

Bench: A Pasayat, D Bhandari

CASE NO.:

Appeal (civil) 877 of 2007

PETITIONER:

Smt. Mayadevi

RESPONDENT:

Jagdish Prasad

DATE OF JUDGMENT: 21/02/2007

BENCH:

Dr. ARIJIT PASAYAT & DALVEER BHANDARI

JUDGMENT:

J U D G M E N T

(Arising out of SLP (C) NO. 3686 OF 2006)

Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Rajasthan High Court at Jodhpur dismissing the appeal filed by the appellant under Section 28 of the Hindu Marriage Act, 1955 (in short the 'Act').

Background facts in a nutshell are as follows:

Respondent filed an application for divorce on the ground of cruelty alleging that because of the acts of cruelty on several occasions perpetrated by the appellant, the respondent- husband was under apprehension that it would not be desirable and safe to stay with the appellant and to continue their marital relationships.

It was, inter-alia, stated in the divorce petition as follows:

Parties got married according to the Hindu rites on 17.4.1993. The appellant's father was an employee in the Railway department and the appellant used to make demands for money frequently and used to quarrel when money was not paid. She did not even provide food to her husband or the children and used to threaten the husband to falsely implicate him in a case of dowry demand and to kill the children and to put the blame on the respondent-husband and his family members. On 23.10.1999 she took Rs.1,05,000/- from the respondent and acknowledged the receipt of the money in the diary of the respondent-husband. She used to borrow money from time to time at the behest of her parents. From the wedlock four children were borne namely, Neha, Anu, Khemraj and Vishnu Sagar. The appellant used to keep the children tied by ropes and she attempted to throw them down from the rooftop and used to physically torture them. She was temperamentally very cruel and used to behave cruelly with the children also. She always used to threaten that she will destroy

the whole family of the respondent and that there would be no successor left in the family. On 5.4.2002 at about 12.00 noon she left her parental home alongwith three children namely, Neha, Anu and Khemraj on the pretext that she was going to her parental house which was located in the same village. Since she did not return till evening as was told to the respondent-husband, he started searching for her. During course of search the garments and slippers of the children and the appellant were found lying near the well of Ramialji. Police was informed and on search dead bodies of the three children were recovered from the well and appellant was also taken out of the well. A criminal case was instituted and she was convicted for an offence under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC'). She was pregnant at that time and subsequently delivered a child. She filed an application for bail. While on bail, she filed a false case alleging dowry demand against the respondent-husband and his family members. Final report was given by police and it was observed that a false case had been lodged.

The appellant filed her response to the petition for divorce and contended that no amount was borrowed by her father or any of her family members. The respondent-husband used to threaten her for dowry and she had never perpetuated any cruelty so far as the children and the husband are concerned. She did not know as to how the children fell into the well. She was herself unconscious and recovered after about four days. The husband, in fact, turned her out of matrimonial home on 5.4.2002 alongwith their three children. Unfortunately, she and the three children fell into the well. The appeal is pending against her conviction. The trial Court found that the allegation of cruelty was established. Several instances were noted. One of them related to her behaviour on the date of judgment in the criminal case. After the judgment of conviction was pronounced, she threatened to kill the husband and prosecute him. It was also noted by the trial Court that the allegation made by her alleging for dowry demand was dis-believed and the police gave final report stating that the case was falsely lodged. The trial Court granted the decree of divorce which was, as noted above, confirmed by the High Court in appeal by dismissing appellant appeal.

Learned counsel for the appellant submitted that the foundation of decree for divorce is the alleged conviction for which the appeal is pending and, therefore, the High Court should not have disposed of the matter. In any event, it is submitted that it was the husband and his family members who were torturing her and being threatened by the husband she had not made any grievance with the police. Unfortunately, when she made the allegation, the police did not properly investigate the matter and gave a final report exonerating the husband.

Learned counsel for the respondent on the other hand submitted that the instances highlighted by the trial Court and analysed in great detail by the High Court clearly made out a case for dowry and no interference is called for in this appeal.

The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in

evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

The expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted (See Shobha Rani v. Madhukar Reddi, AIR 1988 SC 121 and A. Jayachandra v. Aneel Kaur 2005 (2) SCC 22 ).

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 an 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.

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.

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. (See Dastane v. Dastane, AIR 1975 SC 1534).

The instances of cruelty highlighted by the trial Court and also by the High Court clearly prove that the husband was subjected to mental and physical cruelty. It is not a fact as submitted by learned counsel for the appellant that the conviction in the criminal case was the foundation for the decree. On the contrary, the trial Court clearly mentioned that the aspect was not taken note of as the appeal was pending.

In view of what has been stated above, the inevitable result is dismissal of the appeal which we direct. There will be no order as to costs.