

Smt Anita Dharam wife of Shri Vinod Kumar Vs Vinod Kumar son of Shri Badri Narain

Court: RAJASTHAN HIGH COURT

Date of Decision: Dec. 14, 2017

Acts Referred: [Code of Criminal Procedure, 1973](#), [Section 125](#) - Order for maintenance of wives, children and parents
[Indian Penal Code, 1860](#), [Section 498A](#), [Section 32](#)

Hon'ble Judges: [Ajay Rastogi](#), [Deepak Maheshwari](#)

Bench: [DIVISION BENCH](#)

Advocate: [Saransh Saini](#), [Syed Saadat Ali](#)

Final Decision: [Dismissed](#)

Judgement

1. The instant appeal is directed against the judgment & decree dt. 25.02.2010, whereby Id. Family Judge No.1, Jaipur has allowed the petition

filed on 23.04.2007 u/S.13(1) of the Hindu Marriage Act, 1955 ("the Act of 1955") by the husband-respondent Vinod Kumar and passed the

decree for dissolution of marriage which took place on 11.12.2000 between the parties.

2. Facts in brief which are relevant for our consideration are that out of the wedlock one girl child namely Riddhima was born on 01.09.2003. The

relations between the parties remained discord, wife-Anita went to her maternal home and stayed there. Husband Vinod filed a petition u/S.9 (Ex.-

1) of the Act of 1955 on 11.07.2005 before the Id. District Judge, Tonk. Good senses prevailed in the parties and a compromise (Ex.-2) took

place between them on 20.05.2006. The husband agreed to keep his wife peacefully and she also agreed to fulfill the matrimonial obligations as

per the customs & traditions. But the compromise could not materialize and Anita had to file an application (Ex.-A/1) on 25.08.2006 seeking

execution thereof. Meanwhile, because of continuation of dispute between the parties, Vinod filed a petition (Ex.-A/4) u/S. 13 of the Act of 1955

on 01.08.2006. Again compromise (Ex.-A/2) took place between them on 25.09.2006 and both of them went to their matrimonial home straight

away from the Court. Vinod also got his petition filed u/S.13 dismissed as withdrawn.

3. It appears that even thereafter the relations between the parties remained strained. Vinod again filed a petition u/S. 13 of the Act of 1955 on

23.04.2007 mentioning therein that wife- Anita continued to make false allegations against him and his family members, she used to pick up

quarrels and tried to lower down them in self esteem. She even threatened to implicate them in some false case regarding demand of dowry and

also to send them behind the bars. Even she hit the forehead of Vinod by bucket, which caused grievous injury to him. It was further alleged in the

petition that family members of Anita took her to Kotkhawda, her maternal place. She filed a false report (Ex.-7) on 13.01.2007 at Police Station

Chaksu for the offence punishable u/Ss. 498A, 406 & 323 IPC against Vinod and his family members. She continued to file various complaints

against Vinod, one such complaint u/S.12 of the Protection of Women from Domestic Violence Act, 2005 ("the Act of 2005") was filed before

the Court of ACJM No.4, Jaipur City, Jaipur. She filed a false FIR against 27 persons implicating Vinod, his family members & even neighbours

and got Vinod & his parents arrested. She also raised demand of Rs.2,00,000/- when Vinod went to take her back. In this background, Vinod

made the prayer for dissolving the marriage dt. 11.12.2000 by filing the petition u/S.13 of the Act of 1955.

4. In reply, Anita refuted all the allegations made in the petition filed by Vinod and stated that she never went to her maternal home without

obtaining permission from her husband. It was also averred that she did not pick any quarrel, neither rebuked Vinod & his family members; on the

contrary, Vinod & his parents used to give beatings to her to pursue their demand of dowry. She sustained 09 injuries on account of beating done

by Vinod and his family members. They forcibly took her to maternal home and left there. In this situation, she had to file a complaint u/S. 12 of the

Act of 2005, wherein the Court of competent jurisdiction took cognizance and ordered Vinod not to commit any violence against her. She,

therefore, prayed to reject the petition filed by Vinod u/S.13 of the Act of 1955.

5. On the basis of the pleadings of both the parties, following issues were framed by Id. Family Judge, Jaipur :-

(I)- Whether non-petitioner wife committed cruelty to her husband ?

(II)- Whether the petitioner is entitled for decree of divorce ?

(III)- Relief ?

6. The petitioner Vinod got himself examined as PW-1 and his younger brother Gajendra PW-2 was also examined. Besides respondent Smt.

Anita (DW-1), her younger brother Sanjeev Kumar (DW-2) was also got examined on her behalf.

7. After hearing both the sides, Id. trial court decided the issues in favour of husband-petitioner and awarded the decree impugned dissolving the

marriage dt. 11.12.2000.

8. Id. counsel appearing for the appellant-wife submits that Id. Trial Judge has not properly appreciated the evidence available on record. Divorce

has been granted mainly on the ground that a departmental complaint with false allegations has been filed by Anita against her husband before his

employer, which caused harm to his image and thus, cruelty has been committed to them. His submission is that sufficient evidence is available on

record that in fact cruelty was committed by husband of appellant and not by her, which is also established by various documents produced in the

evidence. Further, no action was taken against Vinod on the basis of her complaint, so no cruelty has been committed by her. In support of his

arguments, Id. counsel has relied upon certain judgments also.

9. Per contra, Id. counsel appearing for the respondent- husband has supported the judgment impugned stating that the evidence has been properly

appreciated by Id. Family Judge and the judgment and decree impugned was passed perfectly in accordance with the evidence available on

record.

10. We have scanned the evidence available on record in light of the arguments advanced by rival sides. There is no quarrel on the point that a

complaint was filed by Smt. Anita against her husband Vinod before the Block Development Officer, Panchayat Samiti Niwai. That complaint dt.

06.06.2007 (Ex.-6) is on record. It appears from perusal of record that no action was taken against Vinod on the basis of this complaint. Thus, it

cannot be inferred only on the basis of this complaint that cruelty was caused by Anita against husband Vinod. At the same time, from perusal of

the judgment impugned also it does not appear that only on account of this complaint (Ex.-6), Id. Family Judge has inferred about the cruel

behaviour of Anita. Besides this complaint, the criminal proceedings initiated by her against Vinod and his family members have also been taken

into consideration which is very much obvious by the observations recorded by the trial court on Pg.13 of the judgment impugned.

11. Emphasis has been laid by learned counsel for the appellant that pursuant to the demand of dowry, cruelty was committed by Vinod and his

family members towards Anita. In this regard our attention has been drawn by the opposite side towards the statement of Anita (Ex.-3) recorded

in Cr. Case No.49/2007 (State v. Badri Narayan) pending trial before the Court of ACJM Nol.1, Jaipur District, wherein she has admitted

during cross- examination that her in-laws did not raise any demand prior to the marriage, no dowry was given at the time of marriage and the

ceremony of marriage took place happily. It is also pertinent to note that after seven years of marriage, FIR (Ex.-A/5) was filed on 13.01.2007 for

the first time against Vinod and his family members for the offence u/Ss. 498A, 406 & 323 IPC . In this fact situation though the allegation of

committing cruelty loses it weight, however, we refrain ourselves from recording any definite conclusion on this aspect, as it has been brought to

our notice that the criminal case No.49/2007 is yet pending trial.

12. Our attention has been drawn by counsel for respondent to the statement of Vinod wherein he has deposed that Anita did not like him since

beginning stating that he was working on a lower post. She also used to say that she committed mistake by agreeing to marry him as various better

matrimonial proposals by doctor and engineer were available to her. PW-2 Gajendra has also deposed this fact. Anita has also stated in her

statement (Ex.-3) that she did not see Vinod personally prior to marriage.

13. In background of these rival allegations against each other, the cumulative effect was that the parties were not maintaining cordial relations.

DW-1 Anita has stated that she was forcibly driven out by matrimonial home on 27.02.2003 and was left at the residence of her maternal uncle at

Jaipur. But it is obvious on perusal of the record that no effort was made by Anita for getting the matrimonial ties restored by filing application

u/S.9 of the Act of 1955. On the contrary, such application was filed by Vinod on 11.07.2005, which has been placed on record as Ex.-1. It has

been alleged on behalf of the appellant-Anita that despite compromise having been arrived at between the parties, she was not taken back by

Vinod. But, any how, it appears that another compromise took place between the parties on 25.09.2006 and both of them straight away from the

court went to their matrimonial home at Niwai. It is also evident from perusal of the order-sheet dt. 25.09.2006 (Ex.A/3) that Vinod got his

petition filed u/S.13 of the Act of 1955 dismissed in view of the compromise arrived at by the parties. This material is sufficient to show that Vinod

took initiative to resolve the discord and re- establish the matrimonial ties.

14. PW-1 Vinod has stated that besides the quarrelsome and cruel attitude of Anita towards him & his parents, she used to threaten them to

implicate in some criminal case. He deposed that in January,2007, she threw the bucket towards him which hit on his head. This allegation is

further corroborated by the charge- sheet (Ex.-8) filed in FIR No.14/2007. The investigating officer has mentioned in his conclusion that on

12.01.2007, some heated discussion took place between Anita & Vinod and out of anger, Anita hit the bucket on the head of Vinod. This was

found to be the basic reason by the I.O., for which the dispute flared up between the parties. In our view, such fact cannot be ignored to infer

about the conduct and behaviour of Anita.

15. Our attention has been drawn to the fact that FIR No.14/2007 was lodged on the basis of report (Ex.-7) submitted by Anita not only against

Vinod & his family members but also implicating 27 persons including the neighbours and other persons. It is pertinent to note that after

investigation, charge- sheet (Ex.-8) was filed only against Vinod & his parents, namely Badrinarayan and Smt. Santosh for the offences u/Ss.

498A, 406 & 323 IPC . It further needs to be noted that after hearing the charge arguments, all the three persons were discharged for the offence

u/S.406 IPC vide order dt.26.03.2008 (Ex.4). This clearly shows that the FIR was lodged by Anita with exaggerated facts. Counsel for the

respondent has contended that this attitude of Anita clearly demonstrates her quarrelsome and torturous behaviour towards her in-laws and the

husband. We are satisfied with the contention advanced by Id. counsel that if the wife tries to implicate her husband and parents in-laws in criminal

proceedings on the basis of unfounded and exaggerated allegation, then it can only be assumed that she is committing cruelty towards them.

16. It is also pertinent to mention here in this regard that the scuffle that was alleged by Anita in report Ex.-7 to have taken place on 13.01.2007,

was not found established by the investigating officer as mentioned in the charge-sheet (Ex.-8). It has been categorically stated in it by I.O. that no

manhandling or beating by any person was found to have taken place at Kotkhawda, when in-laws of Anita and their neighbours came over there.

Much emphasis was laid by counsel for the appellant in this context on photos marked "A" & "B", but the result of the investigation stated above

clearly negates the contention raised by counsel for the appellant about such incident.

17. Our attention was also drawn by counsel for the respondent to the fact that a complaint u/S. 12 of the Act of 2005 was filed by appellant-wife

Anita on 23.01.2007 in the Court of ACJM No.4, Jaipur Metropolitan not only against the respondent- husband Vinod but also against his

parents, sister Sunita, brothers Ashok & Gajendra, maternal uncles namely Kailash, Kamlesh, Subhash & Surendra. Counsel has specifically

mentioned that all the maternal uncles named above are residing at different place in Tonk. His contention is that implicating all the family members,

who were residing at different places, shows that the conduct and attitude of Anita was quarrelsome and revengeful towards the family members

and relatives of her husband, which tantamounts to cruelty towards them. We do not find any reason to reject this contention.

18. In light of the above, the judgments on which reliance has been placed by counsel for the appellant are not found to apply in the given facts. In

case of Darshan Gupta v. Radhika Gupta, reported in (2013)9 SCC 1, the facts of the case were entirely different. In the case referred above, the

appellant- husband, despite the medical advise and warning, proceeded with unsafe cohabitation with wife causing severe cognitive deficiencies to

her. When the plea of cruelty was taken by the husband against his wife on account of her intemperate behaviour and she being suffering from

incurable unsound mind and mental disorder, the ground of cruelty was not accepted by the Hon"ble Supreme Court. This is not the situation in the

case in hand. On facts, the husband-respondent cannot be held liable for the conduct and attitude of his wife.

19. In case of P.Jayaram v. P. Sudha Laxmi, reported in 2014(2) HLR 33 and Bhola Kumar v. Seema Devi, reported in 2015(3) HLR 462

(Pat.), it was observed by the Andhra Pradesh & Patna High Court respectively that unless it is proved that filing of the complaint was motivated

and aimed at harassing family, it cannot be treated as basis constituting cruelty and cannot be valid ground for seeking divorce.

20. In this regard, it may be observed that appellant Anita filed the report (Ex.-7) against 27 persons, out of which, only 03 person were charge-

sheeted and after hearing the charge arguments, they were also discharged from the offence u/S.406 IPC . This clearly demonstrates that the

report was lodged with exaggerated facts and with the intention to implicate and harass as many persons as possible. It requires to be noted further

that though the charges were framed for the offences u/Ss. 498A & 323 IPC on 26.03.2008, even after almost 10 years, the prosecution evidence

has not yet been completed. Similarly, the complaint filed by Anita u/S.12 of the Act of 2005 against 10 distant relatives staying at different places,

exemplifies the conduct and intention of the appellant. In such circumstance, there is no hesitation for us to hold that the intention and conduct of

the appellant-wife was to get as many persons as possible implicated and to harass them by prolonging the criminal proceedings as far as possible.

21. Besides this, our attention has also been drawn to the fact that DW-2 Sanjeev Kumar, brother of appellant Anita has admitted in his cross-

examination that after the respondent filed petition u/S.9 of the Act of 1955, Anita proceeded to institute three criminal cases against husband

Vinod and his family members. It has also come on record that the complaint under the Protection of Women from Domestic Violence Act, 2005

was filed before the Court of Id. ACJM No.4, Jaipur Metropolitan showing the address of Anita at Shyampuri, Hida Ki Mori, Ramganj, Jaipur.

Complaint u/s. 125 Cr.P.C . was filed while showing her address at Shastri Nagar, Jaipur and FIR No.14/2007 was filed at Police Station Chaksu

showing the address of Anita at Kotkhawda. This fact goes to show that wife Anita intended to implicate her husband Vinod and other family

members not only in various criminal proceedings but also in the Courts situated at different places. This was simply with the intention to harass and

pressurize the husband and his family members.

22. It can be easily inferred by the facts mentioned above that appellant-wife Anita did not leave any stone unturned to harass and tease Vinod and his family members.

23. In case of Praveen Mehta v. Inderjit Mehta, reported in (2002) 5 SCC 706, the Hon"ble Apex Court has held as under:-

21. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes

reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the

other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other.

Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to

be drawn from the facts and circumstances of the case. 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. The approach should be to take the cumulative effect of the facts

and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition

has been subject to mental cruelty due to conduct of the other.

24. In case of A.Jayachandra v. Aneel Kaur, reported in (2005) 2 SCC 22, the Hon"ble Apex Court has observed as under :-

10. 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 willful 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.

25. It is relevant to mention here that Hon"ble Apex Court in Naveen Kohli v. Neelu Kohli, reported in (2006)4 SCC 558 has held as under :-

51. The word ""cruelty"" has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass

or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established.

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26. Having considered the facts & circumstances of the case in entirety, we are of the considered view that sufficient evidence is available on

record to clearly establish that the mental cruelty was meted by appellant Anita towards her husband respondent Vinod Kumar and in our view, no

error has been committed by the Id. Family Judge in holding the issue No.1 regarding the appellant wife committed cruelty to her respondent

husband Vinod proved and who is entitled for getting a decree of dissolution of marriage on the ground envisaged u/S.13(1)(ia) of the Act of

1955.

27. Consequently, while upholding the judgment & decree dt. 25.02.2010 passed by the Id. Family Court No.1, Jaipur City, Jaipur, the appeal

deserves to be dismissed and is accordingly dismissed.