

(1)

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ROHIT ARYA

&

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

FIRST APPEAL No. 375 OF 2023

BETWEEN:-

[REDACTED]

.....APPELLANT

(BY SHRI H.K.SHUKLA - ADVOCATE)

[REDACTED]

[REDACTED]

.....RESPONDENT

(BY SHRI S.S. GAUTAM - ADVOCATE)

Reserved on : 22/03/2024
Pronounced on : 8/04/2024

(2)

This appeal having been heard and reserved for orders, coming on for pronouncement this day, Hon'ble Shri Justice Rohit Arya pronounced the following:

JUDGMENT

Appellant/husband has preferred this appeal under section 19 of the Family Courts Act against the judgment dated 21/12/2022 passed by Principal Judge, Family Court, Ashok Nagar (M.P.) in HMA Case No. 36A/2015, whereby the petition filed by the respondent/wife under section 13 of the Hindu Marriage Act, 1955 (for short “the Act”) has been allowed and decree of divorce has been granted.

2. Admittedly, marriage of appellant and respondent was solemnized at Sagar on 25/04/2002 as per Hindu rites and rituals. On 20/4/2010, respondent/wife made a petition under section 13 of the Act before the Family Court *inter alia* with the following submissions;

(i) That the marriage had been solemnized by keeping her in dark, inasmuch as the appellant/husband had claimed to be a Chartered Accountant, when in fact he did not have any such degree.

(ii) That, in fact, the appellant/husband had no source of earning and his sole intention of marriage was to lead a luxurious life on the income of respondent/wife who is a doctor by profession. After marriage, the appellant/husband had taken her to his house at Sagar where he insisted upon severing all ties with her parents. Not only this, he also used to solicit details of her income and expenditure and prohibit her from going outside for job. She was subjected to cruelty by the appellant when she went for job and he also brought home all

(3)

the articles which were given by the hospital to the respondent/wife from her rest-room at the hospital. She stayed with the appellant/husband till March, 2003.

(iii) In March, 2003, the respondent/wife requested for wearing jewellery on the occasion of marriage of his brother, upon which the appellant/husband slapped her in front of guests due to which she returned to her parental home in the clothes worn by her. The said incident resulted in cardiac arrest of her father due to extreme grief. Thereafter, the respondent/wife joined services at Bhagyodaya hospital and resided in the hospital itself till June, 2006. During this period, the appellant/husband used to threaten and snatch away her entire salary; being extremely perturbed, the respondent/wife left the job and moved to Mumbai and thereafter from July, 2006 she started residing at Silwasa having got her job there, while the appellant/husband also shifted to his brother's flat in Mumbai.

(iv) The respondent/wife had bank account at SBI, Bada Bazar Branch, Sagar and another account at Dena Bank, Silwasa. The appellant/husband had taken away the ATM Card and used to withdraw money from the said account at his will. Respondent/wife had bought a Santro Car and a flat at Silwasa on installments which are being paid by her.

(v) In December, 2007, the respondent/wife left for Muscat, Oman for job where also the appellant/husband followed her and used to squander her entire earnings. During this period, there was no physical intimacy between the two. Being extremely perturbed, the respondent/wife left the job and came

(4)

back to Ashok Nagar in February, 2009 and joined at Sukhpur Hospital, Baheriya on 11.02.2009. The appellant continued to keep her Silwasa flat and Santro Car in his possession. He snatched away all her *Stridhan* and also kept her ATM cards with him and used to withdraw any amount from her accounts as per his will.

(vi) The appellant also used to manhandle her. On 31.05.2004, when her brother had come to Bhagyodaya Hospital, Sagar, there also the appellant/husband came demanding money and on her refusal not only filthily abused but also assaulted her and when her brother intervened, he was also assaulted by the appellant leading to injuries on his head, in respect whereof a written complaint was made by the respondent/wife on 01.06.2004 to S.P. Sagar as well as at Mahila Thana.

(vii) The appellant also used to demand money on telephone when the respondents/wife was employed Sukhpur Hospital. He used to come there, abuse and threaten the staff of Sukhpur Hospital. He also levelled allegations against her mother with regard to alleged miscarriage.

With the aforesaid allegations, respondent/wife pleaded that appellant/husband had no source of earning and did not use to do any work. He had made her life a hell, subjecting her to intense mental suffering and torture. She pleaded that she was entitled to possession of her flat, *stridhan*, car etc and prayed for decree of divorce.

3. In response, the appellant/husband refuted all the allegations contending that the respondent/wife had not specified the date on

(5)

which he allegedly demanded details of her account. In fact, she had participated in his brother's marriage wearing entire jewellery and later went to her parental house along with the same and cash. As such, the allegation of assault and maltreatment is entirely false. The respondent/wife has not given the specific dates, places and time when such incidents allegedly happened. She also does not know the date when her father suffered cardiac arrest. At Silwasa they both resided together and if as alleged the appellant used to withdraw the entire amount from ATM, then how was she able to purchase car and flat, which shows that at Silwasa both of them were living together and had purchased the said articles jointly. At Muscat also both of them resided together and therefore no credence can be attached to her plea that there was no physical intimacy between the two. He further pleaded that in fact the mother of respondent/wife wanted to keep her entire earnings and that is the sole reason why the petition on frivolous grounds had been tendered. The respondent/wife had kept the entire *Stridhan* with her mother and had there been even an iota of truth in her allegations, she must have reported the matter to Police and freeze her bank account. That having not been done, it is writ large that the allegations are entirely baseless. There is no report of the alleged incident dated 31.05.2004 at any Police Station with regard to assault on her brother.

4. Respondent/wife examined Dr. Babita Goyal (AW-1), Manoj Kumar (AW-2), Hemant Kumar (AW-3) and Ashok Kumar Jain (AW-4) while adducing documents Ex.P-1 to P-43 in evidence while appellant/husband examined Pawan Kumar Goyal (NAW-1) and tendered documents Ex.D-1 to D-42 and photographs Article A-1 in

(6)

evidence.

5. The Trial Court, upon critical appreciation of the evidence on record found that the appellant/husband has subjected the respondent/wife to cruelty as defined under Section 13(1)(ia) of the Act and granted the decree of divorce which has been assailed by the appellant/husband in the instant appeal.

6. Learned counsel for the appellant submits that the learned Trial Court has mis-appreciated the evidence on record. The appellant had always been willing and ready to keep his wife with him but the reunion could not be effected owing to adamant attitude of the wife. The Trial Court also ignored the fact that an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights had been filed by the appellant/husband. In fact, it is only because of the interference and instances of her mother and brother that the respondent/wife had made the petition under Section 19 of the Act and was not willing to resume nuptial ties. The fact of the matter is that the parents of the respondent/wife had avarice for her earnings and that is why the sole reason that they were not inclined to settle the matter amicably.

7. In response, learned counsel for the respondent has supported the impugned judgment and submitted that the appellant in fact had made the life of respondent/wife miserable. He has no source of earning of his own and used to treat the wife as a machine for earning money. Not only this he also used to interfere in her professional work making various complaints to her employers as to how they had kept her at job without his permission. Such an attitude of the appellant/husband clearly showed that he treated the respondent/wife

(7)

as an object under his control with no dignity and respect for her. All this amounted to cruelty in terms of Section 13(1)(ia) of the Act and various pronouncements of the Hon'ble Apex Court made in catena of decisions. They are living separately without cohabitation for last 15 years since February, 2009. As such, no interference is warranted with the impugned judgment passed by the Trial Court.

8. Heard learned counsel for the parties.

9. The points for determination in present appeal are as under:-

(i) Whether trial Court committed error in holding that the respondent was subjected to physical and mental cruelty by the appellant ?

(ii) Whether trial Court committed error in holding that the appellant has created such circumstance wherein it became impossible for the respondent to cohabit with the appellant ?

Points for determination (i) & (ii) – Reasons for conclusion

Both the points are being considered together as the reasons and findings thereon are interdependent.

10. A bare perusal of the impugned judgment reveals that the learned Trial Court has exhaustively and *in seriatim* dealt with the instances of cruelty as alleged by the respondent/wife and in paragraphs 11 and 12 has rightly found that the allegations with regard to keeping her in dark as to his educational qualification was not proved inasmuch as the respondent/wife had ample time of 1½ to 2 months before marriage to ascertain his credentials and even if she failed to do so then her conduct of remaining taciturn for a period of seven years clearly weighed in favour of the appellant/husband. The specific instances of cruelty have been elaborately dealt with by the

(8)

trial Court in paragraphs 14 to 36 of the impugned judgment. The evidence of respondent/wife has been corroborated by the evidence of her brother Manoj Kumar (AW-2) who has deposed that on 31.05.2004 Hemant had gone to Bhagyodaya Hospital, Sagar for meeting his sister/respondent where appellant/husband also came and started demanding money for the payment of loan. On denial by the respondent/wife, appellant not only filthily abused her but also intended to assault her, as his brother tried to intervene, he was pushed by the appellant leading to injury on his head. The said incident was reported by the respondent/wife to S.P. Sagar as well as at Mahila Thana but the same was later withdrawn on persuasion of community people. Manoj Kumar (AW-2) further deposed in para 3 of his evidence that suffering harassment at the hands of appellant/husband, the respondent/wife had left the job at Sagar and went to Mumbai and then to Silwasa where also the appellant followed and harassed her. Thereafter, the respondent/wife went to Muscat, Oman where also the appellant went along with her and ill-spent her hard earned money for his own pleasures. Being perturbed, she came to Ashok Nagar and joined at Sukhpur Hospital where also the appellant/husband used to come and threaten not only respondent/wife but also the authorities as to why the had employed her without his permission. This fact has also been corroborated by Hemant Kumar (AW-3).

11. The respondent wife had tendered the complaint made to Mahila Thana as Ex.P-28 and also her SBI transaction dated 11.07.2005 as Ex.P-41.

12. The learned Trial Court in paragraph 22 has highlighted that in para 6 of cross-examination of Hemant Kumar (AW-3), on suggestion

(9)

of the appellant he admitted that appellant had demanded money on 31.05.2004 from respondent/wife when Manoj Kumar (AW-2) had gone to meet her. In paragraph 14 of his cross-examination, the appellant/husband had admitted that he had never been in any Government job from 2002 till date. He also admitted that he had neither any income nor had he filed any income tax return nor had he any movable or immovable property in his name. In paragraph 29, the learned Trial Court found that professional commitments of the appellant/husband were being settled by respondent/wife inasmuch as in paragraph 31 of his cross-examination, he had admitted that Rs.8,700/- were paid by respondent/wife for satisfying the decretal amount to one Rajkumar Jain against him.

13. The petition under Section 9 of the Act filed by the appellant/husband for restitution of conjugal rights was rejected vide order dated 30.11.2022 on the ground of cruelty attributed to the appellant/husband. The said facet has been dealt with by the learned Trial Court in para 31 of the impugned judgment. The veracity of allegations levelled by the respondent/wife are further corroborated by the complaints Ex.P/28 & P/29 made by her wherefrom it is reflected that on 01.06.2004 she had made a complaint against appellant husband alleging therein that since immediately after marriage she was being subjected to mental and corporal cruelty and harassment due to non-satisfaction of demand of dowry. The complaint alleges threat to her life at the hands of her husband. The narration of incident dated 31.05.2004 with her brother also finds mention therein. However, on 19/7/2004, appellant and respondent jointly made an application (Ex.D/1) for withdrawal of such complaint on the basis of

(10)

compromise. Both appellant and respondent have admitted their signatures on application (Ex.D/1). It goes to show that respondent/wife attempted to save her marriage despite discord and disharmony in matrimonial relationship. That apart, Ex.D-4 is a complaint made by appellant/husband to DIG for holding an enquiry as to why respondent/wife 's mobile was not in operation. The respondent/wife was compelled to shift to various places and ultimately reside and work at a community centre, Anandpur Trust Hospital, Sukhpur since 2009. Ex.D/6 is a complaint made to CMO Ashok Nagar against the Authorities of Anandpur Trust Hospital, Sukhpur alleging therein that in 2009, when his wife was working there why he was not allowed to meet her and why had she been offered a job without his permission. Ex.D-8 is similar complaint made to SP. Similar complaints have been made by him as D-25, D-28, D-37, D-38, D-39 and D-40. In this regard, the learned Trial Court, in para 40, rightly emphasized that the said complaints indeed reflected that he treated the respondent/wife as a slave having no identity of her own and soliciting that she should not have been given any job without his permission. This in itself was sufficient evidence of cruelty. Besides, appellant/husband could not lead any cogent evidence as to his regular income to do away with the allegations that he was only dependent on the income of his wife. The appellant/husband made failed attempt to reason out his misconduct in evidence by showing stray incidents of financial support and cohabitation with respondent, but the explanations are not worthy of credence in totality of circumstances reflected by evidence on record.

14. In Shobharani Vs. Madhukar Reddi (1988) 1 SCC 105, the

(11)

Hon'ble Apex Court observed that the term “Cruelty” is a course of conduct of one spouse which adversely affects the other spouse. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of degree which is relevant. If it is mental, the enquiry must begin as to the nature of cruel treatment and then as to the impact of such treatment on the mind of other spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. *Mens rea* is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or willful ill-treatment.

In **Parveen Mehta Vs. Inderjit Mehta (2002) 5 SCC 706**, the Hon'ble Apex Court observed that a feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty, it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty.

In **A. Jayachandra v. Aneel Kaur, (2005) 2 SCC 22**, the Hon'ble Apex Court observed as under:

“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

(12)

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 the 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 a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept 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 dispute.”

(emphasis supplied)

15. The contention of learned counsel for the appellant that owing to greed of her parents nuptial ties have been severed cannot be countenanced, inasmuch as the learned Trial Court in this regard has rightly found that being a daughter, the respondent/wife was always free to financially support her parents and if there was any objection in this behalf of the appellant/husband, the same in fact amounted to cruelty. At this juncture, it can also not be lost sight of that more than

(13)

15 years have passed by since both of them have been living separately. The efforts made by this Court on 28.02.2024 for amicable settlement at the instance of appellant/husband have resulted in vain. The marriage is indeed irretrievably broken. It is well settled that where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. Further, the married life has to be reviewed as a whole. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, as in the case in hand. [**Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511, referred to**]

16. In view of the aforesaid, the learned Trial Court rightly concluded that the cruelty as alleged was well proved against the appellant/husband. Learned trial Court committed no error in concluding that the cohabitation of respondent with appellant had become impossible due to constant ill-treatment resulting in mental and physical cruelty to respondent. Considering overall circumstances reflected by evidence on record, learned trial Court committed no error in granting the decree for divorce under section 13(1)(ia) of the Act. The findings recorded by the learned trial Court are based on facts on record; therefore, impeccable and the conclusions have been drawn after applying the correct principles of law. As such, this Court does not find any ground to interfere in the impugned judgment and decree.

(14)

The appeal *sans* merits is hereby *dismissed*.

(ROHIT ARYA)
JUDGE

(SANJEEV S KALGAONKAR)
JUDGE

(and)

Digitally signed by
ANAND SHRIVASTAVA
Date: 2024.04.08
18:44:22 +05'30'