

Equivalent citations: II (1998) DMC 368

Bench: D Dharmadhikari

Smt. Kanta Sachdev vs Devidas on 5/3/1998

## JUDGMENT

D.M. Dharmadhikari, J.

1. This appeal preferred by the wife under Section 28 of the Hindu Marriage Act, 1955 (for short 'the Act') against grant of decree of divorce shall also decide the connected Appeal No. F.A. 45/94 Devidas v. Smt. Kanta Sachdev, filed by the husband against grant of permanent alimony to the wife.

2. The parties are members of Sindhi Community. They were married on 28.4.1982 and both are residents of Bhopal. There is no issue from the wedlock. The husband is engaged in the business of supply of Milk to Dairies and also helps his father in their joint business. Since the differences arose between the parties the spouses are separated. The wife is living with her brothers. The wife remained present in the Court with her Counsel. It is expressed by the Counsel and the wife present in the Court that there is no possibility of reconciliation between the parties as according to the wife the husband has contracted a second marriage with a girl by name Vandana. The husband has denied the allegation of his second marriage.

3. The husband filed the petition for grant of a decree of divorce on 6.10.1986. The wife resisted the proceedings on the ground that the husband and members of his family beat and ill-treated her for dowry demands and she had been virtually driven out of the house. It is also alleged by the wife that the husband contracted second marriage and hence is interested in obtaining decree of divorce against the wife.

4. In support of his case, the husband examined himself as PW1. His version of the nature of their married life is sought to be supported by the examination of his father PW 2 Parpayomal Sachdev and PW 3 Harpal brother of the husband. The wife in her defence examined herself as DW1 and her version is supported by her brother Narendra Kumar Malkani DW 2. The wife has also examined one Ballumal PW 3 to prove that as Vice President of the Sindhi Panchayat consisting of members of the community he had mediated for reconciliation between the parties and according to him their differences could not be patched up as the husband has re- married.

5. The case set up by the husband and his witnesses in their oral evidence before the Court below is as under:

After their marriage in the initial period of one month they lived peacefully. According to the husband thereafter the behaviour of the wife in the house was indisciplined. She used to abuse the members of the family and used to leave the matrimonial home. She used to visit the parental home as and when desired and without obeying the instructions of the elder members of the family.

6. The members of the Sindhi Community through their Panchayat tried to patch up their differences and she came back to the house of the husband. She then made a police report against the husband and the members of his family alleging that the husband had beaten her and tried to put her on fire. On that police report the husband was arrested. Thereafter she made another police report on 28.3.1984 in which on the allegations of ill-treatment for dowry demands she involved not only the husband, his parents, his Bhabhi Bhagibai, but also his married sisters Maya and Usha who after their marriage live in Indore and Ganjbasoda respectively. As a result of this police report the two married sisters had to obtain bail orders from the Court.

7. The husband then has narrated another incident which took place according to him on 7.10.1989. It is alleged that sometime in the evening at 4.00 the wife came to his house and abused him filthily. The husband,

thereafter, went along with his brother Harpal to make a report in the police station Shahjanabad (in Bhopal). At the police station one Constable Chandrashekar asked them to wait as he was expecting the arrival of the wife also at the Thana. In the police station the above named Constable then recorded the report given by the wife and put the husband and his brother behind the bars. The police Constable also manhandled them. They could be released only next day on the basis of a bail order from the Court.

8. The third incident narrated against the wife is that on the same day i.e. 7.10.1989 she went to the shop of Harpaldas P.W. 3 (brother of the husband) and filthily abused him and also suggested to him that if his brother i.e. the husband and his father were not prepared to accommodate her in their house Harpaldas should agree to keep her or else she would take such steps as to render them beggars.

9. It is also alleged by the husband that during her stay with him in his house, on some minor issue the wife lost her temper and gave a slap to his Bhabhi Bhagibai. It is alleged that she always refused to take part in house-hold duties and used to take out his money without permission of the husband.

10. The last incident stated against the wife is that on 16.11.1989 and 17.11.1989 she went to a dairy in Habibganj where the husband used to supply milk. She made enquiries about the whereabouts of her husband from the security staff. She could not meet the husband but later on he came to know through the security staff that she had come along with few Goondas and was threatening to destroy her husband. According to the husband the above narrated incidents make out a strong case in favour of the husband for grant of a decree of divorce on the ground of cruelty and desertion.

11. The version of the incidents given by the husband has been substantially corroborated by his father PW 2 Parpyomal and his brother PW 3 Harpaldas.

12. In opposing the divorce petition the wife examined herself as PW 1. She denied the allegations of misbehaviour alleged against her. According to her case on 28.3.1984 she had lodged a report with the police which was correct on facts. It is alleged that she was not being treated properly by her in-laws. They used to make demands of dowry and used to quarrel with her. According to her, her parents had given a dowry of Rs. 57,000/- at the time of marriage. After a month demands of more dowry started. She was asked to bring Rs. 20,000/- more. One day sometime in the morning when she was busy in washing clothes, she was beaten, driven out and left at her parents' place. She then lived with her mother for a month and then the mother arranged for Rs. 10,000/-, with bed, gas cylinder, clothes and gold bangles. The husband then again took her to the matrimonial home. It is alleged that after a month thereafter again demands for remaining Rs. 10,000/- were made. She was beaten and pushed out of the house. She then went to lodge a report to the Police Station Shahjanabad. From that day she is continuously living separately from the husband. She has also alleged that the husband had contracted second marriage with one Vandana of Gwalior and has two issues from her. Her allegations against the husband as stated in her statement has also been corroborated by her brother Narendra Kumar Malkani.

13. The learned Judge of the Trial Court believed the version of the husband and held that the conduct and behaviour of the wife in lodging a false police report against the husband and members of his family was an act of extreme cruelty which has made their joint living impossible. The version of the wife that she was beaten and ill-treated on dowry demands has been disbelieved. A decree of divorce, therefore, has been passed against the wife. The learned Judge at the time of passing of the decree fixed a sum of Rs. 700/- per month as the amount of permanent alimony which would be paid by the husband to the wife. Against that part of the order a separate connected Appeal No. 45/94 has been preferred by the husband.

14. Mr. G.C. Jain learned Counsel appearing for the wife took this Court minutely through the oral evidence of the parties recorded in the Court below. It is submitted on her behalf that the Court below fell in gross error in discarding the version of the wife that she was ill-treated and physically assaulted by the husband and members of the family for dowry demands. It is submitted that she was forced by circumstances in which she

was placed to make a report of the incident to the police. It is submitted on her behalf that where the husband and the members of the family were guilty party, a decree of divorce could not have been passed.

15. Shri Amit Verma learned Counsel appeared for the husband placed reliance on 1992 MPLJ 466, Pushpa Datt v. Narayan Datt Mishra; 1992 J LJ 289=I (1992) DMC 337, Smt. Vibha Shrivastava v. Shri Dinesh Shrivastava and, II (1989) DMC 275, Inder Pal Kaur v. Gurvel Singh, in support of his contention that false allegations of dowry demands, police report, arrest of the husband and criminal prosecution of the family members amount to serious act of cruelty deserving a decree of divorce. The second submission made on behalf of the husband is that the wife has brought about a situation where restoration of married life is now an impossibility. According to him the marriage has been irretrievably broken down. As is described by his Counsel 'this wedlock has turned into a dead lock' and this Court should, therefore, uphold the decree of divorce.

16. The evidence on record shows allegations and counter allegations of cruelty by the spouses against each other. The difficult question for this Court is whose version is to be believed. The learned Counsel for the husband is right in submitting that since husband and his family members were involved in a criminal case in which some of them were also arrested, re-union between them is an impossibility. The wife also appeared before this Court and did not express any desire for reconciliation or re-union as according to her allegation that the husband has already re-married and has children from the second wedlock. In these altered circumstances, it is submitted on behalf of the wife that a guilty spouse cannot be granted a decree of divorce in his favour.

17. The fact of lodging a police report by the wife and the consequent arrest and obtaining a bail by the members of husband's family has not been denied. It has been stated by the wife that the contents of the police report were factually true. In this context if the statement made by the wife in her cross-examination is seen, her version of ill-treatment for dowry demands does not appear to be credible. Her case is that at the time of marriage the husband was given a dowry of Rs. 57,000/-. She also admits that after marriage for a month they lived harmoniously. If some more amount of dowry as is stated to have been demanded had been agreed to be paid, it is not explained why such demands were not made soon after the marriage. It is her version that the mother then arranged a sum of Rs. 10,000/- for her alongwith furniture and ornaments and she came back to the husband. The wife has not narrated the actual incident which happened after she came back with another Rs. 10,000/- as dowry in her second visit. The wife has not proved even in this appeal that on the basis of police report made by her, the husband and members of his family have been convicted of the charge under Section 493A, Indian Penal Code. In the course of hearing the Counsel for the respondent informed that the criminal cases have resulted in acquittal as the accused have all been discharged. The orders passed by the Criminal Court are, however, not on record. In the absence of those orders, which could have been produced by the parties, it cannot be held that the accusations made by the wife against the husband and his family members were truthful. It is to be noticed that in the criminal case, on allegations of dowry demands, not only the husband and his family members living with him have been involved but also his two married sisters. The wife in her statement has stated that the married sisters used to live at Bhopal with the family of the husband but she has not explained the actual part played by his two married sisters in the incident of dowry demand. When there is allegation of demand of dowry against the married sisters of the husband, the burden was on the wife to lead evidence to show that such demands were made by the married sisters as well. The husband in his statement has stated that because of the involvement of the married sisters great agony was caused not only to the members of the family of the husband but also to the in-laws of his married sisters. On allegations of dowry demands, lodging of a police report and institution of criminal cases, was too extreme a step and such conduct on part of the wife can be held to be justified only if such allegations are found true. Even at the time of hearing of the appeal nothing has been brought on record to show that the accusations against the husband and his family members of dowry demands were true. Such allegations which resulted in criminal prosecution and arrest of the members of the husband's family undoubtedly amount to a conduct of cruelty so grave as to completely impair their relationship in marriage. Due to such allegations which are not found to be true the wife by her own conduct has made continuance or restoration of happy married life almost impossible. I rely

on AIR 1989 Patna 362, Rajkishore v. Rajkumari, and AIR 1985 Calcutta 431, Krishan v. Alok Ranjan.

18. The wife in her cross examination in paragraph 10 of her statement and her brother DW 2 in paragraph 5 of his statement have admitted that the members of the family of the wife were also prosecuted for dowry demand after the marriage of their brother Narendra Kumar. She admitted that in that criminal case she was arrested. It appears, therefore, that the wife having herself suffered such a criminal prosecution adopted similar method to pressurise them by involving her husband and in-laws in a criminal case based on dowry demand. The wife has not been able to satisfactorily explain her conduct of lodging such a police report against the husband and his family members. The above act of cruelty is sufficient to maintain the decree of divorce granted to the husband. This Court does not think it necessary to go into other allegations of cruelty against the wife such as that she slapped the Bhabhi of the husband and had gone with Goondas in search of the husband to give him a threat or thrashing.

19. The other connected appeal has been preferred by the husband against the order granting permanent alimony to the wife at the rate of Rs. 700/- per month. Learned Counsel appearing for the husband contends that no application by the wife under Section 25 of the Hindu Marriage Act was separately made demanding permanent alimony. The husband, therefore, got no opportunity to lead any evidence with regard to his own income and the income of the wife. At the time of filing of the divorce petition and when the wife entered the witness box she admitted that she is serving in Mahila Kalyan Samity on a salary of Rs. 547/- per month. When she appeared in this Court she stated that she is no longer in that service. In this Court the parties have filed applications to bring on record documents on the question of quantum of permanent alimon . According to the wife the husband is owner of a truck in his own name and is also running an S.T.D. /P.C.O. booth. She claims enhancement of the amount of permanent alomony. The husband has also filed applications and documents to show that the truck is of a very old model and being out of use and has been kept on 'K' Form with the permission of the R.T.O. So far as the STD/PCO booth is concerned, it is stated that the same is being run by his father and the income is meagre. Under the provisions of Section 25 of the Act the Court can award permanent alimony on the application of one of the parties at the time of passing of decree or at any time subsequent thereto. The learned Trial Judge has not properly decided the question of quantum of compensation after allowing the parties to lead evidence on the same at the time as or after passing of the decree. In any case because of the subsequent developments and the evidence sought to be produced in appeal, it is necessary for the Trial Court to take a fresh decision on the same.

20. In the circumstances, this Court considers it fit to remand the matter to the Trial Court with a view to allow the wife to make a suitable application under Section 25 of the Act for grant of permanent alimony and to allow the husband to meet such a claim by filing a reply and leading evidence.

21. Consequent to the above discussion, First Appeal No. 15/94 filed by the wife against grant of decree of divorce against her is dismissed. The connected First Appeal No. 45/94 filed by the husband against the order of the Court below granting permanent alimony in the sum of Rs. 700 / - is partly allowed by remand ing the case to the Trial Court so as to enable the wife to make a suitable application under Section 25 of the Hindu Marriage Act and for trial of the issue of permanent alimony on the basis of evidence to be led by the parties. In the circumstances, I make no order as to costs.