

Anita Devi. Vs. Pradyuman Prasad Yadav.

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Court : Patna

Decided On : Jul-05-2010

Judge : Mungeshwar Sahoo, J.

Acts : Hindu Marriage Act - Section 5, 13, 25; Indian Penal Code (IPC) - Sections 498 A, 323, 380, 379; Dowry Prohibition Act - Section 3, 4

Appeal No. : FIRST APPEAL No.295 of 2003

Appellant : Anita Devi.

Respondent : Pradyuman Prasad Yadav.

Advocate for Def. : Sri Sanjeev Ranjan, Adv.

Advocate for Pet/Ap. : Sri Ajay Kumar Thakur, Adv.

Judgement :

1. The wife Anita Devi has filed this First Appeal against the Judgment dated Sahoo, J. 08.09.2003 and the decree following there upon signed on 22.09.2003 by Sri Suresh Chandra Pandey, the learned Addl. District Judge-7th Munger in Title Suit (Matrimonial Case) No.28 of 1991/ 8 of 1997 whereby the learned Court below decreed the plaintiff-respondents suit for divorce.
2. The husband-respondent filed the aforesaid divorce suit, initially for declaration that the marriage of the petitioner with Anita Devi is a nullity being in contravention of Section 5 of the Hindu Marriage Act. It was alleged that in the year 1975 when

the husband-respondent had not attained majority he was forced to marry with the appellant. Subsequently, amendment was made in the plaint and prayer was made that the marriage be dissolved by decree of divorce on the ground of cruelty. It is alleged that there is no consummation of marriage and the appellant did not come to his house as his wife because she was also a minor. Subsequently, he learnt that she was married with somebody else. Then the petitioner husband got employment at Rajpura Colliery in Dhanbad district. Thereafter, the appellant begun to pressurise the petitioner husband by political pressure to keep her.

3. The wife-appellant thereafter complained to the authorities concerned against the husband causing mental cruelty and torture and humiliation. She filed false case against the husband and his family members alleging offence of theft cruelty torture and demand of dowry being Muffasil P.S. Case No.65 of 1993 under Section 498 A, 323, 380 I.P.C. and 3/4 Dowry Prohibition Act after filing of this divorce case. Because of the false case, they were put behind the bar and suffer physical and mental agony in facing the trial for about 5 years. The trial Court acquitted them from the charges under Section 323, 380 and 3/4 Dowry Prohibition Act and thereby disbelieved the case of demand of dowry but convicted them under Section 498 A and 379 I.P.C. On Appeal, i.e., Cr. Appeal No.136 of 1996, the appellate Court acquitted them disbelieving the case of the appellant. Because of this false criminal case, the petitioner husband and his family members were subjected to mental and physical torture and cruelty and, therefore, the petitioner husband is entitled for a decree of divorce on the ground of cruelty.

4. On being noticed, the respondents-appellants filed written statement contesting the case. It may be mentioned here that the respondent-appellant No.2 is father of Anita Devi. Besides taking various legal grounds mainly it was contended that on the date of marriage, petitioner was about 21 years and the marriage was performed with mutual consent of the parties and their parents according to Hindu Rites and Customs. The allegation of non-consummation of marriage was denied. It is alleged that after marriage, she was taken to the house of husband for 4 times and she lived there for a considerable period. The allegation of second marriage with other person is denied.

5. The further case is that after some time of marriage, the petitioner respondent and his parents begun to press the father of the appellant to transfer his share of land about 8 bigghas and residential house in lieu of dowry because her father has no male issue. On refusal to transfer the petitioner, respondent and his family members started torturing her and sometimes she was also assaulted. They refused to allow her to reside in the house and also refused to maintain her. She went to her father house and she filed Maintenance Case No.8 of 1992 and also criminal case being complaint case No.73 (C) of 1993. The other allegations were also denied.

6. It appears that during the course of hearing of the case in the Court below, the husband-respondent did not press the question of marriage in contravention of Section 5 of Hindu Marriage Act. He admitted that the appellant No.1, Anita Devi is legal wedded wife. Therefore, the only question decided by the learned Court below is on the question of cruelty and desertion. Initially, 12 issues were framed by the learned Court below. When the issue regarding marriage in contravention of Section 5 of Hindu Marriage Act was forgiven, the learned Court below framed 5 issues. The Issue No.3 is whether the defendant No.1 after marriage has treated the petitioner and his family members with cruelty and caused mental torture and harassment by filing several cases against the petitioner and his parents or not. The Issue No.4 is whether there is a continuous desertion for two years immediately after marriage or not?

7. After considering the materials available on record, the learned Court below found that the factum of cruelty pleaded in the petition has been well proved and on this ground, decreed the divorce suit. The learned Court below also held that the parties are separate since long for more than 25 years and there is no likelihood of their re-union. Therefore, in this circumstance, decree of divorce is proper in the interest of both the parties.

8. The learned counsel, Sri Thakur, appearing on behalf of the appellant submitted that the learned Court below has granted the decree of divorce on two grounds which are not available in this case. The learned counsel further submitted that so far the first ground regarding cruelty is concerned, filing of case cannot be

construed as cruelty. According to the learned counsel, the criminal case was not a false case because the learned trial Court had convicted the husband and his family members. Therefore, the learned Court below has wrongly granted the decree finding that filing of false case amounts to cruelty. Secondly, the learned counsel submitted that so far granting of decree on the ground of long separation is concerned, it is not a ground mentioned in Section 13 of Hindu Marriage Act and, therefore, on this ground, no decree could have been granted. In support of his contention, he relied upon a decision reported in 2009 (6) (S.C. Cases) 379 Vishnudutt Sharma v. Manju Sharma.

9. On the other hand, the learned counsel, Mr. Sanjeev Ranjan, appearing on behalf of the petitioner-husband-respondent submitted that in the facts and circumstances of this case, the decision cited by the learned counsel for the appellant is not applicable. The learned counsel further submitted that in the facts and circumstances of this case, it becomes abundantly clear that situation is such that the party cannot reasonably be asked to put up with such conduct and continue to live with other party. The feeling of deep anguish disappointment, frustration in one spouse caused by the conduct of the other for a long time is a mental cruelty. According to the learned counsel because of false prosecution against them, they faced mental agony and cruelty and, therefore, the learned Court below has rightly granted the decree of divorce.

10. In view of the above rival contentions of the parties, the following point arises for consideration in this Appeal that as to whether the petitioner-respondent has been able to prove the ground of cruelty as pleaded by him and whether the learned Court below has rightly found the same in his favour and granted the decree? Findings

11. According to the petitioner-respondent after filing this divorce case in the year 1991, the appellant filed false criminal case against him and his family members under Section 323, 380, 498A I.P.C. and 3/4 Dowry Prohibition Act. The petitioner-respondent and his family members were acquitted by the appellate Court finding the allegation of demand of dowry and subjecting her to cruelty in relation to demand of dowry as false. On the contrary the case of the appellant is that she

was ousted from the house by the in-laws and the respondent because of non-fulfillment of dowry, i.e., for non-transfer of 8 bigghas land. It is also alleged that she was being assaulted by the in-laws.

12. The petitioner-husband has been examined as P.W.1. He stated that he never demanded dowry from the parents of Anita Devi in the form of land. All the allegations made by Anita Devi in complaint case are false. From perusal of the cross-examination of P.W.1, it appears that no cross-examination has been made on this point. From perusal of Exhibit 3, i.e., the Judgment of the appellant Court passed on 21.09.1998 in criminal Appeal No.136 of 1996, it appears that the case was filed by the appellant alleging that after a year of marriage, she was being subjected to cruelty in connection with demand of dowry of Rs.1 lakh. It may be mentioned here that in the present case, the defence is that the petitioner-husband and family members were demanding to transfer 8 bigghas land. There is no case regarding demand of Rs.1 lakh as dowry. As stated above in the evidence, the husband clearly mentioned that the allegations of demand of dowry as made in the complaint case is totally false and the appellant did not make any cross-objection on this point.

13. Smt. Anita Devi has been examined as O.P.W. NO.11. She has stated that she lived in sasural up to 1987 and then went to her father's house. In paragraph 6 of her cross-examination, she has stated that after marriage, she lived with her husband for one year. In her evidence, nowhere she stated that allegation made by her in the criminal case are not false. As stated above, the petitioner-respondent and his family members were acquitted by the trial Court also under Section 3/4 Dowry Prohibition Act and 323, 380 of the Indian Penal Code. We have seen above that Anita Devi herself admitted that she is living with her father since 1987. Had there been any torture in connection with demand of dowry some criminal cases must have been filed thereafter but no such action was taken. The said criminal case was filed in the year 1993. It may be mentioned here that the divorce case was filed in 1991 and, therefore, it appears that in retaliation to this divorce case, the criminal case was launched making false allegations of theft, torture, demand of dowry etc. which has been disbelieved by the criminal Court. This conduct of the appellant itself shows the falsity of allegation made by her in

the criminal case.

14. In a case reported in A.I.R. 1986, Patna 362, *Raj Kishore Prasad v. Smt. Raj Kumari Devi*, this Court has held that the conduct of the respondent No.1 in launching a criminal prosecution against her husband with false allegation would amount to mental cruelty as well. From perusal of the impugned Judgment, it appears that the learned Court below has considered all these aspects of the matter.

15. From perusal of the decision *Vishnudutt Sharma v. Manju Sharma* (Supra) cited by the learned counsel for the appellant, it appears that in that case, the divorce case filed by the husband was dismissed by the learned trial Court as well as by the appellant Court finding that the husband failed to establish that the respondent treated him with cruelty. Therefore, in that case, the finding of cruelty was otherwise. There was no false criminal case instituted by the wife before Hon'ble Supreme Court. The husband-appellant prayed that decree of divorce may be granted on the ground of irretrievable break down of marriage. The prayer of the husband-appellant before the Hon'ble Supreme Court was refused on the ground that the said ground is not available under Section 13 of the Hindu Marriage Act. It may be mentioned here that the marriage in that case was held in 1993. In the present case, marriage was held in the year 1975 and as admitted by Anita Devi herself in her evidence, they are living separately since 1987 that is for last 23 years.

16. In a decision reported in 2007 (4) (S.C. Cases) 511, (*Samarghosh v. Jaya Ghosh*), the Hon'ble Supreme Court at paragraph 101 has held as follows :

101. No uniform standard can ever be laid down for guidance, yet we deem it 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:

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. Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

iv. Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty. v. A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

vi. Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

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. The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

ix. Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty. x. The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party and longer, may amount to mental cruelty.

xi. If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

xii. Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

xiii. Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

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.

17. Therefore, according to the Hon'ble Supreme Court, although cruelty has not been defined in the Act and there cannot be any uniform formulae for defining the said term, it can safely be inferred that cruelty includes both the cases of physical as also the mental cruelty. In the present case, according to the husband, there is no consummation of marriage and it is admitted that since last 23 years, the wife is living separately. Unlike the physical cruelty the mental cruelty is difficult to be established by direct evidence. Cruelty is to be taken as behaviour of one spouse towards the other which causes reasonable apprehension in mind of the later that it is not safe for him or her to continue the matrimonial relationship with the other. As has been held in paragraph 101 in the case of Samarghosh (Supra) that where there has been a long period of continuous separation, it may 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 case does not serve the sanctity of marriage, on the contrary it shows scant regard for the feelings and motions of the parties. In such like situation, it may lead to mental cruelty. This is fully applicable in the present case.

18. In the present case, during course of hearing of this Appeal both the parties in the matter of reconciliation submitted that there is no possibility of the parties living together for the rest of their life. Therefore, since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact as seized to exist.

19. The Hon'ble Supreme Court in 2005 (2), (S.C. Cases) 673 (Central Board of Dawddi Bohra Commity v. State of Maharashtra) held that the law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser strength or co-equal strength. A Bench of lesser quorum cannot disagree or dissent from point of view of the law taken by a Bench of larger quorum. It may be mentioned here that the Samarghosh case was decided by Bench consisting of 3 Hon'ble Judges of the Supreme Court. Therefore, I find no force in the submission of the learned counsel appearing for the appellant. The decision cited by him is not helpful to him. Therefore, in view of the above, I find that the petitioner-respondent has been able to prove the ground of cruelty as pleaded by him and also that the marriage between the parties has broken down which is irreparable and in fact the marriage has seized to exist. Accordingly, the findings of the learned trial Court on these point are hereby confirmed.

20. In view of my above discussion, I find no merit in the submissions of the learned counsel appearing on behalf of the appellant.

21. The learned counsel for the appellant during course of argument submitted that if at all the Appeal be dismissed, the appellant be awarded permanent alimony under Section 25 of the Hindu Marriage Act. So far this submission is concerned, there is no evidence on record regarding the status of the family, the income of the husband, and the status of the appellant and, therefore, I grant liberty to the appellant wife to take steps for permanent alimony/maintenance before the Court of competent jurisdiction if so advised and if so desires. If the wife-appellant files such application before the Court of competent jurisdiction, such Court will decide the matter in accordance with law.

22. In view of the above findings, I find no merit in this First Appeal and accordingly this First Appeal is dismissed. In the facts and circumstances of the case, the parties shall bear their own cost.

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