

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 66 OF 2006

Ajay Ashok Khedkar Appellant.
V/s
Sou. Laleeta Ajay Khedkar.... Respondent.

Mr.Hitesh Vyas, Adv. For the appellant.

Mr.Sachin S. Pande, Adv. For the respondent.

CORAM: A.PDESHPANDE
AND
SMT. R.P. SONDURBALDOTA, JJ.

Date:12th April, 2010.

ORAL JUDGMENT: (Per Deshpande, J.)

This is family court appeal filed by the unsuccessful husband whose petition for divorce has been dismissed by the Family Court. The appellant and the respondent's marriage was solemnized as per Hindu rites and customs at Pune on 8.3.2001. The marriage was an arranged marriage and after the marriage the respondent came to reside with the appellant. The appellant's mother resides along with the appellant. The petition for divorce was filed on the ground of mental cruelty under section 13(1)(i-a) of the Hindu Marriage Act, 1955.

2. According to the petitioner on the wedding night itself the respondent alleged that she was deceived in regard to income of the appellant. The respondent allegedly stated that the salary of the appellant as informed to her was much more than what he was

actually receiving. It is also alleged that with reference to the number of spectacle the respondent taunted the appellant by saying that she was made to perform marriage with a blind person. Touching those issues the respondent allegedly started quarreling with the petitioner and insulting the petitioner. It is the case of the appellant that since beginning the behaviour of the respondent was arrogant and rude and immediately after the marriage the respondent was insisting that the petitioner should stay separately from his mother in one of the two flats owned by the appellant's family situated at Raviwar Peth, Pune. According to the appellant he tried to convince the respondent that his mother is old and there is no one else to look after her and hence refused to stay separately. It is also the case of the appellant that the respondent gave threats that she would commit suicide if the appellant fails to reside separately. The respondent also denied conjugal rights to the appellant so as to coerce him to stay separate from his mother. On the above referred allegations touching mental agony and torture divorce petition was filed.

3. Sometime in December 2002 the respondent went to the house of her parents for delivery. She delivered a girl child on 26.2.03. Despite passage of enough time the respondent did not join the company of the appellant. According to the appellant because of the insistence on the part of respondent to stay separately the marital life was disturbed and peace and harmony was lost.

On 3.5.03 the father of the respondent brought the respondent to the house of the appellant but without meeting the appellant or his mother respondent's father went away. On 6.5.03

the respondent called her parents and brother at the house of the appellant. The near relations of the respondent quarreled with the petitioner and his mother and after creating a scene threatened the appellant that they would implicate the appellant and members of his family in false criminal cases. So threatening the appellant, father and brother of the respondent took her away along with them. While leaving the appellant's residence they said that only if he resides separately the respondent will be sent back. The appellant immediately sent a notice on 9.5.03 asking the respondent to join the company and cohabit with the appellant but instead of joining the company of the appellant the respondent initiated criminal case under section 498A of IPC not only against the appellant and his mother but three other near relations who were staying separately including the uncle, aunt and husband of the aunt. All the persons accused of having committed the offence under section 498A of IPC were arrested by the police and they were detained in custody. This is the main circumstance which is relied upon by the learned counsel for the appellant to contend that lodging of false case which resulted in arrest and detention of family members of the appellant is singularly sufficient enough to hold that the respondent is guilty of causing mental cruelty and agony to the appellant and thus pressed for grant of decree of divorce. According to the learned counsel for the appellant arrest and detention of the family members and near relations of the appellant in false case has caused him utmost mental torture. During pendency of divorce petition the said criminal case came to be decided by a judgment dated 13.5.05 by Judicial Magistrate, First Class, Pune acquitting the appellant and all his family

members from the charge under section 498A of IPC.

4. Perusal of the judgment clearly reveals that the prosecution utterly failed to prove the case put forth by the complainant. The Judicial Magistrate has recorded categorical finding that the complainant's own testimony falsifies the prosecution case that the complainant was treated cruelly and was harassed by the accused persons with a view to coerce her and her parents to meet their unlawful demand of Rs.50,000/-. The Magistrate has totally disbelieved the version of the complainant/wife and has acquitted the accused persons. On a careful reading of the judgment rendered in the case of prosecution under section 498A of IPC one thing is crystal clear and it can be safely assumed that the wife had filed a false case not only against her husband and mother-in-law but had unnecessarily roped in other near relations. It is obvious that on account of arrest and detention of the husband and his family members respondent has treated the appellant with utmost mental cruelty and the appellant has suffered agony. It will not be out of place to mention that the complaint filed by the wife was calculatedly designed in as much as it was a sort of counter blast to the divorce petition filed by the husband. The appellant had filed divorce petition on 16.6.03 whereas the complaint was lodged by the respondent-wife on 11.7.03.

5. Learned counsel for the appellant submits that the appellant and his family members including ladies who did not stay along with the appellant were arrested and detained causing utmost humiliation and embarrassment and agony to the appellant. This solitary incidence would itself constitute mental cruelty even if other circumstances are not taken into account and thus the trial

court has erred in law in dismissing the divorce petition. Para 29 of the judgment of family court deals with this aspect of the matter by observing :

“There can not be absolutely two opinions regarding legal proposition that if the wife filed false criminal cases against the husband, her conduct does amount to causing mental cruelty and torture to him, therefore, the husband becomes entitled for a decree of divorce. The necessary condition for constituting such legal cruelty is that the wife has indulged into making false and reckless allegation by filing false complaint to the police. A singular complaint filed by wife under section 498A of IPC against the husband and his family members can not indicate the tendency of wife to indulge into making such false allegation.”

We fail to understand the logic behind the reasoning adopted by the family court to hold that a singular complaint of this nature under section 498A of IPC resulting in arrest and detention of the family members and relatives thereby causing utmost embarrassment, humiliation and suffering does not constitute mental cruelty. It is illogical that more than one complaint are necessary to be filed to constitute mental cruelty. In our view, embarrassment, humiliation and suffering that is caused on account of arrest and detention of appellant and his family members and relatives in a false case does constitute mental cruelty to enable the husband to seek decree of divorce on this sole ground. In our considered opinion, the approach of the family court is wholly perverse and the reasoning cannot be sustained in law. In regard to other circumstances the family court has observed :

“At the most one can infer that this conduct of the respondent may have caused some disharmony between the couple but in no way it can be said that it was sufficient to constitute a mental cruelty to petitioner or his mother.”

Without deliberating on all the circumstances in detail we are of the clear view that cumulative effect of the behaviour and conduct of the respondent is good enough to draw an inference that respondent has caused utmost mental pain and suffering which constitute mental cruelty to the appellant and hence the appellant is entitled for decree of divorce on the ground of cruelty.

6. This brings us to the consideration of question of granting maintenance to the girl child who is aged about 8 years. The family court in exercise of powers under section 24 had granted interim maintenance of Rs.700/- p.m. whereas this Court by an interim order has raised it to Rs.1000/- p.m. The appellant so also the respondent are both gainfully employed. They are earning in the range of Rs.5000 to 7000 per month each. The child is in custody of the respondent-mother. Learned counsel for the appellant on instructions from his client who is present in the court submitted that the appellant would pay a sum of Rs.1.5 lacs towards permanent alimony for the maintenance of child. Having found the said amount insufficient we persuaded the counsel for the appellant to raise the amount so that monthly interest on the said amount works out in the range of Rs.2000 per month. The mother of the appellant has come forward to contribute further sum of Rs.1.5 lacs towards maintenance of the child. In our view if the appellant pays sum of Rs.3 lacs by way of permanent alimony for the maintenance of child the said amount if kept in fixed

deposit can fetch interest of Rs.2000/- per month and the same could be utilized by the respondent for upbringing of the daughter. In the result we pass the following order:

- (i) The marriage of the appellant and respondent stands dissolved by a decree of divorce under section 13(1)(i-a) ;
- (ii) The appellant shall pay sum of Rs.3 lacs by way of permanent alimony for the maintenance of the girl child. The said amount of Rs.3 lacs shall be invested in fixed deposit in a nationalized bank and the respondent is permitted to withdraw the interest accrued thereon quarterly. The amount of Rs.3 lacs shall be invested in the fixed deposit within two months from today in the name of the minor child and the respondent would be shown as her guardian;
- (iii) The said sum of Rs.3 lacs shall be kept invested in fixed deposit till the child attains majority.
- (iv) Appeal is allowed with no order as to costs.

8.4.2010.

At this stage the learned counsel for the respondent seeks stay of this order. Having regard to the peculiar facts and circumstances we do not find any reason to stay the impugned order. Hence the prayer is rejected.