

Reserved On : 22.09.2023

Delivered On : 13.10.2023

AFR

Court No. - 39

Case :- FIRST APPEAL No. - 149 of 2020

Appellant :- Ashok Jha

Respondent :- Pratibha Jha

Counsel for Appellant :- Rahul Sahai,Rajeev Kumar

Counsel for Respondent :- In Person

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Arun Kumar Singh Deshwal,J.

Per : Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Ankit Srivastava, learned counsel holding brief of Sri Rajeev Kumar, learned counsel for the appellant and Smt Pratibha Jha, in person (respondent).
2. Present appeal was filed against the order dated 07.11.2019 of Additional Principal Judge, Family Court, Court No.-2, Ghaziabad passed in Matrimonial Case No.253 of 2014 (Ashok Jha Vs Smt. Pratibha Jha), by which application of the appellant under Section-13(1) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955') for annulling the marriage of appellant and respondent was rejected.
3. The facts which give rise to the present case are that marriage of the appellant and respondent was solemnized on 19.06.2002. Two children were born out of their wedlock. The appellant filed application under Section-13(1) of the Act, 1955 on 15.02.2014 for dissolving marriage of the appellant and respondent. This application was allowed *ex parte* by order dated 03.08.2016 and marriage of the parties was dissolved. After the knowledge of the aforesaid *ex parte* divorce

decree dated 03.08.2016, the respondent filed a recall application on 22.11.2017, which was allowed and *ex parte* order dated 03.08.2016 was recalled by order dated 24.05.2018 and the divorce petition was restored at its original number. Thereafter, the respondent had also filed her written statement denying the allegation of divorce petition. Subsequently, the appellant had also filed an amendment application to make amendments in the divorce petition, which was allowed on 27.05.2019 by which the appellant brought on record certain new facts regarding criminal cases lodged by the respondent against the appellant, during the pendency of the divorce petition but respondent did not file any written statement after the amendment of the divorce petition. Apart from filing documentary evidence, the appellant examined himself as PW-1, Ram Shankar as PW-2 and Shailendra Singh as PW-3. Respondent also filed several documents and examined herself as DW-1. Learned Family Judge, framed following issues on the basis of pleadings of parties :

"1. क्या वादी वादपत्र में किये गये अभिकथनों के आधार पर प्रतिवादिनी से विवाह विच्छेद कर पाने का अधिकार है?

2. क्या वादी अन्य अनुतोष, यदि कोई हो, प्राप्त करने का अधिकारी है? "

4. After hearing both parties, the learned Family Judge rejected the divorce petition of the appellant on the ground that the appellant could not prove cruelty on the part of the respondent.

Contention of learned counsel for the appellant :

5. Learned counsel for the appellant submitted that the Court below failed to consider the evidence on record while passing the impugned order. It is contended by learned counsel for the appellant that the respondent had

lodged the following four false criminal cases against the appellant:

“1. Case Crime No.239 of 2014, FIR No.255, Police Station-Indrapuram, Ghaziabad under Sections-498A, 420, 506, 507 IPC.

2. Case Crime No.17 of 2018, Police Station-Kalyanpuri Delhi, under Section-377 IPC.

3. Case Crime No.2955 of 2018, Police Station-Indrapuram, under Sections-147, 323, 379, 427, 506, 507 IPC (State Vs. Pratibha Jha).

4. Case Crime No.1828 of 2017, under Sections-392, 336, 338 IPC.”

6. The concerned criminal Court acquitted the appellant, and a closure report was submitted by the police and apart from this, the respondent has also filed civil suit no.605 of 2018 (Smt. Pratibha Jha Vs. Ashok Jha) for permanent injunction, which was also dismissed on 10.01.2019 by learned Civil Judge, Senior Division, Ghaziabad and several false complaints were also sent by respondent to Senior Police and Administrative Officer against appellant.

7. The above conduct establishes that the respondent, just to harass and defame him, had repeatedly lodged criminal and civil cases against him, this continued act amounts to cruelty. Learned counsel also submitted for the appellant that the Court below had also failed to consider that PW-1, PW-2 and PW-3 had proved before the Court that the respondent by continuously misbehaving with the appellant, had committed cruelty. In support of his contention, the appellant also relied upon the judgement of **Naveen Kohli Vs Neelu Kohli** reported in **2006 (4) SCC 558**.

8. It was lastly submitted by learned counsel for the appellant that the appellant and respondent have been residing separately since 2014, and because of false criminal complaints as well as other complaints to police and administrative officers by the respondent, their

relationship has become so bitter that there is a complete irretrievable breakdown of their marriage. There is no chance of reconciliation. Therefore, his divorce petition deserves to be allowed on this ground also.

Contention of the respondent :

9. It is contended by the respondent, who is present in person, that she has never committed any cruelty to the appellant and except the case of 498A, she lodged all other cases against the appellant during the pendency of the divorce petition, and the appellant had also lodged false criminal case against her and also illegally grabbed her property. The respondent also submitted that till 2013, the respondent had a cordial relationship, but subsequently, on developing the extramarital relation of the appellant with one 'S', who was an employee in the firm/company of the appellant, their relationship had become estranged and subsequently, after getting *ex parte* divorce decree, the appellant also got married to the said 'S'.

10. Respondent also submitted, her husband wrongly shifted (on the respondent) the entire liability of service tax that arose on their joint business and grabbed her property; therefore, she also lodged cases against the appellant. It is also further submitted by the respondent that appellant is having several immovable properties worth crore of rupees and his ITR for the F.Y. 2021-22 is approximately 2 crores. The respondent in her written statement also submitted that he had bad intention to not only cheat her but also to kill her and her children. Now she, along with two children aged about 16 years & 19 years, has been living on her own but she doesn't want the stigma of divorce.

11. The respondent lastly submitted that the appellant could not prove cruelty on the part of the respondent; therefore, his divorce petition was rightly rejected by the Court below.

12. After hearing both the parties as well as on perusal of the record, it is clear that though the appellant could not clearly establish the cruelty on the part of the respondent till filing a divorce petition in their day-to-day life, this fact is also undisputed that the respondent had lodged one case under Sections-498A, 420 506 and 507 IPC in 2014, before the filing of the divorce petition by the appellant. In that case, though police had filed a chargesheet under Section-420 IPC and Section-498A IPC was deleted and subsequently the competent Court also acquitted the appellant under Section-420 IPC. Similarly, in Case Crime No.17 of 2018, under Section-377 IPC which respondent though lodged during the pendency of the divorce petition, the police had submitted a closure report.

13. Apart from the above criminal cases, the respondent filed several other complaints against the appellant. The record also shows that the property dispute between the appellant and respondent is also pending, and all efforts for conciliation have failed. This Court has also tried to explore conciliation between the parties, but the respondent stoutly refused to consider any settlement.

14. It is also an undisputed fact that both parties have been residing separately since September, 2013, and there is no chance of reconciliation surviving between them, by way of a realistic possibility.

15. Even during the hearing, the respondent asserted that as the appellant had grabbed her company, 'Creative Media' and by manipulation, the appellant persuaded the

service tax department to issue liability of service tax of more than Rs.1 crore against her.

16. Respondent also stated in her statement while examining herself as DW-1 that the appellant had made incorrect allegations against her of having illicit relationship with Prem Kumar Chawla, who is the proprietor of Leher Advertising Agency and correct fact is that she is having only professional relationship with Prem Kumar Chawla and in her written statement respondent also expressed her apprehension that appellant may kill her and her children.

17. The above facts clearly establish that both parties have lodged criminal cases against each other and have serious disputes about the properties. Apart from this, both parties are also making allegations against each other of having relationship outside of marriage, therefore, forcing them to live together despite their intense hate towards each other will amount to cruelty. The Hon'ble Apex Court dealt with this issue in the case of K. Srinivas Rao Vs. D.A. Deepa reported in (2013) 5 SCC 226 in para 30 of the said judgement, which is being reproduced as under:

“30. It is also to be noted that the appellant-husband and the respondent-wife are staying apart from 27/4/1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in Samar Ghosh Vs Jaya Ghosh, (2007) 4 SCC 511, if we refuse to sever the tie, it may lead to mental cruelty.”

18. The Hon'ble Apex Court in the case of **Naveen Kohli Vs Neelu Kohli (supra)**, observed in paragraph nos.62, 63 and 64, which are quoted hereinunder:

“62. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered,

as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

63. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

64. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.”

19. Similarly, Hon'ble Apex Court in the case of K. Srinivas Vs. K. Sunita reported in 2014 (16) SCC 34 observed that knowingly and intentionally filing a false complaint will constitute cruelty against spouse.

20. The above observations of Hon'ble Apex Court regarding cruelty show that if the conduct of one party is such as may satisfy the conscience of the Court that the

relationship between the parties had deteriorated to such extent due to the conduct of the other spouse that they can't live together without mental agony that itself would amount to cruelty. To force the parties to live together in such circumstances would be to allow one spouse to put up with cruelty by the other. In the present case, two complaints lodged by the respondent were found to be false or not proved. Therefore, that fact itself constitutes evidence of cruelty on the part of the respondent. The Hon'ble Apex Court in the case of Naveen Kohli Vs Neelu Kohli (supra) observed that filing a false complaint against another spouse is cruelty. Also, the Hon'ble Apex Court in the case of Naveen Kohli Vs Neelu Kohli (supra) observed, where parties have been living separately for a long period and civil/criminal cases have been initiated by the respondent against the appellant and matrimonial bond between the parties is found broken beyond repair then marriage between the parties continues in name only. Forcing the parties to live together is potentially more prejudicial to the public interest than dissolution of marriage bond. Paragraph no.87 of the judgement mentioned above is being quoted as below:

“87. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.”

21. In the present case, both the parties have levelled allegation against each other for not maintaining the sanctity of marriage and their involvement in relationship outside of marriage and they have been living separately

for more than ten years and number of complaints including the criminal complaints have been filed by the respondent against the appellant and every effort has been made to harass and torture him. Appellant had also filed a case against the respondent. Even, at this stage, respondent is not ready for any conciliation with the appellant.

22. It is also an undisputed fact that the appellant got married to another woman after getting an *ex parte* divorce decree, and for a decade, the parties have been living separately. It also appears from record that the marriage does not survive any longer, and the relationship was terminated otherwise except by a formal divorce decree. Hon'ble Apex Court in the case of **Rakesh Raman Vs Kavita** reported in **2023 SCC OnLine SC 497** observed in paragraph no.20(xiv) as under:

“20(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.”

23. From the analysis and evaluation of the entire evidence, while the respondent may not be claiming cruelty suffered by her, yet she may not thrust that fate on the appellant. To him cruelty remains available and established as a ground to seek dissolution of the marriage. That cruelty stands established. Also, it is clear that the marriage between the parties had broken down irretrievably, and there is no chance of their living together, again.

24. Hon'ble Supreme Court in the case of **Shilpa Sailesh Vs. Varun Sreenivasan** reported in **2023 SCC OnLine SC 544**, in paragraph no.41 of the judgement, observed

as under:

“41. Having said so, we wish to clearly state that grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that ‘complete justice’ is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration.”

25. Similarly, the Hon’ble Supreme Court in the case of Dr. Nirmal Singh Panesar Vs Paramjit Kaur Panesar alias Ajinder Kaur Panesar reported in 2023 SCC OnLine SC 544, in paragraph no.18 of the judgement, observed as under:

“18. However, in our opinion, one should not be oblivious to the fact that the institution of marriage occupies an important place and plays an important role in the society. Despite the increasing trend of filing the Divorce proceedings in the courts of law, the institution of marriage is still considered to be a pious, spiritual, and invaluable emotional life-net between the husband and the wife in the Indian society. It is governed not only by the letters of law but by the social norms as well. So many other relationships stem from and thrive on the matrimonial relationships in the society. Therefore, it would not be desirable to accept the formula of “irretrievable break down of marriage” as a strait-jacket formula for the grant of relief of divorce under Article 142 of the Constitution of India.”

26. Therefore, looking into the peculiar facts of the case and taking into consideration the observation of Apex Court, our opinion lies in accepting the pragmatic reality of

life and making a decision which would be ultimately conducive in the interest of both parties.

27. Consequently, we set aside the impugned judgment dated 07.11.2019 passed by the Additional Principal Judge, Family Court, Court No.-2, Ghaziabad in Matrimonial Case No.253 of 2014 and dissolve the marriage between the parties, according to the provision of the Hindu Marriage Act, 1955 on grounds of cruelty suffered by the appellant at the hands of the respondent and also for reason if that marriage having broken down, irretrievably.

28. Considering the facts and circumstances of the case, this Court, while dissolving the marriage between the parties, also directs the appellant to pay Rs.1,00,00,000/- (One Crore) to the respondent towards permanent alimony within three months, considering the financial condition of the appellant that he is having several immovable properties worth crore of rupees and having ITR for F.Y. 2021-22 of about 2 crores.

29. If the appellant fails to pay the amount indicated above within the stipulated period, the amount awarded shall carry interest liability @ 6% from today, till date of payment.

30. The appeal is **allowed**. No order as to costs.

Order Date :- 13.10.2023

S.Chaurasia