

Sapna Vs. B.Pradeep Kumar.

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Court : Chennai

Decided On : Mar-13-2012

Judge : Elipe Dharma Rao; M. Venugopal, Jj.

Appeal No. : C.M.A.No.1301 of 2010 and M.P.Nos.1 to 3 of 2011

Appellant : SapnA.

Respondent : B.Pradeep Kumar.

Advocate for Def. : Mr.T.Viswanatha Rao, Adv.

Advocate for Pet/Ap. : Mr.Narottm Jain, Adv.

Judgement :

JUDGMENT

M.VENUGOPAL,J.

1. The Appellant has projected this Civil Miscellaneous Appeal as against the Order dated 07.05.2009 in O.P.No.577 of 2007 passed by the Learned II Additional Family Court Judge [I/c of I Additional Principal Family Court Judge], Chennai, in dismissing the Original Petition holding that the Appellant/Petitioner (Wife) is not entitled for divorce as prayed for in the petition since she has not established that the Respondent/Husband has committed cruelty towards her.

2.The Learned II Additional Family Court Judge, Chennai, while passing the order in O.P.No.577 of 2007 dated 07.05.2009, has opined that the Appellant/Petitioner has not established the mental and physical cruelty, torture and harassment caused by the Respondent/ Husband and his family members, by examining the witnesses and also she has not proved by examining witness to whom she has handed over the dowry of Rs.50,000/-; in regard to the allegation of the Appellant that the Respondent/Husband's mother and sister have threatened the Appellant/Petitioner that they will kill her by throwing her from the terrace of their house, if she will fail to bring the further dowry has not been proved; in regard to the allegation that the Respondent/Husband has given standing instructions to the Appellant/ Petitioner to eat food always at the functions and celebrations of their relatives and the neighbours otherwise to eat annathanam provided in the temple has also not been established by her and the said allegation has not been mentioned in the Xerox copy of the police complaint Ex.P.4 and P.W.2 the father of the Appellant/Petitioner has not proved the cruelty committed to her daughter by the Respondent/Husband and also that there is no other evidence is available to accept that the Respondent/Husband demanded dowry from the Appellant and consequently, held that the Appellant/Petitioner has not established that the Respondent/Husband has committed cruelty towards her and dismissed the petition with costs.

3.The Point that arises for consideration in this Civil Miscellaneous Appeal is:

Whether the Appellant/Petitioner is entitled to get a Decree of divorce in dissolving the marriage that has taken place between her and the Respondent/Husband on 03.07.2003 as claimed in O.P.No.577 of 2007 on the file of the Learned II Additional Family Court Judge, Chennai? The Contentions, Discussions and Findings on Point:

4.The Learned Counsel for the Appellant/Petitioner (Wife) submits that the Learned II Additional Judge, Family Court, Chennai should have granted the relief of divorce to the Appellant/Petitioner on the ground of cruelty taking into consideration the evidence of P.Ws.1 and 2.

5.The Learned Counsel for the Appellant/Petitioner urges before this Court that the Learned II Additional Judge, Family Court, Chennai was committed an error in coming to the conclusion that the Appellant/Petitioner was failed to examine the witness to prove her averment and in regard to the nature of cruelty committed by the Respondent/Husband, there may not be any third party witness and therefore, there was no necessity to examine the other witnesses, which crucial aspect of the matter was not adverted to by the Family Court Judge in proper and real perspective.

6.Yet another submission of the Learned Counsel for the Appellant/Petitioner (Wife) is that in the present case not providing food, clothes as well as not permitting the Appellant/Wife to attend social gathering nor husband taking wife on outing are all incident of cruelty which can be proved only by the person who suffered it and for such type of cruelty, there will never be a witness.

7.Proceeding further, the plea taken by the Appellant/Wife is that in matrimonial matters whenever such type of amounts are given there will not be any proof for actual payment and receipt and such transaction will not take place in the presence of the outsider and even if the payment of Rs.50,000/- as dowry is not established, the other incidents which have taken place are sufficient enough to grant divorce on the ground of cruelty.

8.The Learned Counsel for the Appellant/Petitioner contends that the Family Court failed to appreciate properly that Ex.P.4-Police Complaint relates to the threat of killing the Appellant/Petitioner (Wife) by the Respondent/Husband and the Appellant was concentrated in saving her life and not to mention the past sufferance by her.

9.Expatiating his submissions, the Learned Counsel for the Appellant submits that the Appellant/Petitioner along with her minor son was forced to leave the matrimonial home due to mental torture meted out by the Respondent/Husband and his family members as early as 2006 and from that onwards the Respondent/Husband has not taken any endeavour till date requesting or insisting the Appellant/ Petitioner to join the conjugal bliss and this shows that the Respondent /Husband is not at all interested in the Appellant/Petitioner (Wife) as

well as in the minor child and these acts are sufficient ground to grant the relief of divorce as desertion will also amount to cruelty.

10.Lastly, it is the contention of the Learned Counsel for the Appellant/Wife that the Family Court has come to a conclusion that the Appellant/Wife was treated as servant maid and forced to do all household works, but still came to the conclusion that it is the normal wear and tear in the life and it will not amount to cruelty and in this regard, the Family Court has committed a grave error because the aspect of cruelty will differ from an individual to individual depending upon the status of a person and the economical scenario under which a person has come up in life.

11.Furthermore, the Learned Counsel for the Appellant/Wife that the Appellant/Wife has not been physically enough to fit the household works immediately after giving birth to the male child and therefore, when the Respondent/Husband and his family members compelled and treated her as a servant maid, then, undoubtedly, it will amount to cruelty and the said fact was never denied by the Respondent/Husband either in his counter or in his evidence in cross examination.

12.Per contra, it is the submission of the Learned Counsel for the Respondent/Husband that the Family Court in its order in O.P.No.577 of 2007 has concluded that the Appellant/Wife has not established her allegations of cruelty against the Respondent/Husband and has rightly negated the relief of divorce and dismissed the petition and as such, prays for dismissal of the Civil Miscellaneous Appeal.

13.In the Petition, the Appellant/Wife had averred that the marriage between her and the Respondent/Husband took place at Nappa Kalyana Mandabam, Old Washermanpet, Chennai-21 on 03.07.2003 as per Hindu (Jain Marriage Customs and Rites) and they lived together by leading a matrimonial life at the Respondent/Husband's parents residence at 36/11, Elephant Gate Street, Sowcarpet, Chennai 79. As a result of the wedlock, the male child named Aayush was born on 21.10.2004.

14.The case of the Appellant/Wife is that at the time of marriage the Respondent/Husband and his parents demanded dowry of 700 grams of gold ornaments and 15 kilograms of silver articles and cash for a sum of Rs.1,00,000/-. Her parents gave the said gold, silver and cash to the Respondent/Husband as dowry. Within two months from the date of marriage, the Respondent/Husband, his parents and his sister started irritating and abusing her demanding further dowry. She brought Rs.50,000/- as dowry from her parents and handed over the same to her husband's family members. She belonged to the middle class family. Due to non-payment of further dowry, she was treated as a servant maid forced to do all the household works including washing the clothes of all the members of her husband's family.

15.Added further, the Respondent/Husband and their family have stopped all the servant maids and she was forced to do all their works. She was compelled to do work from the early morning till late night. She was under the continuous harassment and exploited during her matrimonial life. Her husband, her mother-in-law and her husband's sister have abused and assaulted her on many occasions demanding huge dowry. The Respondent/Husband, his mother and his sister have tortured the Appellant/Petitioner like a beast.

16.The Respondent/Husband was always in the habit of leaving the Appellant/Wife without providing food or expenses to prepare the food. The Respondent/Husband had given standing instructions to the Appellant/Wife to eat food always [even during normal days] at the functions and celebrations of their relatives and neighbours; otherwise to eat at annathanam [free food] provided at the temple. Her mother-in-law and her husband's sister had threatened her that they would kill her by throwing her from the terrace of their house, if she failed to bring further dowry.

17.Due to harassment and torture as stated supra, she left the matrimonial home during early 2006. Later she lodged a police complaint before the All Women Police Station, Flower Bazaar W-10, on 30.05.2006 against the Respondent/Husband and their family. She issued a legal notice on 28.12.2006 through her counsel to the Respondent/Husband, who evaded to receive the

same. Therefore, she had filed the petition praying for dissolution of marriage that took place on 03.07.2003 between her and her husband.

18.The Respondent/Husband, in his counter, had stated that the Appellant/Wife took away the jewels weighing about thola of various gold articles like one full Jancon Stone Set, Necklace, Finger Ring, Ear Hanging Pair (Kamal Patta) and Bangle four, Patla two et., one full Meena Set in which one Necklace, Finger Ring, Ear Hanging Pair (Kamal Patta), Bangles Four, Patla 2 (Pair), Gold Sada Bangles (six), Mangal Sutra with dollar and she also to knock away the family jewellery gave false dowry complaint before the police and took away her family jewellery of her own through mediators and without giving back the family jewellery of his family which was handed over to her to wear on occasion which showed her malafide intention. She was already employed earning heavy amount and to harass him by creating a story of dowry, with intention to knock away the family jewellery belonging to him.

19.Continuing further, the allegation of the Respondent/Husband that she brought Rs.50,000/- by way of dowry and handed over to his family members was utter falsehood. By her profession of teaching and taking tuition, she received considerable sum.

20.P.W.1, in her evidence (in cross examination) had deposed that for handing over of a sum of Rs.50,000/- to the Respondent/Husband two months after her marriage, there was no documentary proof and at present stage she works as a Nursery School Teacher at Ayanavaram on monthly salary of Rs.2,300/- and also she takes tuition for four students.

21.It is the further evidence of P.W.1 that she had to do the household works and whether she liked or not she should take only the food provided by the Respondent/Husband and in Respondent/ Husband's family they directed her to take free food provided by the temple and they also directed that her child to take food at annathanam for four months and since the Respondent/ Husband had caused cruelty on her, she left to her parents house during 2005.

22.P.W.1, in her evidence, had also deposed that they asked her to take water in small bucket to clean the house vessels and when water was in full in over tank they used to close the valve and they would not permit her to frequently provide milk to her child by boiling the same and they used to say that case cylinder would be for used 35 days and otherwise, it would be go empty and these kinds of harassment they used to do.

23.P.W.2 (father of the Appellant/Wife-P.W.1), in his evidence, had stated that he had given jewels to her daughter for which there were no documents and generally nobody would keep documents and at the time of Respondent/Husband's marriage in the marriage room at the time of his sitting he demanded Rs.1,00,000/- and he paid the said sum of Rs.1,00,000/- and during the three years period, the Respondent/Husband had not purchased even a single saree to his wife (Appellant).

24.Further, P.W.2 in his evidence [proof affidavit] had also stated that the Respondent/Husband's family most of the days had their food in the marriages, temples and in other Jain community functions and his daughter viz., Appellant and her son were also forced to take food at temples daily and that his daughter was treated as a servant maid after marriage and that the Respondent/Husband had stopped the servant maid and also that the Respondent/Husband or his parents had not purchased any dress for his grandson.

25.R.W.1 (Respondent/Husband), in his evidence, had stated that he had paid the income tax but he had not permanent account number or the card within and that the Appellant/Wife belonged to middle class family and to a suggestion whether the Appellant/Wife alone were prepared food for every one, he had stated that his mother would also join with his wife and prepare food and it was incorrect to state that after marriage, he had not taken his wife to their Jain temples, picnics and to common places and that he had taken her to marriage and to cinema, but he does not remember to which cinema he has taken his wife and that the Appellant/Wife had left the house during the year 2006 and his father controls him.

26.It is to be borne in mind that the term 'Cruelty' has not been defined under the Hindu Marriage Act, 1955. However, what conduct amounts to cruelty is an issue

of fact to be decided on various considerations of each particular case as per decision in Bhagwanti V. Laxmandas Panjawani, [2000 (1) M.P.L.J. 631 at p.634]. No doubt, for passing a decree for divorce based on the reason of cruelty, the acts complained of ought to be so serious and weighty so as to arrive at a conclusion that a wife cannot reasonably be expected to live with the husband.

27. In the present case, the Appellant/Wife is required to law in establishing after solemnisation of marriage the Respondent/Husband has treated the Appellant/Wife with cruelty.

28. Indeed, cruelty is a ground of divorce as per Section 13(1)(ia) of the Hindu Marriage Act, 1955 is a conduct of such type that the Appellant/Wife cannot reasonably be expected to live with the husband. The Cruelty as per Section 13(1)(ia) is to be considered as a behaviour by one spouse towards another, which causes genuine/ reasonable apprehension in the mind of a person that it is not quite safe for her/him to continue the relationship of marriage with the another. The mental cruelty must be of such a character with the parties cannot reasonably be expected to live together. In case of mental cruelty, it is not essential to prove that such act is likely to cause injury to the health of a person.

29. In marital relationship the feelings and attitudes of minds are material as per decision in Neelu Koli V. Naveen Koli [AIR 2004 All. 1 at p.12]. Whether one person has been guilty of an act of cruelty to another is basically a question of fact in our considered opinion. Cruelty may be of unfounded variety viz., subtle or brutal. Also, it may be by words, gestures or by mere silence, violent or non-violent as per decision in Bhavna Sharma V. Devendra Kumar Sharma [AIR 2007 Raj. 157 at p. 158].

30. The term 'Cruelty' of course connotes and includes not only physical but also mental cruelty. According to Blacks Law Dictionary [8th Edition, 2004], the term 'Mental Cruelty' has been defined as follows:

As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse as per decision in Surender Pal V. Kanwaljit

Kaur [II (2008) D.M.C. 183 at p. 187 (Delhi)].

31. In law, a legal burden is fixed and lies on the Petitioner. However, the burden of proof shifts and it is not static instead it is a continuous process.

32. In the present case on hand, though the Appellant/Petitioner had averred in her Petition that the Respondent/Husband's parents and her sister-in-law started irritating and abusing her demanding further dowry and also that she brought Rs.50,000/- as a dowry from her parents and handed over the amount to her husband's family members, except her evidence as P.W.1 and that of her father viz., P.W.2, there was no independent or corroborating evidence from other witnesses and as such, the Appellant/Wife's allegation in this regard, had not been established to the subjective satisfaction of this Court. Even the allegation of the Appellant/Wife that the Respondent/ Husband's mother and sister had threatened her that they would kill her by throwing her from the terrace of their house, if she failed to bring further dowry, was also not substantiated by her. So also, the allegation of the Appellant/Wife that the Respondent/Husband had issued standing instructions to her to eat food always during Jain functions and celebrations of their relatives etc. and otherwise to eat food at annathanam (free food) provided by the temple remained unproved in the present case.

33. In regard to the allegation of the Appellant/Wife that she was treated as a servant maid and forced to do all the household works including washing the clothes of all the family members of her husband's family, the Family Court had observed, in para 7 of its order in O.P.No.577 of 2007, that 'in every family there is normal wear and tear arising between the Petitioner and the Respondent and the said allegation of the Appellant/Petitioner (Wife) is coming under the normal wear and tear and the mere allegation does not coming under the ground of cruelty', it is to be pointed out that it is not accepted that a woman should remain like a maid servant and only to prepare food and look after the children. To put it differently, a wife is also expected to have a rightful equal honour and dignity in matrimonial home, in the considered opinion of this Court. As such, the observation of the Family Court, in its order in O.P.No.577 of 2007 that the allegation of the Appellant/Wife that she was treated as a servant maid and forced to do all the

household works including washing the clothes of all the family members of her husband's family was coming under the normal wear and tear and the mere allegation does not come under the ground/aspect of cruelty, is not a valid and legally justifiable one.

34.The mental cruelty will continue to hurt a person throughout and any amount of healing words or healing touch would not wipe out the tears/scars, which continue to cause hurt and to prick in one's life. But the physical cruelty is concerned with the injury caused, but it will leave a scar to remind the incident, although the impact of the incident may not be such which may constantly and consistently affect a person's mental frame work.

35.In *Manmohan Singh V. Aneeta Preet* [2003(1) H.L.R. 289 at p. 305 (P. & H.)], it is held that 'Sometimes a person may suffer cumulative effect of physical and mental cruelty which may result into a decision of breaking the thread.' A feeling of frustration, anguish and disappointment in one person caused by the conduct of another can only be assessed or appreciated based on the surrounding facts and circumstances in which two partners of marital life are leading. An inference is to be drawn based on the attending facts and circumstances taken together in a conspectus fashion.

36.The mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. While arriving at a conclusion as regards 'cruelty' the social status, educational level of the parties, society they move in, the possibility or otherwise of parties ever living together in case they are living separately are to be taken into account by the Court concerned.

37.In the instant case on hand, though the Respondent/Husband had pleaded in his counter that he never caused any mental agony and in cruelty to the Appellant/Wife and always willing to live with her etc., it appears that the Appellant/Wife had a reasonable apprehension in her mind that it would be unsafe for her to live with the Respondent/ Husband at his parents house. Between the parties bitter waters had flown and therefore, it would not be possible for them hereafter to live as husband and wife unitedly. The marriage between the Appellant/ Wife and the Respondent/Husband had completely broken down

beyond repair. The Appellant/Wife had been living separately from the Respondent/Husband by working as a Teacher in a school and also taking private tuition. Since in the present case, the parties had been living separately for a period of six years and there appears to be no possibility between them to reconcile and to reside together and it is a clear case of irretrievable break down of marriage between the parties which entail the Appellant/Petitioner (Wife) to get the relief of Divorce as prayed for by her in the O.P.No.577 of 2007 on the file of the II Additional Judge, Family Court, Chennai. As such, the view taken by the Family Court that the Appellant/Wife was not entitled to obtain the relief of Decree of Divorce is not a correct one and the point is so answered. M.P.Nos.1 to 3 of 2011:

38.The Appellant/Petitioner (Wife) has filed M.P.Nos.1 to 3 of 2011 seeking the following reliefs:

(i)To direct the Respondent to pay the interim maintenance to the Petitioner and the minor son Master Ayush @ Chirag, at the rate of Rs.15,000/- per month from the date of desertion i.e. 28.2.2006 till the filing of the CMA i.e. 26.2.2009 amounting to Rs.5,39,000/- along with Rs.25,000/- towards educational expenses incurred for the minor son during this period in all amounting to Rs.5,64,000/-;

(ii)To direct the Respondent to pay the interim maintenance at the rate of Rs.15,000/- per month from the date of filing the CMA i.e. 26.2.2009 till the date of disposal of the CMA; and

(iii)To direct the Respondent to pay the educational expenses periodically in respect of the minor son Master Ayush @ Chirag from the date of filing of the CMA i.e. 26.2.2009 till the disposal of the CMA.

39.The case of the Appellant/Petitioner is that ever since 28.02.2006 when the Appellant/Petitioner had left the matrimonial home because of the cruelty and misdeeds committed by the Respondent/Husband on her and from that day onwards, herself and the minor child are dependants on the parents of the Appellant/ Petitioner, who are senior citizens and not financially well to do persons. Furthermore, the Respondent/Husband had not met any of her expenses or the minor son expenses and during this period the Respondent/Husband had not even bothered to enquire about the welfare of the minor son.

40. According to the Appellant/Petitioner, the Respondent/ Husband apart from his finance business he is doing number of other businesses and he is an income tax assessee owning number of immovable properties apart from the shares in the HUF of Babula Kothari. Moreover, in the past four years, he had undertaken on pleasure trip to Hill stations in India nearly 4 to 5 times and considering his financial status of Rs.15,000/- per month, the amount claimed in the Miscellaneous Petitions are quite reasonable.

41. The Respondent/Husband in his counter to the Miscellaneous Petitions had averred that the Appellant/Petitioner filed applications seeking interim maintenance falsely mentioning the she is a house one allegedly with no income and should be paid interim maintenance during the pendency of the Original Petition. It was brought to the notice of the Family Court that the Appellant/Petitioner (Wife) was employed in Bensch Matriculation School, Narayanan Street, Ayanavaram, Chennai -23 and she was conducting tuition to several students and earning more than Rs.15,000/- per month. Moreover, the Appellant/Petitioner (Wife) is well over that he was employed as a Clerk in Kumbhat Financial Services Limited, NSC Bose Road, Chennai 79 drawing a monthly salary of Rs.3,000/- and produced his salary certificate.

42. Finally, the Family Court dismissed the main O.P.No.577 of 2007 and as such, at a belated stage, the Appellant/Petitioner (Wife) has filed the applications for interim maintenance etc. Also, five months ago when the Appellant/Wife visited a parents house to attend the marriage of her uncle's grand daughter, she was wearing jewellery presented by his father worth Rs.13 lakhs which she left with her parents house and returned alone. When he requested her for the return of the jewellery herself and her parents refused and also made all these allegations out of vindictiveness.

43. The Appellant/Petitioner filed I.A.No.882 of 2008 in O.P.No.577 of 2007 on the file of II Additional Judge, Family Court, Chennai praying for interim maintenance of Rs.15,000/- per month to be paid by the Respondent/Husband pending disposal of the O.P.No.577 of 2007. In the said Petition, she had averred that the Respondent/Husband is a financier, running money lending business and an

income tax assessee and that he recently purchased the elephant gate house for Rs.80 lakhs and also that the Respondent/ Husband unreasonably deserted her from the valuable family life exerting cruelty, physical and mental torture since 28.2.2006 and from that date onwards, she was residing with her parents adding more burden to them.

44.In this connection, a perusal of I.A.No.882 of 2008 in O.P.No.577 of 2007 on the file of II Additional Judge, Family Court, Chennai shows that on behalf of the Appellant/Wife, an endorsement was made on 30.03.2009 to the effect that 'I am not processing this Petition. This Petition may be dismissed' and on the basis of endorsement, the Petition was dismissed as not pressed on that day itself. But, before this Court, the Appellant/Wife in M.P.No.1 of 2011, in paragraph 8 of her affidavit, had made an averment that 'as per her knowledge, she had not made any such endorsement.'

45.At this stage, this Court worth recalls the decision of the Hon'ble Supreme Court in Satish Sitole V. Ganga (Smt) [(2008) 7 SCC 734] following the precedent in Romesh Chander V. Savitri [(1995) 2 SCC at page 7)], while invoking Article 142 of the Constitution of India, dissolved the marriage subject to the husband paying permanent alimony of Rs.Two Lakhs and cost of the Appeal assessed at Rs.25,000/-.

46.Taking note of the primordial well being and interest of the Appellant and her minor son Master Ayush @ Chirag aged about 7 years and 4 months, their status in Community, bearing in mind the spiralling cost of inflation, rise in prices of essential commodities etc., this Court, exercising its inherent powers to grant permanent alimony based on Equitable Remedy, Fair Play and Good Conscience and also to do complete justice between the parteis, directs the Respondent/ Husband to pay a sum of Rs.2,00,000/- each to the Appellant and her minor son Master Ayush @ Chirag in respect of Permanent Maintenance in full and final settlement. Also, he is directed to pay a sum of Rs.25,000/- towards educational expenses of her minor son incurred by the Appellant during the period from 28.02.2006 till the date of filing of the CMA on 26.02.2009, within a period of two months from the date of receipt of a copy of this Judgment.

47. In the result, the Civil Miscellaneous Appeal is allowed, leaving the parties to bear their own costs. Resultantly, this Court grants the relief of Divorce in favour of the Appellant, by dissolving the marriage that took place on 03.07.2003 at Nappa Kalyana Mandabam, Old Washermanpet, Chennai-21 between her and the Respondent/ Husband. Consequently, connected Miscellaneous Petitions are closed.

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