

Ramesh Kumar Sharma Vs. Smt. Akash Sharma

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Court : Himachal Pradesh

Decided On : Jan-01-2008

Reported in : AIR2008HP78,II(2008)DMC315,2008(1)ShimLC399

Judge : Dev Darshan Sud, J.

Appellant : Ramesh Kumar Sharma

Respondent : Smt. Akash Sharma

Disposition : Appeal allowed

Judgement :

Dev Darshan Sud, J.

1. This is the husband' s appeal against the judgment and decree of the learned District Judge, dismissing the petition instituted by the husband against the wife on the ground of divorce under Section 13(1)(a) and (b) of the Hindu Marriage Act, 1955, (hereinafter referred to as the 'Act').

2. The parties were married on 1st March, 1979 at Pathankot. A male child was born to them on 27.2.1982. The appellant alleges that they lived together for 14 years and the respondent has withdrawn from the company of the appellant without any lawful excuse. She used to quarrel constantly and has not joined his company on the pretext that the appellant is having illicit sexual relations with his

sister-in-law (Bhabhi) Smt. Sushma, which allegations have not been substantiated by her. His further allegation is that in 1981 when he was employed and posted at Indora the respondent used to visit his office and the residences of his superior officers using abusive language against him, humiliated him in the presence of his colleagues and superior officers. All these acts caused mental cruelty to the appellant. The respondent had filed two divorce petitions. These were compromised in the fervent hope that the respondent would live normally, but even after that, there was no improvement in her behaviour.

3. The respondent contested the petition by alleging that the appellant had turned her out from the matrimonial home without any lawful excuse and that she was maltreated by him. A categorical allegation was made that the appellant is having illicit sexual relations with his 'Bhabhi' and in consideration, he had transferred the entire ancestral land falling to his share in favour of his brother Ramesh Kumar which deprived their son Ronit of his right of inheritance. After considering the evidence which was led by the parties, the petition was dismissed by the learned District Judge only on the ground that prior to the filing of the present petition, another divorce petition had been instituted on similar allegations, which petition was dismissed by this Court. He holds that the petition was filed on the same grounds as pleaded in this petition and that the High Court had rejected his prayer for divorce.

4. I have heard learned Counsel for the parties and have gone through the record of the case. I do not find that the approach of the learned District Judge is judicious. The parameters of cruelty are by now well defined. Allegation of the nature made against the appellant of persistent sexual misadventure with his 'Bhabhi' is a serious allegation. Not only was this allegation made in the previous petition, but has been reiterated with emphasis and full conviction in the present petition also. Before discussing the evidence of the parties, the pleadings may be considered. The allegation of cruelty pleaded is:

4(i) That during the stay of the respondent, she lived in her parents house for more than six months. The Respondent actually lived with the petitioner for about 1-1/2 years and used to leave the house of the petitioner without informing the

petitioner. After a great persuasion Respondent used to accompany the petitioner to her matrimonial house. Now since February, 1982 the respondent has left the house of the petitioner with intention not to return, All the efforts made by the petitioner to persuade the respondent has brought no fruits and the respondent has categorically stated that she does not want to live with the petitioner. It is worth mentioning here that Respondent filed two petitions under Section 14 of H.M. Act (75 of 1985, 35 of 1986) for dissolution of marriage. In both the petitions the Respondent gave the statement that she will not quarrel with the petitioner and she is ready to accompany the petitioner to her matrimonial house. Respondent after giving the statements refused to join the company of the petitioner and all the efforts made by the petitioner and his relatives brought no result. The petitioner even sent a notice dated 22.8.1986 to the respondent to live with him after the abovesaid cases were compromised but the respondent failed to give any reply or join the company of the petitioner. On the other hand, the Respdt. started making false allegations against the petitioner that the petitioner is, having illicit relations with his sister-in-law (BHABI), Smt. Sushma Devi. These wild allegations have caused great mental cruelty to the petitioner. The acts mentioned above have caused great mental harassment to the petitioner and she has deserted the petitioner for more than two years without any reasonable cause,

(ii) That from April, 1981 to December, 1981 the petitioner was employed at Indora. The respondent lived with the petitioner at the place of posting for few days and left the place without the knowledge and consent of the petitioner. During that period, the Respondent used to visit the office and houses of officers of the petitioner and behaved very abnormally by using abusive language. The petitioner always felt humiliated in the presence of his superiors. In these circumstances the petitioner was unable to work properly in his office. In May, 1985 when the Respondent was not living with the petitioner for the last about 3 years, she visited the office at Jawali which is Divisional Office of the petitioner and asked Shri R.S. Shanna, the then Executive Engineer to give her the salary of the petitioner, which was refused by Shri R.S. Sharma. When the Respondent started making scenes there, the staff collected some money and asked the Respondent to leave the place and not to create any scene and was also asked not to come again. Even Shri R.S. Sharma and the staff members tried to persuade the Respondent to live

peacefully with the petitioner. Contrary to that the Respondent filed divorce petition by making false allegations.

4(iii) That after the compromise in the two divorce petitions mentioned above, the petitioner got his son Rohit admitted in School situated at Samlana and Patta Jattian. At that time the Respondent never resided with the petitioner and lived in the houses of different persons against the wishes of the petitioner. The Respondent after 5-6 days without the knowledge of the petitioner and without any reason have withdrawn the son from both the schools.

4(iv) That the respondent had locked one room in the house of the petitioner in January, 1987 in the absence of the petitioner. All the belongings of the petitioner are lying in that room. The petitioner made complaints to the Pradhan, Gram Panchayat, Jakhara that the condition of the room is not good and it is not 'possible for him to carry out any repair unless the same is got opened by the Respondent. Pradhan, Gram Panchayat sent notices to the Respondent to appear but the Respondent failed to appear. Even the pradhan, Gram Panchayat also informed S.H.O., Police Station, Jawali, about the danger of collapsing of wall of that room. But every time Respondent failed to abide by the directions. A decree in this regard was also sent through Counsel but the Respondent failed to give any suitable reply.

4(v) That the Respondent without any rhyme and reason has deprived the petitioner the marital bliss and has left the matrimonial house without the knowledge and consent of the petitioner and has laid down false allegations against the petitioner. The irresponsible behaviour of the Respondent has caused great harassment and the health of the petitioner has been grievously impaired. The petitioner has become physically weak, mentally tortured and felt humiliated in the public. There are no chances of co-habitation between the parties.

In reply, the respondent has stated:

3 It is, infact, true that the petitioner is having illicit relation with his sister-in-law and it is in consideration of this relationship that the petitioner has transferred the entire ancestral land falling to his share in favour of his only brother and co-sharer,

Ramesh Kumar, illegally to the detriment of the rights of his only son Rohit. The desertion, if any, is by the petitioner and not by the respondent and that, for the reason stated above.

5. The allegations in the pleadings of the respondent have been made with responsibility and full knowledge of the facts and the illicit nature of the relationship of the appellant with his sister-in-law has been emphasized. She repeated these allegations while appearing in the witness box as RW-1 on 23.9.2003, stating in her evidence, 'Wadi ne sari jameen ba jaydad jo lag-bhag 230 kanal hai apne sautele bhai ke nam bhabhi ke kahne par kar di hai. Wadi ke bhabhi ke sath sambandh hain jiske karan wadi ne sari jameen ba jaydad bhai ke nam kar di hai'. In her cross-examination, she admits that no relationship of husband and wife exists between the parties since 1982 in the following words:

Theek hai 1982 se hamare bataur pati patni sambandh na hai. She then states, 'Theek hai ki maine ilzam lagaya ki uske bhabhi ke sath sambandh hain.

6. The pleadings and evidence have been reproduced to show that the marriage has broken down irretrievably and the respondent has followed a consistent course of conduct accusing the petitioner of having illicit relations with his 'Bhabhi' (sister-in-law). On a suggestion being made to her that the petitioner's sister-in-law treats him like a son, she states, 'mujhe pata na hai ki wadi bhabhi ko ma saman samjhata hai'. The purpose of reproducing this evidence in some detail is to show that the attitude of the respondent is such that she does not wish to stay with the petitioner as his wife.

7. The pleadings and evidence have been noticed in some detail as an argument has been raised by the learned Counsel appearing for the respondent that in view of the previous litigation between the parties as reported in Smt. Akash Sharma v. Shri Ramesh Kumar Sharma (1991) 1 Sim. L.C. 198, wherein similar allegations have been made viz, the acts complained of by the petitioner, more especially, the allegations of having illicit sexual relations with his sister-in-law whom he treats like her mother have been condoned and this allegation cannot give rise to a fresh cause of action. This argument cannot be accepted. It is no doubt true that Section 23 of the Act provides that in case a person has condoned the acts complained of,

as specified therein, he shall not be entitled to sue for divorce or judicial separation etc.

8. In *Dr. N.G. Dastane v. Mrs. S. Dastane* : [1975]3SCR967 , the Hon'ble Supreme Court held:

52. The next question for consideration is whether the appellant had at any time condoned the respondent's cruelty. Under Section 23(1)(b) of the Act, in any proceeding under the Act whether defended or not, the relief prayed for can be decreed only and only if 'where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty'.

55. Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things: forgiveness and restoration: *The Law and Practice of Divorce and Matrimonial Causes* by D. Tolstoy, Sixth Ed., p. 75....

9. This principle is by now well established. Some other judgments are also being considered as they provide a valuable guideline for determining as to what constitutes condonation of acts of cruelty complained of by the petitioner in proceedings under the Act.

10. In *Maganlal Budhaiabhai Patel v. Bai Dahi* : AIR1971 Guj33 , the High Court of Gujarat held that the best evidence of condonation (in this case adultery), is the continuance or resumption of sexual relation by the parties after one has discovered the misconduct of the other party. This is a question of fact.

11. The High Court of Jammu and Kashmir in *Lalit Mohan v. Tripta Devi* (1990) 1 HLR J&K; 583, holds that condonation does not mean mere resumption of cohabitation. It has to be proved as a fact that while resuming cohabitation the other -party had completely forgiven the conjugal offence. Condonation, according to the learned Judge, is:

9...Condonation mean the complete forgiveness and blotting out of a conjugal offence followed by cohabitation, the whole being done with the full knowledge of

all the circumstances of the offence forgiven, so as to restore the offending party to the same position he or she occupied before the offence was committed. Cohabitation being the essence of the matrimonial tie between the parties to a marriage there can be no condonation which is not followed by conjugal cohabitation. It is a conditional waiver of right of the injured spouse to take matrimonial proceedings and is a conditional reinstatement of the offending spouse. Condonation is a conclusion of fact and not of law. The condonation has to be acknowledged and proved as a fact which can be ascertained from the evidence produced in the case and cannot be inferred as a question of law.

12. Following the judgment of the Hon'ble Supreme Court in Dastane's case (supra), this Court, in *Nirmala Devi v. Ved Prakash*, has held:

13 In a sense condonation is reconciliation, namely, the intention to remit the wrong and restore the offending spouse to the original status which in every case deserves to be gathered from the attending circumstances. The forgiveness in order to constitute condonation need not be express. It may be implied by the husband of the wife's conduct and vice versa. Ordinarily, as a general rule, condonation of matrimonial offence deprives the condoning spouse of the right of seeking relief on the offending conduct, When a petition is filed claiming a decree for restitution of conjugal rights, it clearly stipulates that the person seeking relief has no grouse or cause of complaint against' the other spouse and even if there was any cause or complaint, the same has either been condoned or forgiven. The intention being to resume normal cohabitation.

13. I am not burdening this judgment with other precedents as the principle of law already stands established. So much so, in *Florence Amelia Thompson v. George S. Thompson* (1912) ILR XXXIX Calcutta, 395, it has been held:

Condonation is conditional forgiveness, and any subsequent misconduct on the part of the husband, even an attempt to take liberties with a female servant in the house and solicit her chastity, will revive condoned adultery: *Ridgway v. Ridgway* (1881) 29 W.R. (Eng.) 612.

14. It is true that in the previous petition which was instituted by the petitioner and in the other petitions which were filed and withdrawn, similar allegations were made, but at the same time, it is now established from the evidence of the respondent herself that there was no cohabitation after 1982. In other words even if the petitioner is taken to have condoned the acts constituting cruelty that was not a permanent license granted to the respondent to repeat them in future without inhibition as is sought to be argued by the learned Counsel for the respondent. Condonation does not grant freedom to the respondent to continue with vituperation and abuse against the petitioner and showing him down on every possible occasion. It need not be reiterated that in a society and more especially Hindu society where the relationship of mother and son is revered irrespective of the fact who discharges of his duties whether it be an elder sister or an sister-in-law, allegation of unsubstantiated sexual involvement is the worst possible mental cruelty which can be inflicted on a person.

15. The respondent was peeved by the fact that no wealth/property has been left for her or her son. Surely, the respondent cannot claim a right in presenti of a spes successionis to the estate of the petitioner. If the transfer was illegal and against law it could have been set aside by a separate action which could be instituted. It does not furnish a motive or source of instigation to the respondent to have levelled unsubstantiated allegations against the appellant.

16. The other witness produced by the respondent, Shri Shrawan Kumar, RW-2, testifies that he has no knowledge regarding the allegations made by her. PW-6, Smt. Sushma, who is the 'Bhabhi' (sister-in-law) of the appellant, has stepped into the witness box and stated that she has brought up the appellant like her son, educated him and settled him in life. At the time of his marriage, she was having two children and at present she has four children. When her statement was recorded on the 30th October, 2003, she stated that three of her sons are employed and the fourth is studying in Engineering College. Even she has not been spared, suggestion has been made to her that the respondent had been turned out of the matrimonial house because the appellant had illicit relations with her. She affirmed on oath in her evidence that the relationship between her and the appellant was that of brother and sister. PW-4 is one Shri Kishan Chand, who

was the Ward Panch, who has stated in evidence that the respondent used to use derogatory words against the appellant. He states in his evidence that, 'Pratyarthi ulat pulat baten karke Prarthi ki bezatti karti hai'. PW-3, Sohnoo Devi, has stated that the parties have been living apart for the last 20 years and that she has locked out one room in the residence of the appellant. A suggestion was also made to this witness that the appellant was having illicit relations with his 'Bhabhi' and for this reason respondent had been turned out. This was denied. PW-2 Ram Swaroop Sharma, who was working as X.EN in the Jawali Division, has stated in his evidence that the respondent came to his office and demanded half the pay of the appellant to which he has stated that this would be done only if there is a valid or subsisting Court order. He testified on oath that the respondent created a scene in the office and all the employees present, tried to pacify her but of no avail.

17. I have considered the submissions of the respondent that the present petition is barred as the allegations made had already been considered by this Court in Smt. Akash Sharma v. Ramesh Kumar Sharma (1991) 1 Sim.L.C. 198. This submission' is made only to be rejected as I have held that there has been no condonation of the acts which were being committed continuously by the respondent after the decision of the case as aforesaid. It is not the case of the respondent or of the party to this petition that subsequent to the passing of the judgment by this Court on 29th October, 1990 in FAO(HMA) No. 174 of 1988, Smt. Akash Sharma v. Shri Ramesh Kumar Sharma (1991) 1 Sim.L.C. 198, these allegations were not made. Rather the case of the appellant is that this course of conduct in leveling false allegations has been adopted by the respondent with obstinate persistence. This petition was filed on 30.6.2000 and decided on 22.3.2004. The previous conduct if condoned was not a license to the respondent to have used, it as a tool for abusing the appellant and to continue with that behaviour. This Court did not put its seal of approval on the future conduct of the respondent in anticipation that such conduct would be condoned by the appellant. Section 13 (1) (i-a) provides:

13. Divorce.--(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party

(i) ...

(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty;
or....

18. The evidence on the record is clear. The respondent has consistently levelled accusation against the petitioner of sexual involvement with his 'Bhabhi' and has withdrawn from the matrimonial home without any just excuse. She justifies these allegations on the basis of deprivation of property which is nothing but spes successionis. The appellant was free to deal with his property in accordance with law and if the transfer was illegal it could have been challenged. It did not give an unfettered right to the respondent to level baseless allegations of sexual misconduct. There is no cohabitation between the parties since 1982 as admitted by the respondent. Although the concept of mental cruelty cannot be cribbed and confined to particular acts, the decision of the Hon'ble Supreme Court in *Samar Ghosh v. Jaya Ghosh* : (2007)4SCC511 , lays down the principles applicable. The Court held:

98. On a proper analysis and scrutiny of the judgments of the Supreme Court and other Courts, there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No Court should even attempt to give a comprehensive definition of mental cruelty.

99. The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in another case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and the value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never

by any strait jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors into consideration.

101. No uniform standard can ever be laid down for guidance, yet it is deemed appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

19. Further the Court laid down certain acts which would constitute mental cruelty. All of them need not be reproduced here, but the case of the appellant would be covered by the following:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) ...

(iv) ...

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) ...

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) ...

(ix) ...

(x) ...

(xi) ...

(xii) ...

(xiii) ...

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

20. When considered in its entirety, the present case is squarely covered by the principles enumerated by the Hon'ble Supreme Court.

21. The evidence on record leaves no doubt in my mind that the appellant has been subjected to constant mental cruelty by the respondent more especially her allegations of sexual misbehaviour and mis-conduct against the appellant accusing him of having illicit sexual relations with his sister-in-law (Bhabhi), for consideration, who is treating him like a younger brother. The evidence, clearly points out to the fact that the respondent has treated the appellant with cruelty within the meaning of the Act. In terms of the pronouncement of the Hon'ble Supreme Court in Samar Ghosh's case, I am satisfied that not only has the marriage broken down irretrievably because of the acts on the part of the respondent, and it is not possible for the appellant to live in an atmosphere which is vitiated and surcharged by allegations of adultery etc. Indian Society is sensitive to the relationships of brother and sister and mother and son which are not only respected but venerated. There has been no cohabitation between the parties since 1982.

22. Learned Counsel appearing for the respondent, submits that merely because the allegations made by the respondent have not been substantiated by her, would not furnish a cause to the appellant for grant of relief as prayed for. He places reliance on two judgments of the Andhara Pradesh High Court in Naval Kishore Somani v. Poonam Somani AIR 1999 A.P. 1 and Smt. Hema. Reddy v. Rakesh Reddy : AIR 2002 AP228 . In the present case, not only all the allegations are unsubstantiated, but the appellant has proved these allegations to be false to the very knowledge of the respondent. His 'Bhabhi' (PW-6) has appeared in the witness box and has been subjected to searching cross-examination. Her plight can be well imagined. Having brought up the appellant like her brother, she had to face the ordeal of appearing in Court and to protect her character from the onslaught of the respondent. Lastly, the judgment in V. Bhagrat v. Mrs. D. Bhagat : AIR 1994 SC710 , may be considered. In this case, the Hon'ble Supreme Court held:

7. A good part of the life of both the parties has been spent in rancour and litigation. De hors the allegations of adultery originally made in the petition for divorce, the petitioner is entitled to divorce on the basis of the additional ground put in by way of amendment viz., cruelty - mental cruelty by wife. The averments made in her counter and the questions put by her Counsel in the cross-examination of the petitioner do constitute clear acts of cruelty. In view of the said averments/questions, no further material is necessary to establish the said additional ground

9. It is said that marriages are made in Heaven, that may be so, but this one has turned into a Hell for sure. The allegations and the counter-allegations are indicative of the intense hatred and rancour between the parties. Any reconciliation is out of question. There can be no better way for describing the relationship between the parties than by referring to this judgment.

23. This appeal is accordingly allowed. The judgment of the learned District Judge is quashed and set aside. The marriage of the parties is dissolved by a decree of divorce. Liberty is reserved to the respondent to move for grant of maintenance in accordance with law.

