

Allahabad High Court

Smt. Sadhana Srivastava Wife Of ... vs Sri Arvind Kumar Srivastava Son Of ... on 6 September, 2005

Equivalent citations: AIR 2006 All 7, 2006 (1) AWC 177, II (2005) DMC 863

Author: K Murari

Bench: R Misra, K Murari

JUDGMENT Krishna Murari, J.

1. This appeal under Section 19 of the Family Courts Act is directed against the judgment and decree passed by the Family Judge, Varanasi in matrimonial suit No. 177 of 1992, whereby the suit for a decree of divorce instituted by the respondent husband Sri Arvind Kumar Srivastava against the appellant wife Smt. Sadhana Srivastava has been decreed.

2. The case set up by the respondent husband was inter-alia that parties to the suit were Hindu and were married according to Hindu rites on 2.5.1985. Out of the wedlock two sons were born on 10.7.1987 and 15.12.1988 respectively. From the very beginning of the marriage the behaviour and attitude of the appellant-wife towards the respondent-husband, his parents and other family members had been inhuman and intolerable which culminated into separation of the elder brother of the husband from the family. The wife was always on a look-out to remain at her parent's place more than that at the matrimonial home. She had been in the habit of keeping the husband under mental torture either by teasing his parents or spreading frivolous stories in the family which amounted to cruelty. On account of such recklessness behaviour of the wife the life of the husband-respondent became miserable. It was also alleged that in June, 1990 she left the husband's place along with his younger son under pretext of the illness of her mother. When all persuasion to bring her back proved futile, proceedings under Section 9 of the Hindu Marriage Act (for short the Act') for restitution of conjugal rights were initiated which was, contested by her. It was further pleaded that elder brother of the wife who is an advocate lodged an FIR under Sections 498A, 120B and 506 I.P.C on 19.1.1991 which was registered as case crime No. 13 of 1991 naming entire family members as accused. They were arrested and ultimately, bailed out by Xth Additional Chief Judicial Magistrate, Varanasi. The bail order was challenged by the brother of the wife before the District & Sessions Judge, Varanasi and the bail was cancelled and the accused were directed to surrender themselves before the court. The order of the District & Sessions Judge canceling the bail was challenged before this court by filing revision which was disposed of vide order dated 17.5.1991 directing the court below to, bail out the accused on the same day and to release them on personal bond. In pursuance to the aforesaid direction, the Chief Judicial Magistrate, Varanasi directed the release on 29.5.1991 on furnishing personal bond of Rs.3000/- each. It has also been alleged that police has submitted a final report in the matter on 25.2.1992. Further allegations made in the petition go to show that proceedings Under Section 25 of the Guardianship and Wards Act for custody of the minor children was also initiated by the wife and the husband both which were being hotly contested by them. It has been alleged that on the intervention of the respectable member of the community a compromise was arrived at between the parties on 4.5.1992. All the proceedings under the Hindu Marriage Act & Guardianship and Wards Act between the parties were finally disposed of in terms of the compromise. It has further been alleged that the appellant-wife committed murder of the younger son on 17.6.1992 for which an FIR was lodged by the respondent-husband which was registered as case crime No. 211 of 1992 under Section 302 I.P.C.

The appellant-wife was arrested by the police. She was bailed out by this court on 5.11.1992. During the course of the argument, we have been informed that the wife has been acquitted of the said offence. However, criminal appeal filed by the State is pending before this court. It was further pleaded in the petition that the aforesaid acts have caused great mental pain and he was totally broken down and thus a decree be passed on the ground of cruelty.

3. The appellant-wife in her written statement denied the allegations of cruelty made by the husband in the petition for divorce. However, the fact of various litigation both civil and criminal between the parties and the compromise was admitted in the written statement. In the additional pleas it was pleaded that behaviour of the respondent-husband was utterly dissatisfactory and against the pious relationship of the husband and wife and she was made target of shots of torture mentally, physically by all possible means by the husband, his parents, his elder brother and elder brother's wife. Allegations of having an illicit and extra marital relation with one Km. Nitu Mehta @ Shalini, the sister of his elder brother's wife were also made. It was also pleaded that; husband wanted to give elder son in adoption to his brother who was issueless. However, because of unwillingness and resistance put by wife, the husband could not succeed. It was further pleaded that husband found the presence of the wife and children as a hurdle in free access to Km Nitu @ Shalini and as such his behaviour became very undesirable to the extent that several times the wife and minor children were assaulted and beaten for no fault and without justification. On 9th June, the wife and children were abused and beaten and thrown out of the house and since then the husband never cared to maintain them. It was further alleged that on 18.1.1991 the husband with the help of softie undesirable elements forcibly took away the elder son. The wife also made allegation in the written statement that the husband himself was responsible for the murder of the younger son.

4. Thus it would be seen that both wife as well as the husband have accused each other for the murder of the younger son. Since the dispute is pending adjudication before criminal appellate jurisdiction of this court, we have refrained ourselves from making any comments with regard to incident as the same may adversely affect the said proceedings.

5. The respondent-husband got himself examined in the proceedings. He stated that after about six months of marriage the behaviour of the wife started becoming bad to worse. She used to pick up fight for no rhyme and reason' and abused the parents also. She used to extend threat in the name of her brother who was an advocate. The husband denied that his elder brother's wife had any sister named Nitu and he was not knowing any other girl of that name, He also denied that he ever neglected to take care of the wife or the children or behaved with them in any cruel manner. He also denied that he ever wanted to give his son in adoption to his elder brother. One Lalji Srivastava, a neighbour of the husband also appeared in the witness box and deposed that after about five to six months of marriage there was frequent fight between the two. He also stated that wife used to beat her children badly and very often did not cook any food as a result, the husband had to go to office without any food.

6. The wife also got herself examined. Apart from stating other things, she categorically stated that the husband was having illicit relationship with Nitu Mehta, the sister in law of the husband's elder brother. The brother of the appellant-wife also came into witness box and made categorical

statement about illicit relationship between husband and Nitu (a) Shalini. He also stated that the husband used to torture appellant-wife both physically and mentally.

7. Issue no.(7) was framed by the Family court about the alleged illicit and extra marital relationship of the husband. However, the appellant-wife herself moved an application dated 22.1.1997 stating that she did not want to press the said issue. She also did not lead any evidence and accordingly, the said issue was decided in negative.

8. The learned trial Judge on consideration of respective cases of the parties as well as orally and documentary evidence adduced in the proceedings came to finding that the wife had made allegation of having illicit and extra marital affair with a lady outside wedlock. The same was reiterated by her in her oral statement. Though the issue in this regard was not pressed by the wife and no evidence was led by her and the fact that husband having extra marital relationship was not proved, the trial Judge came to the conclusion that false allegation of adultery made by the wife against the husband without any evidence or proof amounted to cruelty entailing the husband to a decree of divorce. He also held that various criminal cases instituted by the brother of the wife against the husband which were found false and final report was submitted also amounted to cruelty.

9. Under Section 13 of the Act Cruelty is prescribed as one of the grounds for divorce. The relevant Section 13(1)(i-a) reads as under:

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

10. The word 'Cruelty' has not been defined anywhere in the Act. The word appears to have been used in the Section in context of human behaviour in relation to or in respect of matrimonial obligations or duties. Cruelty can be termed as behaviour or conduct of one spouse which adversely affects the other. Thus broadly speaking 'cruelty' as a ground for the purpose of divorce under Section 13(1)(i-a) can be taken as a behaviour of one spouse towards the other which causes reasonable apprehension in his or her mind that it is not safe to continue the matrimonial relationship.

11. Cruelty can be physical or mental or even intentional or unintentional. Physical cruelty is a question of fact and degree. It may consist of act of one of the spouse which may endanger the physical health, life and limbs of the other spouse or may give cause for apprehension of such injury. Whereas the mental cruelty is a conduct of a spouse which causes mental suffering or fear to the matrimonial life in the mind of the other. Mental cruelty is a state of mind and feeling of one of the spouse due to behaviour or behavioural pattern by the other. Mental cruelty is difficult to establish by direct evidence, It is a matter of inference to be drawn from facts and circumstances of the case, A feeling of anguish and frustration in one spouse caused by the conduct of other can be appreciated on the assessment of facts and circumstances in which the two of them have been living. The inference has to be drawn from overall facts and circumstances considered cumulatively.

12. In the present case, right alter about six months of (he marriage the matrimonial relationship between the patties was not normal. The wife left the matrimonial home and the husband had to initiate proceedings for restitution of conjugal rights. In the meantime, various criminal and civil proceedings were initiated by the bother of the wife who is an advocate. However in most of the criminal proceedings final reports were submitted by the police after investigation. Later on the parties entered into a compromise on the basis of which the civil litigation between the parties pertaining to custody of the children was disposed of. The wife came to live with the husband. On her insistence the husband separated himself from the family and took a new house. Even thereafter there was no reconciliation between the parties and the dispute and difference went on increasing to the extent that husband charged the wife for the murder of the younger son. She was arrested and sent to jail and was later on released on bail by this court.

13. Faced with such a situation the respondent-husband filed a petition for divorce on the ground of cruelty meted out to him by the wife. She filed her written statement making allegations of having illicit and extra marital affair of the husband with the sister of his elder brother's wife.

14. The allegation of adultery and extra marital affair was not a result of emotional outburst but were made in the pleadings before a court of law. These allegations were repeated in the oral statement by the wife as well as by his brother. Though the issue framed by the trial Judge in this regard was sought to be not pressed by the wife and no evidence was led to prove the same.

15. Nevertheless, the allegations were made, were serious in nature and merely by not pressing the issue on the point would not loose their impact and were there on the record of the case. Unfounded allegations of adultery made against the wife though not pressed during the proceedings have been held by the Hon'ble Apex Court to be cruel conduct by the husband entailing the wife to seek relief of divorce. In the case of R. Balasubramanian v. Vijayalakshmi Balasubramanian, it has been observed by the Apex Court as follows :

"Learned counsel appearing for the husband submitted that as far us the allegation of adultery against respondent-wife is concerned he is not going to press, That may be good of him but the fact remains that the allegation that the wife had sexual intercourse with a person other than (he husband is a serious allegation against the wife and shows the cruel conduct of the husband entitling the wife to seek relief against him under the Act or otherwise".

16. In yet another decision in the case of Vijaykumar Rumchandra Bhate v. Neela Vijaykumar Bhate, , the Apex Court has held that allegation of extra marital relationship constitutes grave assaultion the character, honour and reputation of wife. Such allegations though withdrawn by seeking amendment in written statement which may have been allowed amounts to cruelty entitling the petitioner to a decree of divorce. Following observations made by the Court may be relevant to quote :

"That apart, even the fact that the application for amendment seeking deletion of the accusations made in the written statement was ordered and amendments carried out subsequently does not absolve the husband in this case, from being held liable for having treated the wife with cruelty by

making earlier such injurious reproaches and statements, due to their impact when made and continued to remain on record. To satisfy the requirement of Clause (I-a) of Sub-section (I) of Section 13 of the Act, it is not as though the cruel treatment for any particular duration or period has been statutorily stipulated to be necessary. As to what constitutes the required mental cruelty for purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct, but really goes by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude necessary for maintaining a conducive matrimonial home. If the taunts, complaints and reproaches are of ordinary nature only, the courts perhaps need to consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer. A conscious and deliberate statement leveled with pungency and that too placed on record, through the written statement, cannot so lightly be ignored or brushed aside, to be of no consequence merely because it came to be removed from the record only. The allegations leveled and the incidents enumerated in the case on hand, apart from being per se cruel in nature, on their own also constitute an admission of the fact that for quite some time in the past the husband had been persistently indulging in them, unrelented and unmindful of their impact. That the husband in this case has treated the wife with intense cruelty is a fact, which became a fact accomplished the day they were made in the written statement. They continued on record at any rate till the carrying of the amendment of the written statement and the indelible impact and scar they initially would have created, cannot be said to have got ipso facto dissolved, with the amendments ordered. Therefore, no exception could be taken to the courts below placing reliance on the said conduct of the appellant, in this regard, to record a finding against him."

17. What has been observed by the Apex Court in the case of wife will stand true and with equal force in the case of a husband as well. The allegation of having illicit relationship and extra marital affair made by the appellant wife against the respondent husband in her written statement, in our view, cannot but constitute mental cruelty of such a nature that respondent husband cannot be reasonably asked to live with the wife. Thus we see no illegality in the finding recorded by the trial Judge that the allegations of having illicit relationship and extra marital affair made by the wife against the husband amounted to cruelty.

18. The other fact which found favour with the Family Court in holding that the husband was entitled to a decree of divorce on the ground of cruelty was various criminal proceedings initiated against the husband which was found to be false and final report was submitted.

19. It cannot be doubted that the respondent-husband must have suffered traumatic experience because of the arrest and confinement in prison of the entire family including himself. The arrest and imprisonment must have resulted in the loss of reputation and prestige of the husband and his family in the society. The mental agony of being arrested and imprisonment in a false case resulting into loss of reputation and prestige in the society would also amount to cruelty. Again we see no illegality in the trial Judge coming to the conclusion that false criminal proceedings initiated against the husband amounted to mental cruelty entitling him to a decree of divorce on the said ground.

20. Section 23(2) of the Act inundates every court to make every endeavour to bring about a reconciliation between the parties before proceeding to grant any relief under the Act. The trial Judge has recorded that efforts of reconciliation Were made on 31.10.1995. The wife though was ready and willing to live with the husband but the husband was not ready and willing and as such the effort of reconciliation failed. Even we made an effort for reconciliation and for the purposes the parties were directed to be present in person. Before proceeding with the hearing of the appeal, the parties were called in the chamber. Again the wife expressed her willingness to live with the husband but the husband stated that in the facts and circumstances and the way he has been treated through out he is not ready and willing to live with the wife at any cost.

21. Though the wife expressed here willingness to live with the husband but we have a feeling and the entire facts and circumstances of the case also indicate that the marriage between the parties is dead both emotionally and practically and continuance of matrimonial alliance would amount to prolonging the agony and affliction which, in itself, may amount to cruelty.

22. In view of the aforesaid discussion, we have come to the conclusion that the husband respondent is entitled to a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act and the impugned judgment and decree of divorce passed by the trial Judge does not call for any interference. The appeal filed by the wife is liable to be dismissed.

23. However, the trial Judge exercising power conferred by Section 25 of the Act allowed Rs. 600/- as maintenance to the wife from the date of judgment. We feel that the amount of Rs.600/- awarded by the trial Judge is too meager. At this juncture Sri Ramendra Asthana, learned counsel for respondent-husband made ah offer to pay a sum of Rs.4 Lakhs in lump sum towards the maintenance, and support of the wife after divorce. On our persuasion the respondent husband has agreed to pay a sum of Rs.5 Lakhs in lump sum to the wife for her maintenance and support. Let the said amount be paid by means of a demand draft in the name of the appellant wife drawn on some nationalised bank within a period of two months from today.

24. Subject to aforesaid modification made by us the judgment and decree of divorce passed by the Judge, Family Court, Varanasi dated 3.12.1997 in matrimonial case No. 177 of 1992 between the parties stands confirmed.

25. However, in the facts and circumstances there shall be no order as to costs.