

(2017) 12 RAJ CK 0020
RAJASTHAN HIGH COURT
Case No: 5062 of 2009

Bharat Singh S/o Late Shri Khuba
Ram

APPELLANT

Vs

Smt. Bharti D/o Late Shri Bhagat
Ram

RESPONDENT

Date of Decision: Dec. 7, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 107, Section 116 - Security for keeping the peace in other cases - Inquiry as to truth of information
- Hindu Marriage Act, 1955

Hon'ble Judges: Ajay Rastogi, Deepak Maheshwari

Bench: DIVISION BENCH

Advocate: Peush Nag, Dr.Ram Kishan Sharma, Bhrigu Sharma

Final Decision: Dismissed

Judgement

1. Instant misc. appeal is directed against judgment & decree of the Id.Family Court, Ajmer dt.13.10.2009 dismissing the application filed by the appellant-husband u/Sec.13 of the Hindu Marriage Act, 1955 seeking divorce on the ground of cruelty and desertion.

2. Brief facts which are necessary for disposal of the instant appeal are recapitulated. The appellant Bharat Singh got married to the respondent Smt.Bharti on 15.02.2000 as per Hindu rites and customs and from this wedlock two children were born Manas and Manya who are almost of 7" & 4" years of age respectively at the time when the divorce petition came to be filed by the appellant in May, 2008 and both are residing with the respondent- wife from their birth. The date of birth of Manas (son) is 2011.2000 and Manya (daughter) is not known to the counsel but it is informed that she was born in 2004.

3. Prior to the filing of the present divorce petition, the appellant earlier filed a divorce petition No.534/2006 on the ground of cruelty and desertion but that came to be dismissed for non-prosecution vide order dt.15.07.2007 and it was alleged by the appellant in his application that behaviour of the respondent towards the appellant always remain cruel and she always used to ignore the feeling, existence and wishes of the appellant and she is in the habit of picking up quarrel with the appellant over the petty issues and that has disturbed the healthy environment of the family. It has been further pleaded that the respondent has not performed her marital obligations and refused to do household work like preparing food, washing clothes, utensils, etc. and she always used to give threats of committing suicide. Even at one point of time, he was compelled to file a complaint u/Sec.107 & 116 Cr.P.C . against the respondent, her uncle & cousins on 28.10.2006 and a stage has come where it has become impossible for them to live together. At the same time, she has deserted her matrimonial home without any justified reason for more than two years.

4. Written statement was filed by the respondent and all the allegations made have been factually disputed and denied. On the contrary, the wife accused the appellant-husband of harassment and cruelty.

5 The Id.Family Court permitted the parties to lead evidence in support of their contentions. The appellant-husband stepped into the witness box as AW-1 and examined Prabhat Singh, elder brother of the appellant, as AW-2 and Babu Lal, neighbour of the appellant, as AW-3.

6. On the other hand, the respondent-wife appeared in the witness box as NAW-1 and examined Gopal Singh, her uncle, as NAW-2, Babu Lal (brother-in-law of the appellant) as NAW-3 and Bimla and Usha (real sisters of the appellant) as NAW-4 & NAW-5 respectively, who supported the respondent-wife.

7. The Id.Family Court after considering the pleadings, framed four issues which read ad infra:-

"VERNACULAR MATTER OMITTED"

8. All the issues were decided against the appellant and accordingly dismissed the divorce petition under its judgment & decree dt.13.10.2009.

9. Feeling dissatisfied with the judgment & decree passed by the Id.Family Court, the instant appeal has been preferred by the appellant-husband.

10. Counsel for the appellant submits that the Id.Family Court has failed to take note of the unrebutted statements of his witnesses and there was no reason to disbelieve their testimony and the conduct of the respondent which has been highlighted in his statement and supported by his independent witnesses specifies the incident of mental cruelty which she has committed on the appellant and as she has deserted her matrimonial home for more than two years without reasonable justification, the

finding which has been arrived at on both the issues by the Id.Family Court needs to be re-visited by this court and being perverse, deserves to be quashed and set aside.

11. Counsel for the respondent, on the other hand, on the basis of the material on record, submits that a cogent finding has been recorded by the Id.Family Court which suffers from no infirmity or illegality needs no interference of this court.

12. The question which emerges for consideration in the instant appeal is whether the conduct of the respondent-wife & desertion from matrimonial home in the given circumstances amounts to cruelty which entitles the appellant-husband to a decree of divorce.

13. There cannot be any comprehensive definition of cruelty. Cruelty could be physical or mental and both. While it is easy to discern physical cruelty, mental cruelty has to be assessed from the overall behaviour of the spouses as well as other incidental factors. There is no doubt that in the matrimonial set-up, a couple which decides to live together, has different attitudes and opinions, likes and dislikes, and more often than not spouses behave differently when faced with the same situations. While disputes and arguments are normal in a marriage, to constitute cruelty the conduct of the spouse should be something more serious than the ordinary wear and tear of a marital life.

14. To consider as to whether a particular conduct constitutes cruelty or not, it may be relevant to see the social status of the parties, cultural background, physical and mental conditions, customs and traditions etc. have to be considered. This all depends upon the conduct, character and physical or mental weakness of the spouses and probably no general statement is equally applicable in all cases except the requirement that the party seeking relief must show actual or probable injury to life.

15. In a delicate human relationship like matrimony, one always has to see the probabilities of the case. The court dealing with the petition for divorce on the ground of cruelty has always to consider that problems before it are those of human beings and the psychological changes in the conduct of a spouse have to be borne in mind before divorce petitions are being considered. At the same time, such insignificant and trifling 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 and it is always for the court to weigh the gravity and it has to be kept in mind that whether the conduct was such that no reasonable person would tolerate it and it has to be considered whether the complainant should be called upon to endure it as a part of normal human life.

16. Every matrimonial conduct which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happens in day-to-day married life, may also not amount to cruelty and the basic foundation of a sound marriage is tolerance, adjustment and respecting one another. Petty

quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to be made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case keeping in view the physical and mental conditions of the parties, their character and social status. It is possible if we become too technical and hypersensitive and sometimes it may be counter-productive to the institution of marriage.

17. It is in this backdrop behavior of the parties, this court has to discern that the conduct complained is cruelty, as pleaded by the appellant.

18. The appellant in his divorce petition has made all allegations of trivial irritations & quarrels between spouses which always happen in day-to-day married life and that always needs tolerance, adjustment and respecting one another. From the kind of trifling instances, which have been referred to by the appellant in his application, her conduct may cause pain in the mind of appellant but that cannot be called cruelty which touch a certain pitch of severity.

19. Even the witnesses of the appellant named AW-2 Prabhat Singh and AW-3 Babu Lal have only stated in their deposition about their frequent quarrels taking place for petty reasons but no specific instance, if any occurred between the spouses after such a long period of marriage, has neither been quoted by them nor by the appellant himself.

20. As regards, desertion is concerned, only statement has been made that they are living separately for two years but this fact appears to be factually incorrect for the reason that it has come on record that from 2004-2006 the appellant was at Oman and after returning back on 02.11.2006 he stayed along with the respondent and their two children together and there is no factual foundation in the divorce petition that they are living separately for two years which is the pre-condition to establish for passing decree of divorce on desertion, as prayed for.

21. To the contrary, the respondent-wife in her statement and from the documentary evidence from Exhibit-A/1 to A/16 has tried to establish that there was no reason forthcoming for the appellant to leave the respondent and her children and apart from the period 2004-2006 when he was in Oman, the letters written by him were also placed on record as Exhibit-A/9 to A/15 and after coming back in the year 2006 they all stayed together in Pune but on one fine morning he sent a notice and left the family at Pune and never returned back thereafter. Even the statement of the respondent as NAW-1 was not only supported by her uncle NAW-2 but also supported by the other witnesses NAW-3, NAW-4 & NAW-5 who are brother-in-law and real sisters of the appellant and all of them have deposed in their statements that for trifling reasons hot altercations took place between them but nothing ever was brought to their notice.

22. Lastly, it was urged by the counsel for the appellant that the parties have been living separately for a sufficient long time and the marriage has virtually lost its

meaning for them as they have reached a point of no return and for all practical purposes the marriage has irretrievably broken down.

23. To sum up the submissions made, the Apex Court in Anil Kumar Jain Vs. Maya Jain reported in 2009 (12) Scale 115 has clearly defined the jurisdiction of the High Courts while considering the ground of irretrievable break down of marriage as a ground for granting divorce. The Apex Court has stated therein ad infra:-

"17.This doctrine of irretrievable break-down of marriage is not available even to the High Courts which do not have powers similar to those exercised by the Supreme Court under Article 142 of the Constitution."

24. Although in our considered view, it is not a case of irretrievable breakdown of marriage, as being pleaded but that apart this court lacks jurisdiction to dissolve the marriage on the doctrine of irretrievable breakdown.

25. In totality of the matter and after going through the judgment passed by the Id.Family Court, we are of the view that the finding recorded by the Id.Family Court in the impugned judgment is neither perfunctory nor perverse and does not warrant any interference by this court.

26. Consequently, the instant appeal has no merit and is hereby dismissed.