of the respondent, we have to believe her statement that she was driven to that stage. It is not a cruelty towards her husband, but she wanted to end her life so that the atrocities of her in-laws may not continue,

11. Further, the lower court has also held that a reading of Ex. B. 1 will show that even if an attempt to commit suicide amounts to cruelty, by writing Ex. B.1 letter and the continued residence and conjugal union between the parties thereafter at least for a few days amounts to condonation of the alleged cruelty. According to P.W. 1 even after the alleged attempt to commit suicide by the respondent they were residing together for a few months, as man and wife.

12. The appellant has filed Ex. A.11, photo copy of a letter, alleged to have been written by the respondent to her parents. The letter, according to the respondent, was written at the dictate of her sister-in-law. The respondent has got a case in her counter that when there was a demand for dowry she wanted the same to be made to her parents and requested her in-laws to do so. The same was not liked by her in-laws and to wreak vengeance for such a reply, the respondent was

informed by her in-laws that her parents and all other relations died in an accident. Even though P.W. 1 does not speak about it in her deposition. We find that there is some reference to it in her letter Ex. A.1 that also shows that conduct of the relations of the appellant and how they treated the respondent. Being a newly married girl, when she expects love and affection from the husband's people, what she got was only cruelty, intolerance and demand for dowry, and because of all these, she became desperate, and we cannot find fault with a girl, even if she made an attempt to commit suicide. According to us, the husband who should have protected her at that time, did not discharge his duty towards his wife, she was neglected. After considering the entire evidence, we do not think that this is a case in which a divorce should be granted.

13. The learned counsel appearing for the appellant relied on a few decisions in support of her case,

14. (1992) 1 DMC 409 (Rajni v. Shantilal) was cited to show that an attempt to commit suicide is an act of cruelty towards the husband. The facts of that case are entirely different. In that case, the wife denied the alleged attempt in her counter, but she did not examine herself. Further, it was alleged that the husband had committed adultery and had married a second time. It was under these two circumstances, the Madhya Pradesh High Court held in that case that the wife's conduct amounted to cruelty.

15. In 1992 2 DMC 320 (Mahendra Sharda v. Sekha) it was held that the wife's conduct amounted to cruelty. In that case, the wife, without any reason used to accuse her husband and was finding fault with any act of his. The facts of the case on hand are different. In this case, we do not find even a single word by the wife accusing her husband or alleging any act of misconduct on his part,

16. The last decision cited, is, (1993) 1 DMC 358 (Sushila v. Om Parkash) In that case, the wife used to show a tendency of attempting to commit suicide and thus she caused mental torture to the husband. It was an act against the husband. In the circumstances the learned judge of the Punjab and Haryana High Court held in that case that the conduct of the wife amounted to cruelty.

17. In this case, we have already narrated the circumstances under which the respondent (wife) was driven to the stage of attempting to commit suicide. She became helpless woman in that new house, and the appellant did not take any steps to protect her in time. Her conduct will never amount to cruelty. The ground of desertion is also not made out. We do not find any reason to interfere with the finding of the court below.

18. In the result, the appeal is dismissed with costs.

19. Appeal dismissed.

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