

Equivalent citations: AIR 1986 Raj 13, 1985 (1) WLN 437

Bench: G M Lodha

Smt. Shanti Devi vs Raghav Prakash on 29/10/1984

## ORDER

Guman Mal Lodha, J.

1. An unfortunate feud between the husband & wife has resulted in this matrimonial dispute. The respondent husband has filed a petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') alleging therein that he has been a good scholar in bindi literature but got an illiterate wife, who smokes and is habitual for committing thefts so also abusing him. The cruelty was alleged against the wife appellant and, the desertion was also alleged but, the wife-appellant denied all these allegations. It was alleged that it was father-in-law of the respondent husband who managed and paid for his education and this education has proved to be curse because now having been educated at the cost of the wife, he started giving abuses for illiteracy of the lady-wife. It was alleged that the husband was not giving good treatment to the wife.

2. The evidence was recorded and before that, petition for divorce was amended and the same was allowed and some other facts were added.

3. The amendment introduced the additional facts that the wife abused the parents of the husband; that, the wife states that the husband is impotent; that, the husband suffers from T. B. on account of cruelty and bad treatment of wife; and that, the wife has burnt the thesis of the husband. These allegations again, were denied. After recording the evidence, the trial Court has passed a decree of divorce; while granting maintenance, allowed Rs. 200/- per month as maintenance. The wife has filed against the divorce and the husband has filed cross objection against the maintenance.

4. The detailed arguments were heard of the panics and they were allowed time to file written arguments also, for which they have prayed jointly. Attempt to settlement between the parties failed and, hence there is no alternative but to proceed with the judgment. The trial Court has not accepted the allegation of the desertion and it was not pressed by the husband. However, it has come to the conclusion that the husband has proved the cruelty of the wife against the husband.

5. Shri S.M. Jain, the learned counsel for the appellant-wife-Shanti, pointed out that earlier allegations in the original divorce petition were limited to the desertion and cruelty was only based on the ground that the wife was illiterate and she smoked bidis and she was also in habit of committing thefts and abusing. Shri Jain pointed out that these allegations are too bald and sweeping, vague, insignificant and insufficient to dissolve the marriage in the Hindu society under the Act. Shri Jain pointed out that the issues were framed in April, 1978 and many opportunities were afforded to the husband-respondent to lead evidence but instead of leading evidence, he produced amendment applicaion alleging that the earlier evidences produced were not sufficient for the defence. In substance, that evidence was cooked up and concocted one.

6. Shri Jain argued that the oral evidence is of the relatives of the husband and is of no importance and, that also suffers from improbabilities and the witnesses are chance witnesses. Shri Jain also argued that even though there was some delay, and if what respondent says is correct it is liable to be condoned under Section 23 of the Act. Shri Jain pointed out that the plea of desertion and cruelty are inconsistent Shri Jain again pointed out that the allegation that the husband had some relation with some other lady, cannot be termed as cruelty, and no issue was framed on this aspect of the case.

7. The above submissions made by Shri Jain on behalf of the appellant-wife have been controverted by Shri C.G. Sharma, appearing for the respondent-husband. Shri Sharan argued that, undoubtedly it is an unfortunate case but, the marriage is a broken one and nothing can be done now in view of the serious cruelty of the wife. Shri Sharma pointed out that earlier, issue No. 3 was framed regarding illicit relation of his client with one girl - Mohani Sharma, as alleged by the wife, but, this issue was deleted later on.

8. Shri Sharma pointed out that a charge of infidelity of having illicit relation with some other lady after the marriage is of a serious nature of cruelty as has been held in *Smt. Sumanbai v. Anandrao Onkar Panpatil*, AIR 1976 Bom 212; para 16; *Iqbal Kaur v. Pritam Singh*, AIR 1963 Punj 242; paras 3 & 4 Shri Sharma pointed out that to add insult to injuries, the wife has come out with charge of impotency and this is worst type of cruelty as held by their Lordships of the Supreme Court in *Dr. N.G. Dastane v. Mrs. S. Dastane*, AIR 1975 SC 1534.

9. Shri Sharma then submitted that the regular outburst, vulgar languages, calling bad names are not ordinary wear and tear of the married life and, they are termed as cruelty when repeated and persisted by one of the spouses. According to Shri Sharma, the aggrieved spouse has got every reason to seek divorce when there are persistent abuses, insults hurled at the appellant and his parents as to imperil the husband's sense of personal safety, mental happiness, job satisfaction and reputation of the husband. Shri Sharma placed reliance upon the decision in *Dr. N.G. Dastane v. Mrs. S. Dastane* (supra).

10. Shri Sharma pointed out that even unjustifiable interference by one spouse in the sphere of life can be termed as cruelty as held by their Lordships of the Supreme Court in *Dr. Dastane v. Mrs. Dastane* (supra) and *Mt. Padma v. Parma Ram*, AIR 1959 Him. Pra. 37.

11. After reading the relevant evidence, Shri Sharma pointed out that the cruelty has been proved by the evidence of husband, his father, mother and other witnesses. The burning of the thesis of the husband by the wife is the worst cruelty, more so, when the husband is a lecturer in University and is prosecuting his academic activities. The very shabby treatment given to the friends of the husband and the mental agony on account of the cruelty was so intensive that the husband suffered from T.B.

12. Shri Sharma then dealt with the contention of Shri Jain and, argued that in matrimonial matters, it is the evidence of the family members which is most natural and competent, as held by their Lordships in *Kusum Lata v. Kampta Prasad*, AIR 1965 All 280 Para 30, *Sulekha v. Kamala Kanta*, AIR 1980 Cal 370-para 10.

13. I have carefully gone through the evidence recorded in the case and the principles laid down in the relevant judgments, referred to by the learned counsel for the parties. Undoubtedly, granting divorce in Hindu society is not a matter of routine but it is exception, as marriage is a sacrament and cannot be broken like a house of cards treating it as a contract. The heavy responsibility lies on the Courts to seriously consider various facets of the case and after exploring of possibilities and alternatives decide the fate of the spouse.

14. To start with, my judicial conscience was hurt when I found that a decree for divorce is being sought by an educated person, on the ground that the wife is uneducated. If such an allegation is allowed, probably 90% of the homes could be burnt and broken as percentage of literacy in India is too meagre and there again, women folk and that too, in villages is rare. Accepting the divorce petition on the ground of illiteracy of a woman, would be doing great violence to the womanhood of India and adding insult to injury, because, firstly, a man by supremacy and the economic power has not been fair to the woman in the matter of education and kept them dependent throughout the ages. No one can be allowed to take advantage of his wrong. It is primarily due to the dominance of the male in the society as ours is male dominated society. In view of this, the allegation of illiteracy in a divorce petition cannot be appreciated muchless accepted and the fact that it has come from a lecturer, only makes it a worst case, because an educated person pursuing academic pursuits is supposed to know the reality of the life, and be more humanitarian in outlook. The allegation that the wife has got nothing to do with the literacy, in the divorce petition therefore, cannot be treated as relevant. In my opinion, a happy married life is not built by literacy, on art or science but it is values of human life, inherent

culture, human attraction, love, affection, which can make or mar a married life. It is not without significance that the percentage of divorce by educated couples is much more than illiterate couples and, that only exposes of the myth of the so-called alleged and illiteracy for the marriage, so far a happy married life is concerned, though they have got much relevance in other academic fields.

15. However, it would be doing injustice to the case, if on account of this reaction which was spontaneously in my mind, I would have thrown away the husband's case as it may be a case of ill advice or over enthusiasm and misunderstanding of the divorce law that the husband has come out with a case of illiteracy against the wife for proving the cruelty.

16. I would now consider whether the challenge made to the findings arrived at by the lower court in respect of cruelty which is certainly based on the grounds other than illiteracy is sustainable or not.

17. The first objection raised by Shri Jain the learned counsel for the appellant against the finding regarding cruelty arrived at by the trial Court is that the allegations, which have been found to be proved were not there earlier and, they have been introduced by the amendment. In my opinion, the trial court has rightly held that merely because these allegations have been introduced by amendment, they cannot be treated as concocted and false. Moreover, the Trial Court is also correct in holding that some of the allegations were general in nature and now specific species have been shown of the cruelty by amendment.

18. The respondent-applicant has examined himself in addition to other witnesses to prove cruelty which has been proved by his brother Lalchand, Manni Devi (PW 4) is neighbour and Prabhati (PW 5) is the milk vendor. The applicant has also examined his mother. According to the trial Court, from their evidence, it is proved that Shanti used to abuse her in-laws. I do not give much importance to the allegation that Shanti used to smoke. Even if it is said to be proved then it cannot be termed as cruelty. No divorce can be granted if a lady smokes and it would be doing great violence. No discrimination can be made against women by granting of divorce on the ground of smoking by a lady.

19. However, a series of acts have been shown of Shanti Devi-wife which constitute cruelty as held by the trial Court. Radha Kishan Gupta (PW 8) has proved that once Babulal was invited to have dinner, Shanti Devi-wife refused to prepare food in spite of repeated persuasions and, placed her husband in an awkward position, and used the abusive language. She, whenever Radha Kishan (PW 8) used to visit house of Raghav Prakash, the respondent; misbehaved with the husband. Lalchand (PW 2), and Manni Devi (PW 4) have also proved that not only, Shanti Devi used to abuse her husband but, she even abused by saying that she is potent and he is equal to impotent Durga Devi (PW 6) has corroborated it. The trial Court believed the evidence and, further held that Shanti Devi except denial had not satisfied by tangible evidence that the above allegations have been made falsely.

20. Contrary to it, Shantidevi in the court has stated that Raghavprakash developed illegitimate relations with Mohani Sharma and wants to marry her. It may be mentioned here that earlier the allegation was made in writing and the issue was framed but on the request of Shanti Devi's counsel, this issue was deleted. The trial court has taken the view that merely because issue No. 3 has been deleted, they cannot be treated as concocted and false and cannot be ignored and, it also tantamounts to cruelty. In my view, when Shanti Devi had insisted upon this allegation against her husband and it has not been proved that it certainly caused a great mental agony resulting in cruelty to the husband, the mere fact that the allegation has been withdrawn in writing. It is not sufficient because even after the allegation has been withdrawn impleadings it has been repeated in evidence, by persisting and insisting upon by Shanti Devi.

21. Similarly the allegation of Shanti Devi that the husband is impotent in the form of abuse in the house cannot be lightly ignored as in a matrimonial matter it is serious stigma, on the manhood and is bound to cause great mental agony and pain resulting in cruelty to the husband.

22. Yet, another allegation which has been found to be proved and rightly so, is that on 30th Aug., 1975, in the absence of her husband, she burnt his thesis of doctorate and, when the brother of husband tried to take it, she threatened him with dire consequences and 'burning him. Lalchand (PW 2) has proved it. Mohanlal Mangal (PW 3) deposed that Raghav Prakash told him to type out his thesis and asked him to get thesis collected from his house. When Mohanlal Mangal went to the house of Raghav Prakash, the brother of Raghav Prakash met him and showed the thesis. He further deposed that brother of Raghav Prakash told him that some corrections were to be made in the thesis which would be done by Raghav Prakash in the evening. Thereafter when on 30th Aug; 1975 he went to his house, he was told by Lalchand that the thesis has been burnt by his sister-in-law (Bhabhi) Shanti Devi. Durga Devi (PW 6) has also corroborated it.

23. Though, Shanti Devi has denied it, but, I am convinced from the evidence of about three witnesses, this allegation is proved. Letter of Lalchand, (Ex. 4) fully corroborated it as this was the information conveyed by him to Raghav Prakash.

24. It is true that the thesis prepared by a scholar who intended to do Ph. D. is very valuable and important document. The entire study and knowledge is poured in thesis which is prepared after a great research and study for years together. Several books are read and several journals and papers are gone through and the notes are taken by the scholar, for making the thesis comprehensive. The value of the thesis to a student who wants to do Ph. D. is undoubtedly great and any damage done to it is bound to upset him and causes irreparable mental agony and torture. Unfortunately, the burning of thesis by Shanti Devi wife cannot be ignored and it is bound to be treated as an act of great cruelty.

25. In view of the above facts which have been found to be correct, I am of the opinion that the decree of divorce granted by the trial court on the ground of cruelty cannot be interfered with.

26. Shri Jain pointed out certain letters in which some emotional sentiments have been shown. It may be mentioned that in the married life of the couple, there are bound to be several ups and downs and every sensible person who tries to explore all possible alternatives to continue the married life, if possible. While doing so, there are some statements which may not be correct but, are either over exaggeration or some expressions due to frustration. In either case, much capital cannot be made "out of that. A reading of the letters clearly shows that the allegations cannot be falsified by them.

27. I am in agreement with the finding arrived at by the trial court, in this respect and, hold that the decree of divorce has been correctly granted on the finding of the cruelty.

28. The trial Court has granted permanent alimony in the sum of Rs. 200/- per month under Section 25 of the Act The respondent Raghav Prakash has filed cross objection challenging it. Shri Sharma, the learned counsel for the respondent, pointed out that Raghav Prakash is getting Rs. 930/- per month and he is required to support 4 young brothers and two sisters in addition to his old aged parents whose sole bread-earner is the respondent Raghav Prakash.

29. I have heard the learned counsel for the appellant-wife and respondent-husband on this aspect of the case also.

30. It will have to be accepted as a hard social reality that the position, status and life of a divorced Hindu wife in Hindu society so far, is very miserable and pitiable. She is economically and socially poor and had great disadvantage inasmuch as the society looks down against her. Even though law recognises it, most of the communities where the divorce is not customary and have been introduced by law, a divorced wife is a cursed human being, abhorred by the society.

31. Shri Sharma submitted that the parents of Shanti are very wealthy, and rich men. This submission was not accepted by Shri Jain. Even on its acceptance, it is well known that the parents cannot do much in the matter

of maintenance of divorced daughter. Moreover, the parents are facing problem of life of such daughter in all matters and ultimately, in the net analysis, the divorced daughter would be left alone, cursed by the society and a burden on herself both, socially and economically. She may or may not have any shelter to live in it and bread to eat. In the instant case, she is illiterate admittedly and that would add insult to injury because she would not be able to earn anything. The remarriage is very difficult, far-fetched proposition in most of the communities amongst Hindus. In view of this, permanent alimony should be substantially a relief to her at least. Raghav Prakash, the respondent, who is present before this Court, on an enquiry from the Court, submitted that his income is Rs. 1700/- per month but out of it the deductions are made for various purposes and in substance, he gets Rs. 1300/- per month. He is lecturer in the Government College of University of Rajasthan and the income is bound to be increased in future. I am, therefore, inclined to increase the amount of permanent alimony.

32. In the result, this appeal is partly allowed and the cross-objections filed by the respondent are dismissed. The impugned judgment and decree dt. the 17th Dec., 1981, passed by the District Judge, Jaipur, District Jaipur so far as it relates to the passing of decree of divorce under Section 13(1)(1a) of the Hindu Marriage Act, 1955, against the appellant, is upheld. So far as it relates to the grant of permanent alimony in favour of the wife-appellant, the impugned judgment and decree is modified and it is directed that the amount of maintenance and permanent alimony would be Rs. 350/- (Rupees three hundred fifty) per month from today. This amount would be paid by the husband Raghav Prakash to Shanti Devi directly by demand draft every month in her favour and every month this would be sent to her at the address care of her father where she is living unless the same is changed. This amount would be payable till Shanti Devi conducts any remarriage. In addition to the above amount every month, the respondent Raghav Prakash would pay Rs. 5,000/- as lump sum to Smt. Shanti Devi within one month from today by a bank draft in the name of Shanti Devi and, this bank draft would be deposited by Raghav Prakash in the name of Shanti Devi at a scheduled bank having branch at Bassi where Shanti Devi is residing by opening an appropriate account. Then this amount of Rs. 5,000/- would be kept in a fixed deposit by the bank for 6 years, to be renewed after 6 years and the interest would be paid to Shanti Devi only. The amount as a whole would be paid to Smt, Shanti Devi after obtaining the orders of the trial Court in case Shanti wanted to withdraw it finally.

33. There would be no order as to costs.