
(2013) 02 GAU CK 0018

Gauhati High Court

Case No: MAT Appeal No. 11 of 2010

Putul Kumar Sarma

APPELLANT

Vs

Dibyajyoti Sarma Pujari

RESPONDENT

Date of Decision: Feb. 5, 2013

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13

Citation: (2013) 2 GLD 528 : (2013) 3 GLT 7

Hon'ble Judges: P.K. Musahary, J; Iqbal Ahmed Ansari, J

Bench: Division Bench

Advocate: P.K. Roychoudhury, Mr. B.C. Choudhury, Mr. N.G. Kundu and Mr. A. Sarkar, for the Appellant; M. Borah, for the Respondent

Final Decision: Disposed Off

Judgement

Iqbal Ahmed Ansari, J.

This appeal has arisen out of the judgement and order, dated 23.12.2009, passed, in FC (Civil) No. 362/2005, by the learned Member, Family Court, Kamrup, dismissing the suit and declining thereby to dissolve the marriage of the present appellant with the respondent herein. The appellant filed a petition, u/s 13 of the Hindu Marriage Act, 1955, seeking dissolution of marriage with the present respondent on the ground that his wife (i.e., respondent herein) had treated him with cruelty and that she had been maintaining adulterous relation with one Sri Dipak Bezbaruah (i.e., respondent No. 2 in the said suit), the case of the appellant being, in brief, thus:

(i) That the petitioner (i.e., the appellant herein) is a businessman and his marriage had been solemnized with the respondent No. 1 (i.e., the respondent herein), on 21.06.1991, as per Hindu rites, and two daughters were born to them in their wedlock. After the petitioner's marriage, his business dwindled and his financial condition deteriorated, whereupon his wife, who is respondent herein, started undermining him, because of his weak financial condition and joined a monthly

magazine, namely, "Desar Pratinidhi", as sub-editor, one Sri Dipak Bezbaruah (i.e., respondent No. 2 in the suit) being the proprietor of the said magazine. Gradually, respondent No. 1 developed illicit relation with the said Dipak Bezbaruah (i.e., respondent No. 2) and respondent No. 2 started visiting the petitioner's (i.e., the appellant's) house in his absence, his wife started coming home late and, sometimes, in drunken condition. She even started going and staying outside Guwahati on the pretext of her official work without permission/consent of the appellant. The petitioner's wife (i.e., respondent herein) also started instigating his two daughters against the petitioner and, ultimately, succeeded in separating them from the petitioner. On 17.09.2005, when the petitioner tried to make his wife understand and tried to persuade her not to indulge such activities, which she was involved in, she insulted the petitioner, provoking him to burst out in anger and, out of anger, he threw a murah (stool) to the mirror and, as a result, the mirror broke down to pieces and, then, his wife (i.e., respondent herein) attacked him physically and, being compelled, he fled away in order to save himself. His wife, thereafter, filed an Ejahar with the police against the petitioner. However, she, later on, withdrew the case on the condition that they would live separately for three months. In these circumstances, the petitioner (i.e., appellant herein) found it difficult to continue living with his wife (i.e., respondent herein) as husband and wife and prayed for dissolution of his marriage by way of a decree of divorce.

2. The respondent No. 1 contested the suit by filing written statement, her case being, briefly stated, thus:

(i) That all the allegations, made in the petition filed by the petitioner (i.e., the appellant), were false, that before their marriage, the petitioner had falsely exposed himself as a well-established businessman, but after four months of their marriage, he began to demand money from her and her parents, that she helped the petitioner, in all possible ways, and she never undermined the petitioner for his weak financial condition, that even the father of the respondent No. 1 helped the petitioner (i.e., appellant herein) financially, that in order to help the petitioner financially and with a view to run the family smoothly, respondent No. 1 started working, with due permission of the petitioner, as an Assistant Editor of "Desar Pratinidhi", a monthly magazine, but the petitioner always suspected her character that though she had illicit relation with the said Dipak Bezbaruah, though she had no illicit relation with the said Dipak Bezbaruah, the petitioner always accused that Dipak Bezbaruah had been visiting their house; whereas, Dipak Bezbaruah came to the petitioner's house either with his wife or as an invitee. The petitioner (i.e., appellant herein) had never discharged his liability towards his children, that the petitioner used to get drunk and torture respondent No. 1. Being a reporter, she, sometimes, had to go outside Guwahati and whenever she had to go outside, she used to go with the consent of the petitioner, but the petitioner always suspected her character and used to quarrel with her and, on 17.09.2005, too, the petitioner started quarreling with her and threw a murah (stool) towards her with a view to

cause injury to her, but she managed to escape and, in the process, the mirror got broken, whereupon the petitioner took a piece of broken glass and tried to kill her, but she was rescued by her elder daughter and neighbour/tenant. Thereafter, the police was informed about the occurrence and the petitioner fled away from the house. The local people/their well-wishers made an agreement between her and the petitioner, on 19.09.2005, with the stipulation that they (i.e., the appellant and the respondent herein) would live separately for three months, but prior to expiry of the said three months, the petitioner had filed the suit with concocted story.

3. The respondent No. 1 also stated, in her written statement, that the petitioner (i.e., the appellant herein) had the intention to have a second marriage for the purpose of having a son, that the petitioner had started to torture his wife, both physically and mentally, since after four months of their marriage, but she used to tolerate, for, she was mother of two minor daughters, and she never wanted divorce. The respondent, thus, prayed for dismissal of the suit filed by the petitioner.

4. The said Dipak Bezbaruah (i.e., respondent No. 2 in the suit), too, contested the suit by filing written statement, wherein he denied the allegations of his adulterous relation with the respondent No. 1, his case being, in short that he was a man of reputation and status in the society and that he had no relation with respondent No. 1 except the relation of business, that respondent No. 1 was simply an employee of the magazine, namely, "Desar Pratinidhi" and, as she (respondent No. 1) worked hard and sincerely for the said magazine, she had been made co-proprietor of the said magazine, but she was removed after six months and that the allegations made by the petitioner (i.e., the appellant herein) were false, baseless and concocted inasmuch as they maintained relationship of brother and sister and that the petitioner was, rather, liable to pay compensation to him for the mental harassment caused to him.

5. The learned Family Court, having considered the pleadings of the parties, framed the following issues for determination:

(i) Whether the petitioner, Sri Putul Kr. Sarma has been treated with cruelty by the respondent Smti. Dibyajyoti Sarma Pujari?

(ii) Whether the respondent is having any extra-marital affairs/committed in adultery with one Sri Dipak Bezbaruah?

(iii) Whether the petitioner is entitled to get a decree of divorce as prayed for?

(iv) To what relief/reliefs the parties are entitled?

6. The learned trial Court discussed the issue Nos. 1 and 2 jointly and, in consequence of the fact that the said two issues were answered in the negative, the appellant was held not entitled to the relief of a decree of dissolution of his marriage with the respondent No. 1. With the conclusion, so reached, the suit was dismissed and the impugned decree accordingly followed.

7. We have heard Mr. P.K. Roychoudhury, learned counsel for the appellant, and Mrs. M. Borah, learned counsel for the respondent.

8. While considering the present appeal, it needs to be noted that, according to the evidence of the petitioner-appellant, the first eleven years of his married life with the respondent was pleasant and they had two daughters born to them in their wedlock and it was after their marriage that the respondent No. 1 completed her graduation, and after six years of her marriage, she joined as an employee in "Desar Pratinidhi", but, gradually, she started returning home late at night, respondent No. 1 developed illicit relation with the said Dipak Bezbaruah (i.e., respondent No. 2 in the suit) and that respondent No. 2 started visiting the petitioner's house in his absence. The petitioner also deposed that his wife had been found roaming around in the car of respondent No. 2 and they used to drink alcohol together and even started going and staying outside Guwahati, on the pretext of her official work, without permission/consent of the appellant, that his wife (i.e., appellant herein) also started instigating his two daughters against him and, ultimately, succeeded in separating them from him and that on 29.08.2005, the respondents had been found indulging in sexual enjoyment in his house, which he witnessed through the ventilation, whereupon he kicked the door open and respondent No. 2 ran away in his car, though he (the petitioner) chased respondent No. 2 on the street.

9. As against the evidence, so given by the appellant, the evidence of the respondent No. 1 is that it was the petitioner (i.e., appellant herein), who used to torture her, both mentally and physically, since after four months of their marriage, that due to the bad financial condition of the petitioner, respondent No. 1 was compelled to take up a private job to lessen the family burden and to share the responsibility with the petitioner, but the petitioner was a suspicious person and this made her life miserable and that he tried to defame her by concocting stories about her character and instigated their daughters against her by saying that she was a woman of loose character. The respondent No. 1 has also given evidence that the petitioner always came home in drunken condition, tortured her and their two daughters, both physically and mentally, and also threatened to kill them, that after about seven months of their elder daughter's birth, the petitioner had even tried to kill her by pouring kerosene, that her parents had given the petitioner an amount of Rs. 70,000/-, in three installments, to enable him buy a plot of land, at Kahilipara, Guwahati.

10. In her cross-examination, respondent No. 1 (i.e., respondent herein) has stated that she continued her study after her marriage, but she was never supported by the petitioner and that she was made pregnant repeatedly with a view to hamper her study. In her cross-examination, respondent herein has denied having any illicit relation with respondent No. 2 and she has deposed, in her cross-examination, that she had filed an FIR against her husband as regard the occurrence on 17.09.2005, but she withdrew the FIR later for the sake of the children and the family.

11. Though the learned Court below has pointed out that the appellant has not examined any of the members of his family and he has examined only some of his neighbours, as witnesses, and though the learned trial Court has treated this omission, on the part of the appellant, as a weakness of his case, we do not think that mere failure to examine any member of his family by the appellant could have been such a serious weakness, which could have disentitled him to the reliefs, which he has claimed.

12. What is, however, important to note is that, according to one of the petitioner's witnesses, namely, Milan Talukdar, he had seen both the respondents together near Udeshta Cinema Hall on some different occasions and, again, one day, during summer vacation, he saw the appellant chasing respondent No. 2, on the street, at about 7-00 P.M., and respondent No. 2 running away in his car.

13. While considering the evidence of Milan Talukdar, what is noteworthy is that even if it is assumed that the respondents were seen together on some occasions, this, by itself, would not mean that they had been maintaining adulterous relation nor is the fact that the respondent No. 2 was seen being chased by the appellant is sufficient to make one reach the lone and only conclusion that the respondents had been maintaining illicit relation, when the case of the respondent No. 1 is that the appellant is a suspicious person by nature and the appellant suspected that the respondent No. 1 had been maintaining illicit relation with respondent No. 2. Similarly, the other neighbours of the appellant have also claimed to have seen the two respondents together and that respondent No. 2 had been visiting the house of the appellant frequently.

14. As against the evidence, so adduced by the petitioner, the daughter of the petitioner and respondent No. 1 has clearly stated that the respondent No. 2 came to their house only on four occasions, when he had been specifically invited.

15. Another witness of the petitioner, namely, Smt. Anima Kalita Bhuyan, has claimed that she had seen the respondent No. 2 being chased by the appellant, because respondent No. 2 had illicit relation with the wife of the appellant. This witness has also claimed that once she had gone to the house of the appellant to tender invitation and, when she entered the bedroom, she found the two respondents sleeping together. The learned trial Court has not believed the evidence of this witness and we are also not inclined to believe that while maintaining illicit relation, which is necessarily hidden from the world, the respondents would be found by this witness sleeping together in the bedroom, which was necessarily locked from inside, it is not comprehensible as to how this witness happened to enter into the bedroom, because there is nothing in the evidence on record that she was on such terms with the respondent No. 1 that she could enter into the bedroom of the respondent No. 1 without the knowledge of respondent No. 1 and/or without being asked to do so.

16. According to Bipul Das, another witness of the petitioner, one day, at about 11-00 P.M., he saw respondent No. 1 returning with respondent No. 2 and, at that time, it appeared to him (Bipul Das) that she (respondent No. 1) was intoxicated. The learned trial Court has correctly pointed out that this was merely an assumption, on the part of this witness, and this witness' evidence does not conclusively prove that respondent No. 1 was found drunk in the company of respondent No. 2.

17. The parents of respondent No. 1 have also given evidence supporting the case of their daughter. According to the evidence of Sri Golok Sharma Pujari (i.e., father of respondent No. 1) and Smti. Hiranya Devi (i.e., mother of respondent No. 1), after about four months of their daughter's marriage with the petitioner (i.e., appellant herein), the petitioner had begun demanding money from them for some business purposes and the petitioner himself had come to ask for the money, but they were unable to give the petitioner money, as had been demanded by him, because both of them (parents of the respondent No. 1) had been suffering from cancer, that their daughter informed them that as they had not given money to the petitioner, the petitioner tortured her a lot and, therefore, they, ultimately, managed to pay a sum of Rs. 70,000/-, in three installments, to the petitioner to buy a plot of land, at Kahilipara, Guwahati. The parents of the respondent No. 1 have further deposed that the petitioner did not even provide their daughter with minimum food-stuff at the time of her pregnancy and/or at the time of the birth of her child on the ground of his financial inability and it was them, who had to bear all the expenses and that it was due to such financial constraints that their daughter (i.e., respondent herein) joined a publisher in the year 2001. It is the further evidence of Golok Sharma Pujari and Smti. Hiranya Devi (i.e., the parents of respondent No. 1) that their daughter has been maintaining her two children with great difficulty, that on 17.09.2005, the petitioner had tortured their daughter with so much of cruelty that police had to be informed and, at the intervention of local people, an agreement was reached to the effect that the petitioner and respondent No. 1 would live separately to avoid quarrel, but, since then, the petitioner had been frequently threatening them, over telephone, by asking them to bring back their daughter along with the grand-daughters to him, or else, he would kill them. In their cross-examination, the parents of respondent No. 1 denied the suggestion of the petitioner that their daughter had lost her morality by falling in love with others.

18. Even the elder daughter of the parties to the suit has given her evidence and her evidence is to the effect that since her childhood, she could remember her father torturing her and her mother, both mentally and physically, and that the petitioner had never cared for them to provide them with minimum food, that whenever she had asked him for school fees, the petitioner would threaten her to send her back to village and, finding no other way to survive, their mother (i.e., respondent No. 1) joined a magazine, that the nature of her mother's work demanded hard work, but whenever her mother returned home, her father (i.e., the petitioner) rebuked her and blemished her character by terming her as a woman of loose character, that her

father even used to tell them that their mother goes outside to sell herself to earn money.

19. In her evidence, the elder daughter of respondent No. 1 has also deposed that due to such day-to-day torture and use of abusive language by their father, both the sisters started disrespecting their father and their relation worsened, that the petitioner used to beat them up on very silly matters and that, on 21.04.2005, the petitioner trampled on her belly and thereby caused hurt to her and, at midnight, the petitioner also attempted to kill all of them with dao and that their father was a heartless man with criminal mentality. In her evidence, Miss Anisha Sarma, elder daughter of respondent No. 1, has further deposed that on many occasions, their father took money from their grand-parents, that their father used to raise false, but serious allegations to the effect that their mother had illicit relation with her (respondent No. 1's) official boss (i.e., respondent No. 2), who was an elderly person, a gentleman and he (respondent No. 2) had visited their house only on four occasions, as invitee, along with other invitees and their family members and that on 17.09.2005 the petitioner had entered into an argument with her mother (i.e., respondent No. 1) and had tortured her physically and injured her by beating her with the help of a dining chair and a piece of broken mirror and, finding no other way, their mother (respondent No. 1) had to call the Dispur police station.

20. In her cross-examination, the elder daughter of respondent No. 1 has deposed that respondent No. 2 had come to their house only on four occasions, that her father used to quarrel with her mother and that she had seen such quarrels prior to her mother's joining the said magazine, that her father had always avoided his responsibility to maintain the family, that her mother had withdrawn the police case on the request of her father and that she could never respect her father, because of his bad conduct.

21. The witnesses, whom the appellant has examined, have failed to disclose as to how they, being outsiders, came to know that respondent No. 1 had been maintaining illicit relation with respondent No. 2 and/or that the respondents had been seen together in such circumstances/conditions, which were sufficient to make one reasonably draw the inference that the respondents had been maintaining illicit relation.

22. The appellant, as petitioner, failed to show that respondent No. 1 was not a reporter, whereas her evidence is unequivocal to show that she is a reporter and, on some occasions, she is required to visit places outside Guwahati, particularly, when there is no evidence to the effect that respondent No. 2 used to stay with respondent No. 1, whenever respondent No. 1 stayed outside her house. There is also no evidence on record to show that respondent No. 1 takes alcohol. Mere impression of a witness, that respondent No. 1 appeared to be drunk, could be of no avail to hold that respondent No. 1 had, indeed, taken alcohol.

23. In his petition, the appellant does not assert that the respondent No. 1 has been maintaining illicit relation with respondent No. 2 inasmuch as what he has stated, at paragraph 6 of his petition, is that the relationship between the two (i.e., respondent Nos. 1 and 2) is open to suspicion. Alleging that the respondent No. 1 treats him with cruelty, the appellant, at paragraph 7 of his petition, has stated that in order to belittle him, respondent No. 1 demands valuable goods and she use to give him list of valuable goods for fetching from market, for example, Horlicks, Bournvita, which cannot be afforded by the appellant. We wonder how Horlicks and Bournvita can be regarded as valuable goods.

24. We are clearly of the view that by no stretch of imagination, Horlicks and Bournvita can be regarded as valuable goods. The appellant has also alleged, at paragraph 10 of his petition, that he has seen the respondent No. 1 having telephonic conversation in a very romantic manner. This is, again, a suspicious circumstance. There is no assertion in the plaint, it may be noted, that the appellant had ever chased the respondent No. 2 or that he had ever caught the respondent No. 1 in any such objectionable circumstance, which would make one draw the inference that the respondents had been maintaining illicit relation. The appellant's petition, seeking dissolution of marriage is also silent and it is not that anyone had ever seen the respondents in compromising position or in such sexual acts, which would amount to adultery, or which would amount to maintaining illicit relation. Thus, it is clear, that at the stage of evidence, the appellant has improved his case.

25. We do not find any merit in this appeal. The appeal, therefore, stands dismissed with cost

26. Let a decree be prepared accordingly.

27. With the above observations and directions, this appeal stands disposed of. Send back the LCR with a copy of this judgement and order.