

Bench: D Misra, R Jha

Smt. Kavita vs Harish Raisen on 13/4/2006

JUDGMENT

R.S. Jha, J.

1. The appellant has filed the present appeal under Section 19 of the Family Courts Act read with Section 28 of the Hindu Marriage Act, 1955 calling in question the legal validity of judgment dated 1-2-2005 passed in Regular Civil Suit No. 104-A/2003 by the Family Court Bhopal, by which the application filed by the respondent seeking divorce has been allowed.

2. The facts of the case in brief are that the respondent-husband filed an application under Section 13(1) (i- a) and (i-b) of the Hindu Marriage Act, 1955 seeking divorce against the appellant on the ground of cruelty and desertion. It was alleged by the respondent that the parties had entered into wedlock on 26-4-2001 at Indore. Since 16-12-2002 the appellant has willfully deserted her husband and is living with her parents at Indore and in spite of his best efforts has refused to come back and live with him. The respondent plaintiff had also given a notice Ex. P-1 on 25-1-2003. The appellant and her father, who is a police man, had filed a false case against the parents of the respondent plaintiff, his two sisters and his brother and sister-in-law on 3-5-2003 alleging demand of dowry and harassment and cruelty on non-fulfillment of the demand under Sections 498A and 506B of the IPC. All the seven members of the respondent's family were prosecuted and the respondent was also arrested. The bail of the respondent was personally opposed by the appellant's father, who was working in the police department. The charges had been framed by the Judicial Magistrate, First Class, Indore against all the seven persons on 30-4-2004 against which the respondent had filed a revision before the Additional District Judge, Indore, which was allowed by order dated 10-8-2004 and all the charges had been quashed. It was further submitted by the respondent-husband that the conduct of the appellant from the very first day was cruel towards him; that from the very beginning the appellant refused to have any physical relationship with him alleging that the marriage was against her wishes; that she even deprived the respondent of the pleasure of becoming a father from the very beginning and on her own had started taking oral contraceptives due to which she had to be given treatment; that her behavior against his family members from the very first day was highly objectionable; that she refused to stay in the joint family and insisted that the respondent live separately with her; that because of her objectionable behaviour and conduct the brother and sister-in-law of the respondent started living separately; that she used to visit her parents house every now and then without informing the respondent and; that ultimately on 16-12-2002 she herself left the house of the respondent by discarding her Mangalsootra and bangles.

3. The appellant in her written statement denied the charges and the allegations as made by the respondent and submitted that immediately after marriage the conduct of the respondent and his family members was extremely offensive; that all of them started making demands in addition to the dowry already given to them by asking for cash as well as a motorcycle and; that in furtherance of this demand the appellant was subjected to mental and physical cruelty and harassment; that because of the ill-treatment on the part of the respondent and his family members the appellant had to undergo treatment for which she had to go to her parents house; that the respondents and his family members subjected her to cruelty by beating her up and by abusing her; that as the appellant feared for her life she quietly telephoned her father who rushed to Bhopal alongwith her maternal uncle and took her away at Indore; that while leaving the respondent had snatched away the Mangalsootra and bangles etc. and had threatened that if the appellant and her father did not fulfil the demand for a motorcycle the respondent would enter into a second marriage and; that the appellant had filed a report against the respondent and his family members at Police Station MIG Indore.

4. The Court below after analysis of the oral and documentary evidence on record, recorded a finding that while the fact of desertion was not proved, the respondent had been able to establish and prove cruelty and on

that account the application seeking divorce was allowed.

5. The only question which arises for adjudication before this Court is whether the finding in respect of cruelty as recorded by the Court below is legally sustainable. From a perusal of the statement of the appellant herself, the fact of lodging of a criminal complaint under Sections 498A and 506B of the IPC against the respondent and his family, is admitted and established. It is also apparent from a perusal of her statement that she has alleged adultery on the part of the respondent and has stated that he was having an illicit relationship with the Nanad of his sister-in-law. The respondent has also brought on record Annexure P-4 which is the order dated 10-8-2004 passed by the 13th Additional Sessions Judge, Indore in Criminal Revision No. 325/2004 quashing the charges under Sections 498A and 506B of the IPC framed against the respondent and his family members by recording a finding that the charges and allegations are false.

6. This Court in the case of Smt. Kanta Sachedva v. Devidas II (1998) DMC 368, has held that false allegations regarding cruelty and demand of dowry which resulted in criminal prosecution and arrest of the respondent and his family members amount to a conduct which falls within the purview of cruelty and is so grave as to completely impair continuance of the relationship of marriage and restoration of happy married life impossible. Similar view has been taken by this Court in the case of Jhonson M. Joseph @ Shajoo v. Smt. Aneeta Jhonson 2004(5) M.P.H.T. 410 : 2003(2) MPLJ 577, Smt. Chandan Agrawal v. Mukesh Kumar Agrawal I (1996) DMC 598.

7. In the case at hand, the appellant has admitted lodging of a criminal complaint under Sections 498A and 506B of the IPC against the respondent and his family members and has also affirmed the fact that the respondent was arrested pursuant to the complaint lodged by her. It has also come up in evidence that the bail was opposed personally by the father of the appellant who is a police man and on whose behest it is alleged that the criminal proceedings were registered. These facts are also affirmed from a perusal of the order dated 10-8-2004 passed by the Additional District Judge, Indore in Criminal Revision filed by the respondent in which the charges against the respondent and his family members were ultimately quashed. As is seen from the order-sheet of the Court below dated 25-7-2003 that the initial attempts on the part of the respondent for conciliation failed due to refusal on the part of the appellant to reconcile.

8. In our considered opinion the act of the lodging of a criminal case getting the respondent arrested and opposing his bail are acts which amount to cruelty as has been held by this Court in the cases of Smt. Kanta Sachedva, Jhonson M. Joseph @ Shajoo, Smt. Chandan Agrawal (supra) and therefore, the conclusion as recorded by the Court below is perfectly justified and does not warrant interference.

9. Another significant fact that has come up in evidence is the false unestablished wild allegation by the appellant against the respondent in respect of his having an illicit relationship with one of the relatives of his sister-in-law. Wild unsubstantiated allegations which amount to character assassination also do not support or help the cause of the appellant in the present appeal. In our considered opinion such wild unsubstantiated allegations which have been taken up as an after thought also amount to cruelty and lend support to the conclusions recorded by the Court below. In a case of V. Bhagat v. D. Bhagat (Mrs.), where wild allegations had been made the Supreme

Court while dealing with the issue of mental cruelty has laid down the law in the following terms in Paragraph 16 of the judgment which may be profitably reproduced:

16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the

social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the contest in which they were made.

10. In the facts and circumstances of the case it is established that the conduct of the appellant has inflicted mental pain and suffering upon the respondent. As has been held by the Apex Court in the case of V. Bhagat v. D. Bhagat (Mrs.), (supra) any conduct which inflicts such mental pain and suffering on one of the parties and is of such a nature that the parties henceforth cannot possibly live together amounts to mental cruelty and under such circumstances the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. In view of the above mentioned analysis this Court is of the opinion that the respondent has firmly established and proven cruelty on the part of the appellant.

11. In view of the above mentioned analysis, we are of the considered opinion that the conclusions as recorded by the Court below that the conduct of the appellant amounts to cruelty and on that basis allowing the application as filed by the respondent does not suffer from any perversity or material irregularity which would call for interference by this Court.

12. In conclusion, the appeal filed by the appellant being meritless deserves to be and is hereby dismissed. There shall be no order as to costs.