

**Deepayan Chatterjee Vs. Papiya Chatterjee**

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**SooperKanoon Citation :** [sooperkanoon.com/876961](http://sooperkanoon.com/876961)

**Court :** Kolkata

**Decided On :** May-18-1989

**Reported in :** II(1990)DMC75

**Judge :** Shamsuddin Ahmed and ;P.K. Banerjee, JJ.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 12 and 13(1)

**Appeal No. :** Appeal from Original Decree No. 235 of 1988

**Appellant :** Deepayan Chatterjee

**Respondent :** Papiya Chatterjee

**Advocate for Def. :** S.P. Roy Chowdhury, ;Subhra Kamal Mukherjee and ;Debasis Roy, Advs.

**Advocate for Pet/Ap. :** Ashok Kumar Sengupta and ;Binayak Kumar Ghosal, Advs.

**Disposition :** Appeal allowed

**Judgement :**

**Shamsuddin Ahmed, J.**

1. The appellant-petitioner filed a suit for divorce and for declaration of nullity against the respondent-wife with leave of court under Section 14 of the Hindu

Marriage Act as the statutory period of one year did not expire from the date of solemnization of the marriage. The petitioner wanted to make out a case of exceptional hardship and the leave was granted by the Court. The petitioner mainly based his case and sought relief under Section 12 and Section 13(1)(1A) of the Hindu Marriage Act. He disclosed in his petition that the parties were married on 9th July, 1985 according to the Hindu rites. The negotiation of marriage between the parties was made through 'Jogajog' a Marriage Bureau. The particulars supplied to that office of 'Jogajog' by the respondent or on her behalf with regard to her age, educational qualification, family status and other particulars were all false and they suppressed the real position and thereby practising fraud obtained the consent of the petitioner to the marriage. He also came to know that the father of the respondent married twice and was not living with his wife. Though it was disclosed that he is a businessman but he was not so. Immediately, after the marriage the respondent started behaving in a peculiar manner and was found completely indifferent towards the petitioner on the night of Fulosajya, respondent firmly asked the petitioner not to touch her as she was not feeling well. It was a great shock on the petitioner to be behaved in such a manner on the night of Fulosajya, a cherished night for all newly married young man. He wanted to know the reason of such a behaviour, the respondent disclosed that her marriage was solemnized against her will. The respondent did not allow the petitioner to establish and sexual relationship with her. On 18-7-85 at about noon on account of Dashamangala the petitioner took the respondent to her uncle's house and the petitioner was astonished at the changed behaviour of the respondent She became very jolly and happy but as it was a Thursday the parties could not stay there and had to come back to the petitioner's residence. At this the respondent became furious and passed ugly and filthy comments against the parents of the petitioner. After coming back the respondent did not even show the minimum courtesy of meeting her parents-in-law. When the petitioner asked about her such behaviour the respondent replied rudely that she did not want him and also did not wish to live with him. At the exchange of words between the parties the mother of the petitioner knocked at the door. The petitioner opened the door and disclosed everything to his mother. The mother advised the respondent to adjust herself. The respondent after the mother had left made arrangement for sleeping on the

floor much against the wish of the petitioner. But she remained adamant. This situation continued till 20-7-85. To overcome the situation the respondent was again taken to her uncle's flat on 21-7-85 where the respondent stayed for 3 nights. Petitioner also stayed there for one night and here he could have access to the respondent in the matter of sex but that expectation ended in a tragedy. The respondent disclosed that there had been many affairs in her personal life and she had previous experience of sex and it was nothing new to her. That is why she used to live in her uncle's house to enjoy a free life. He had the opportunity of having a look at the limbs of the wife and the petitioner was convinced that she had sexual affair in her life prior to her marriage and she had also made abortions. On 30-7-85 the respondent finally went to her uncle's place leaving her major articles in the house of the petitioner, the petitioner wanted to give it back to her on an accountable receipt. She intimated the respondent about this. The respondent sent a letter through her advocate Sri Kashi Nath Biswas which contained false allegations. He denied those allegations in his reply. On 9th July, 1985 the respondent's consent was obtained to the marriage by practising fraud by furnishing false particulars about the respondent and her relations. They would not have consented to the marriage if those false particulars were not furnished. The petitioner also asserted that it would be harmful and injurious to live with the respondent. Accordingly, he has prayed for a decree of nullity of the marriage under Section 12(1) and a decree for divorce on the ground of cruelty under Section 13(1)(1A) of the Hindu Marriage Act.

2. The respondent denied all the allegations made in the petition specifically. She stated that the petitioner husband is a Sergeant of Calcutta Police. He is very tough and rough in nature. Without any rhyme or reason he used to get annoyed and physically tortured the respondent and also used to warn her with threats of dire consequences by showing a revolver for shooting the respondent if she did not leave the matrimonial home. She was treated like maid servants and forced to do the job of menials. Besides this torture at night the husband and his parents, brother, married sister Indrani and her husband Milan used to physically assault the respondent and caused mental torture on her almost daily. For no reason and sometimes for her inability to do all the work of maid servant, viz., cleaning utensils, washing of the rooms etc. She was not allowed to take her mid-day meal

before 3 P.M. and night meal before 11 P.M. on each day. As a result of this physical strains the respondent became ill and she was having high fever. At such stage of her health she was assaulted by the relations of the petitioner. She used to be wrongfully confined inside a room very often under lock and key during the period between 10-7-85 and 29-7-85. All the ornaments given to the petitioner, respondent during her marriage were taken away from the respondent on the following day of petitioner's arrival at her husband's house. Thereafter she has not seen the ornaments. On 29-7-85 and also on 30-7-85 the respondent was assaulted by the fists, blows and kicks and on 30-7-85 she was driven away from the house of her husband with only one saree and a blouse on her person. That the respondent thereafter living in her uncle's flat and with her mother at Tangra Road Housing Estate. When living at her uncle's flat she was threatened over telephone by the petitioner that if she would come back to her husband's place she would be shot dead and as he is a Sergeant of the Calcutta Police she would not get any help from any where. On these grounds the respondent wanted to resist the decree.

3. On the basis of these pleadings the learned trial Judge framed issues and after considering the evidence dismissed the suit. The learned Judge found that the allegation with regard to fraud could not be established by the petitioner. The particulars relating to the respondent was furnished by the Jogajog. There was nothing to indicate that such particulars were furnished by the respondent herself. The learned Judge noted that Masi of the respondent filed the form containing the particulars. According to the learned Judge the particulars in the form was not proved by any witness from the said Marriage Bureau. According to the learned Judge's view the petitioner failed to connect the respondent with the particulars furnished through Jogajog. The learned Judge also noted that the marriage was settled after prolonged negotiation and was held in the presence of the parents of the parties. Accordingly, he rejected the ground of marriage being a nullity on the ground of fraud. With regard to cruelty the learned Judge held that in his show cause in the proceedings under Section 125 Cr. P. C. initiated by the wife respondent the petitioner did not deny the fact of consummation of marriage between the parties. Accordingly, he did not rely on the case of the petitioner that the respondent refused to have sexual relationship with him. He also did not

believe the statement of the petitioner that the respondent herself admitted that he had prior experience of sex. The learned Judge held that the husband petitioner had raised wild and untrue allegations against the wife and in this view he dismissed the suit.

4. Mr. Sengupta, learned Advocate appearing for the appellant has submitted that the judgment passed by the trial Court is not based on evidence. Mr. Sengupta submitted that the learned Judge was wrong in noting that the petitioner had conceded in his cross-examination that he got access to his wife in the matter of sex. Mr. Sengupta submits that the learned Judge has read the evidence out of context. He also submitted that to his show cause in the case under Section 125 Cr. P.C. there was no scope for denying the fact of consummation of marriage between the parties. Accordingly, Mr. Sengupta submits that the conclusion arrived at by the learned judge was not on the basis of evidence on record.

5. Mr. Roy Chowdhury on the other hand contended that the allegation with regard to fraud even if accepted cannot be said to be a fraud practised on the petitioner at the time of marriage. On this he has relied on a decision reported in : AIR1959 Cal778 . The court held that the alleged fraud must be practised at the time of marriage. On the facts of this case it will appear that the alleged fraud had been practised on the petitioner long before the solemnization of the marriage. After having particulars from Jogajog the petitioner had enough opportunity to verify whether the particulars contained therein were true. The petitioner himself admitted in his evidence that after seeing the respondent he agreed to the marriage. It was not necessary for the respondent to disclose as to her verginity before the petitioner consented to the marriage. In this matter the petitioner has to get himself satisfied by an independent enquiry. On this Mr. Roy Chowdhury has relied on a decision reported in . It is true that the respondent in her deposition admitted that all the particulars contained in the form of Jogajog were true. But it will appear that none of these particulars are very essential in obtaining consent to a marriage and since the opportunities were available to the petitioner to verify them we are unable to hold that the marriage was a nullity because the fraud was practised in obtaining consent.

6. The next ground is with regard to mental cruelty inflicted on the petitioner by the respondent. In this respect, the petitioner has mainly relied on the incident of Fulosajya night. Dashamangala day and one night spent by him along with the respondent in the house of her uncle. It will also appear that the petitioner wanted to assert that the respondent refused to have any sexual relationship with the petitioner. It will also appear that subsequent to 30-7-85 the date on which the parties started living separately, the respondent has started a criminal case against him and his mother alleging theft and cheating. He has also been alleged that the respondent had caused a search warrant to be issued in connection with recovery of articles left by the respondent at her husband's place and in fact in execution of such search warrant some articles were found out. The petitioner has alleged all these to be cruel treatment towards him by the respondent. It will appear that the learned Judge failed to approach the evidence from the proper perspective. On perusal of all the materials on record it appears that one of the principal grounds on which the petitioner has based his case was that the respondent refused to have sexual relationship with him and he has asserted that it was a mental cruelty. It will appear from the deposition of the respondent herself that she filed a case under Section 125 Cr. P.C. being case No. M/187. She deposed in the said maintenance proceedings. She also started a misc. case for setting aside the ex parte decree obtained by the petitioner in this suit and she also admitted that she had initiated a criminal case against the husband and other in laws under Sections 323/342/506/420/120B IPC. She admitted in her cross-examination that in the case under Order 9 Rule 13 she wrongly stated that the marriage was not consummated due to physical incapacity of the opposite party. In reply to the court's query she stated this as she was instructed by her husband. It will appear that in both the case arising out of the proceedings under Order 9 Rule 13 as well as proceedings for maintenance the respondent's case was that the marriage could not be consummated because of physical incapacity of the petitioner. Confronted with this previous statements she wanted to explain that she made these false statements as tutored by her husband. This will show that this lady can make any allegation or make any statement that might suit her purpose. It is clear from her case as made out by her in her written statement that since marriage she had been treated with inhuman cruelty particularly by the husband.

How then she could say that she made these statements being tutored by the husband. In the instant suit she has denied the allegation that she refused to have sexual relationship but if these assertions made in cases referred to above, her statement cannot at all be relied on. The learned Judge refused to believe the case of the petitioner in this regard, only because the petitioner stated that in the house of the uncle he had access to sex but it will appear that the learned Judge failed to read with evidence in its entirety. The petitioner stated that I got access to the petitioner in the matter of sex but at the same time he stated that the marriage was never consummated. The learned Judge ought to have read this evidence in its totality. The petitioner clearly stated that the respondent refused to have sexual relationship with him. In cross examination he conceded that he got access in the matter of sex but marriage could not be consummated. This statement must be read as that he had opportunity to have sex with the respondent but the marriage could not be consummated because of refusal by the respondent. Since it is matrimonial proceedings and the relationship between the husband and the wife is the subject matter of consideration by the court- the case as made out on the one hand by the husband and on the other hand by the wife has to be scrutinised and in a proceedings like this one version of the case has to be accepted by the Court. In the instant case, the petitioner's case was admitted by the respondent any other proceedings she had no acceptable explanation for admitting the same to be true. Accordingly, in this statement of the evidence the case of the petitioner that the respondent had refused sex to him has to be accepted and the learned Judge has made an error in appreciating the evidence in this regard. Refusal to get the marriage consummated is certainly a mental cruelty inflicted by the respondent on the petitioner.

7. Mr. Roy Chowdhury contended that cruelty per se is not a ground for divorce. He referred to a decision reported in 1980 (2) CLJ 82. The learned Court held that even after the amendment cruelty simplicitor is not enough for the purposes of a decree of dissolution of marriage but it must be shown that the cruelty of such a nature that it is injurious and harmful to live with the party causing such cruelty. Even if we accept this contention made by Mr. Roy Chowdhury there is no difficulty in holding that it is not safe to live with a wife who can make such wild allegations. It may also be noted that even after she started living separately she

treated the petitioner with cruelty by instituting several proceedings. She clearly stated that it, was not possible for her to live with the petitioner but at the same time she stated before the trial Court that she is inclined to live with the petitioner. All these clearly revealed that the respondent is not at all a reliable person.

8 It will also appear that the respondent served a notice through her lawyer on the petitioner. In this letter she has alleged that the petitioner had threatened her saying that in the interest of saving her life she should marry again, failing which the petitioner being a Sergeant of the Calcutta police would shoot the respondent dead and also make the lives of her relations in Calcutta miserably by implicating them in, false police cases. These allegations could not be substantiated by the respondent in her deposition. It will appear that the parties lived as husband and wife for about 20 days. During this 20 days the respondent had opportunity to meet his relations and also had opportunity to spend nights with them. If the respondent was faced with such situation it was quite natural that she would immediately intimate her relations but no such evidence is forthcoming. These wild! allegations are also mental cruelty inflicted by the respondent on the petitioner.

9. Accordingly, after perusing all the materials on record we accept the case of the petitioner that the respondent had inflicted mental cruelty on him by refusing to have sexual relationship with him as well as by making false and wild allegations.

10. Mr. Roy Chowdhury argued that the learned trial Judge has made an error in granting leave to the petitioner under Section 14 of the Hindu Marriage Act without giving a hearing to the respondent. It will appear that the respondent contested the suit without raising any objection as to the leave granted by the trial Court to the petitioner under Section 14. She did not move the higher court in revision against that order. At this stage, we are unable to accept the contention of Mr. Roy Chowdhury that such leave has caused prejudice to the respondent. No allegation of prejudice because of such leave was made anywhere. It will also appear that from the very beginning and within the prohibited period the respondent has indulged in severe cruel treatment towards the petitioner. Therefore, there is nothing wrong in granting the leave for extreme hardship faced by the petitioner.

Accordingly, this appeal is allowed. The judgment and decree passed by the trial Court stand set aside. The suit filed by the petitioner also stands decreed and the marriage between the parties stands dissolved by this decree of divorce. There will be no order as to costs at any stage of the case.

**P.K. Banerjee, J.**

11. I agree.

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