
(1991) 05 MP CK 0019

Madhya Pradesh High Court

Case No: First Appeal No. 111 of 1990

Smt. Bhavna Adwani

APPELLANT

Vs

Manohar Adwani

RESPONDENT

Date of Decision: May 8, 1991

Acts Referred:

- Hindu Marriage (Amendment) Act, 1976 - Section 13(1)
- Hindu Marriage Act, 1955 - Section 3(1)

Citation: AIR 1992 MP 105 : (1992) 1 DMC 286 : (1992) JLJ 269 : (1992) 37 MPLJ 40 : (1992) MPLJ 40

Hon'ble Judges: D.M. Dharmadhikari, J

Bench: Single Bench

Advocate: Y.K. Munshi, for the Appellant; Ashok Lalwani and A.G. Dhande, for the Respondent

Final Decision: Dismissed

Judgement

D.M. Dharmadhikari, J.

In this appeal by the wife, under the provisions of Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred as to the Act), the question that needs to be decided is, whether the conduct of the wife, as brought out by evidence on record, amounts to "wilful neglect" on her part, within the meaning of explanation appended to Section 13(1) of the Act, so as to uphold the decree of divorce u/s 13(1)(ib) of the Act?

Parties were married on 27-4-1983 at Raipur. Admittedly, they lived together after marriage at Raipur between 27-4-1983 to 19-6-1983. It is also not disputed that one Murlidhar, brother-in-law of the wife, took her back on 20-6-1983 to Katni for a brief stay with her parents.

The case of the husband is that thereafter he made repeated approaches personally, through his relations and also by sending her letters requesting her to come back home, but she persistently expressed her inability to do so. In the course of these attempts to bring the wife back to home, on 29-11-1983, the husband himself went to Katni with his sister, Padma and brother-in-law, Arjundas to bring back the wife ceremoniously, according to the caste-custom. It is admitted that the husband and wife lived at Kanti and cohabited. During this brief stay of the husband, he requested the parents, of the wife to send his wife with him and his relations, who had gone to Katni to bring her, but the parents refused to send her and the wife also did not express any willingness to accompany him back, stating that she had no courage to act against the wishes of her parents. The husband made a second attempt through his uncle Ramesh Adwani, who was sent to persuade the parents of the wife and her to come back to the husband's house. But, again they refused. On 28-8-1984, the wife gave birth to a female child named Varsha, now about three years old. The husband sent a letter on 14-9-1985 (Ex. P/1) to the wife requesting her to come back to him. The wife sent a reply dated 20-9-1985 (Ex. P/2) in which she expressed her desire to lead a happy married life with him, but again expressed her helplessness, because there was misunderstanding between the husband and her father. The husband sent one more letter on 28-9-1985 (Ex. P/10) and gave her an option that either she should remain at Katni in obedience to the wishes of her father or come back to him, for which, the husband showed his willingness to come up to Bilaspur Station to receive her there for return to Raipur. The wife, however, did not send any reply to the aforesaid letter. The husband then sent a legal notice addressed to the wife (Ex. P/4) calling upon her to return to him within a week of the receipt of the notice or else proceedings for restitution of conjugal rights or in the alternative judicial separation would be filed in the Court of law. he sent a separate legal notice dated 31-8-1986 (Ex. P/6) addressed to the father of the wife and alleged that his wife was being illegally withheld and detained for which the father was stated to be liable for compensation. The repeated attempts made by the husband having failed to persuade the wife to rejoin him, he filed petition u/s 9 of the Act for restitution of conjugal rights and in the alternative, for grant of a decree of divorce u/s 13 of the Act.

In her written statement filed in the petition, the wife took a plea that during stay with the husband, his mother used to make dowry demands and used to ill treat her. It is also pleaded by the wife that the husband, during the pendency of the case in the trial Court, has gone through a second marriage and, therefore, cannot the relief either of restitution of conjugal rights or of divorce. The trial Court, by order under appeal dated 30-3-1990, held that the wife was guilty of desertion of the husband for a period of more than two years of the filing of the petition. The trial Court held that the remarriage of the husband was not proved. The trial Court, therefore, granted a decree of divorce against the wife on the ground of desertion.

The learned counsel appearing on behalf of the respondent-wife assailed the decree of the trial Court firstly on the ground that the contents of the letters and the legal notice sent

by the husband to the wife themselves nullify the case set-up against the wife of her desertion. It was also stated that the letter sent in reply by the wife (Ex. P/2) also does not make out that the wife had deserted the husband. It was stated that the contents of the letter of the wife show that she was very eager to join the husband and, in fact, invited him for a meeting. According to the counsel for the wife, one of the essential ingredients of the matrimonial offence of animus deserendi on the part of the wife is totally absent in this case and, therefore, decree on the ground of desertion could not be passed.

The second submission of the learned counsel of the wife was that the husband has failed to prove that the desertion with animus deserendi continued on the part of the wife during the entire statutory period of two years immediately preceding the presentation of the petition. It was stated that animus deserendi, if at all, on her part could be presumed against her from the date of legal notice dated 31-1-1986 and the petition filed on 12-12-1986 was before expiry of two years statutory period, provided u/s 13(1)(ib) of the Act. Lastly, it was submitted on behalf of the wife that there would be no joint petition seeking relief of restitution of conjugal rights or in the alternative, a decree of divorce and the petition was liable to be rejected for misjoinder of causes of action.

The learned counsel appearing on behalf of the husband supported the decree passed by the trial Court submitting, inter alia, that the husband made all possible efforts to persuade the wife to come back to him and her continuous conduct in remaining away from husband constituted desertion within the meaning of Section 13(1)(ia) read with the explanation appended thereunder. It was also stated that the wife had lived separately from the husband for a period of more than two years before filing of the petition and there was no legal prohibition to grant a decree of divorce. The learned counsel for the appellant also submitted that there is nothing in the Act that in a petition for restitution of conjugal rights, an alternative relief of divorce could not be claimed.

Having gone through the pleadings of the parties, the documentary and oral evidence on record and the submissions made by the counsel for the parties, I have formed an opinion that this case is an unhappy instance of a happy marriage being ruined because of the timidity of the wife and the tack less handling and ill-advice of the father of the wife.

I take up first the question, whether decree of divorce could be passed on the ground of desertion. It is to be noticed that in order to widen the meaning of desertion as a matrimonial offence and to include within it even the case of constructive desertion, explanation was added below Section 13(1) by the Marriage Laws (Amendment) Act, 1976, which reads as under :--

"Explanation.-- In this Sub-section the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly."

It is thus clear that now after addition of the above explanation to Section 13(1), even if the wife is guilty of wilful neglect of the husband, she would be guilty of desertion to constitute a ground of divorce. The first question before me is whether there was any reasonable cause for the wife to live away from the husband? It is to be noted that in none of her letters, she ever complained of any ill-treatment for dowry demands by the mother of the husband, much less, by the husband. The case of ill-treatment to the wife for dowry demands came to be stated for the first time in the reply filed in the Court to the petition and in her deposition. So far as her pleadings on the subject of alleged ill-treatment to her is concerned, it may be noticed that the plea is totally vague and bereft of all necessary particulars of ill-treatment. In para 7 of the written statement, only a general statement has been made that the husband and his mother used to repeatedly demand dowry and complain that sufficient dowry was not brought by the wife. In the same paragraph, it was stated that they used to ill-treat her. No details have been given as to when, where and how the demands were made and that was the nature of ill-treatment. In her deposition as N.A.W.-I, she made a general statement that her mother-in-law used to say that she is not beautiful and both her husband and mother-in-law used to ill-treat her for not bringing scooter and more presents in the marriage. In the cross-examination, she was confronted with her letter (Ex. P/2). She admitted that she sent it, but could not give any explanation why she did not complain to the husband of ill-treatment that she received at his house. There is nothing on record to show that she ever complained of ill-treatment by the husband and his family members to her father. Her father Pariamal has been examined as N.A.W. 5. In para 8 of his cross-examination, he admitted that no dowry was settled at the time of marriage. He also admitted that three times the husband approached to him at Katni to take back the wife. His version was that on each occasion, he was willing to send her back, provided she was promised no ill-treatment for dowry demands by the husband and her family members. From the above state of evidence on record, even if the wife and her father are to be believed that there were some dowry demands and some ill-treatment to the wife, it cannot be inferred that the ill-treatment was of such a magnitude that she should have left the husband's home for all times. It cannot be disputed that normal place of living of the wife after marriage is the husband's home. Heavy burden, therefore, lies on the wife to prove that there was such ill-treatment to her at the husband's place that her living there was impossible. The "reasonable cause" as contemplated by explanation below Section 13(1) should be a cause, which should be sufficiently grave and weighty so as to justify the living of the wife away from the husband. Only because during a brief stay of the wife at her husband's home, there was some taunts or demands of dowry, it cannot be said that they furnished a reasonable cause to the wife to leave the home of the husband and never to return. I, therefore, hold that there did not exist any reasonable cause for the wife to refuse to return to the husband.

The second question is whether the wife can be held to be guilty of desertion within the wider meaning of that expression contained in explanation below Section 13(1) of the Act? In other words, whether it could be said, in the background of the facts of the case,

that there was any wilful neglect of the petitioner by her constitute constructive desertion? From the evidence on record and the pleadings of the parties, it has to be accepted that, to begin with, when after the marriage and brief stay with her husband at his house, she returned to her parents, there was no intention to desert the husband. It was only a return to the parents as per the custom prevalent in the community. According to the husband, when he personally went with his sister and his brother-in-law on 21-11-1983 to Katni to bring her back, she expressed helplessness due to the wishes of her father. In para 2 of her deposition in the Court, her version is that the husband asked her to accompany, whereupon she replied that she was willing to return with him, but the husband to take any responsibility for likely misbehaviour from his mother. In para 6 of her statement, she admitted that Ramesh Advani, uncle of the husband had gone to Katni for the second time to bring her and she expressed to them that if they were agreeable to take her responsibility, she would return. Her father Panamal, examined as N.A.W.-5, substantially supported her version and stated in para 2 of his deposition that when the husband's relations approached him to take the wife, he expressed his willingness to send her, but he complained that she was ill-treated for dowry and that they should send some responsible person to him again for necessary talks and giving assurance on the subject. The father of the wife also accepted that Ramesh Advani, uncle of the husband, had also approached him for the purpose and to him also, he expressed that he should take the responsibility that no one should misbehave or ill-treat her, whereupon, the uncle of the husband is said to have refused to take any such responsibility. In the light of the above deposition and version of the wife and her father, it has to be judged whether the conduct of the wife amounts to a wilful neglect on her part so as to constitute desertion? The expression "wilful neglect" used in explanation u/s 13(1) of the Act has been commented by Mulla in Hindu Law, 16th Edition at page 674 and it has been explained thus:--

".....In the context of matrimonial law wilful neglect would seem to mean that the person is consciously acting in a reprehensible manner in the discharge of its marital obligations or is consciously failing in a reprehensible manner in the discharge of those obligations; and connotes that degree of neglect, which is shown by an abstention from an obvious duty, attended by a knowledge of the likely results of the abstention..... The neglect to become desertion must be such as amounts to forsaking or abandonment of one spouse by the other by a conscious disregard of the duties and obligations of the married state considered as a whole."

Understanding the expression "wilful neglect" from the commentary above, it may be seen that in this case, the only excuse offered by the wife not to rejoin her husband was that she wanted the husband or some elderly person in the family to take responsibility that she would not be ill-treated in the marital home. To me, it appears that such an expectation from the husband cannot constitute a good ground or a reasonable ground for the wife to refuse to live with the husband. In marital relationship, there is no question of any responsibility being taken by the spouses of each other or by the elder members of their families. As I have held above, the wife utterly failed to produce any reliable

evidence that she was ill-treated in her brief stay with the husband, by the mother. In her romantic letter sent to the husband after their long separation she did not even make a passing reference of having suffered any ill-treatment from him or his relations during her stay. The version of the wife and her father, therefore, neither appears believable nor reasonable. She can, therefore, be held guilty of a wilful neglect in the discharge of her marital obligations towards the husband.

Now the stage is in considering the objection raised on behalf of the wife that the husband failed to prove desertion on the part of wife for a continuous statutory period of two years. The agreement of the learned counsel for the wife is that the two years period could not be reckoned prior to the service of the legal notice dated 31-1-1986 (Ex. P/4) and non-compliance thereof by the wife.

This argument also does not seem to sound. As I have stated above, on 20-6-1983, when she first left the husband's place, there was neither any intention to leave forever, nor was there any act of wilful neglect. According to me, the wife would be guilty of wilful neglect when the husband personally approached her on 29-11-1983 and she refused to return with him, on the pretext that he had refused to take responsibility for the alleged ill-treatment by his mother. The period of desertion can, therefore, be reckoned from 29-11-1983, when she would be deemed to be guilty of wilful neglect in discharge of her marital obligation. Reckoning period of desertion from the above date, the petition filed on 12-2-1986 was much after the expiry of two years statutory period provided in Section 13(1)(ib) of the Act.

The last submission made by the learned counsel for the respondent now needs to be considered that there could be no joint petition, both for restitution and divorce. I do not find any legal prohibition under the provisions of the Act for filing a petition by a spouse for restitution or in the alternative, for a decree of divorce on the ground of desertion. The husband has frankly come forward with a case that he was willing at the time of filing of the petition to receive her back in the marital home and in the alternative, if she still continued to refuse, she should be held guilty of a matrimonial offence of desertion and the marriage be dissolved. Her testimony in the Court and the letter sent by her to her husband do not at all show that she ever made any sincere effort to return to the husband. The learned counsel for the wife submitted that her letter sent to the husband expressing yearning for him and keen desire to meet him, terminated the desertion. This argument does not appear to be correct. As commented by Mulla in Hindu Law at page 677, "desertion may also be terminated by supervening animus revertendi expressed by a genuine offer to return to the deserted spouse or in case of constructive desertion by a bona fide attempt to get back the aggrieved spouse. If a deserting spouse takes advantage of the locus poenitentiae provided by law and goes back to the deserted spouse by a bona fide offer or resuming the matrimonial home with all the implications of marital life before the statutory period is out or even thereafter before any proceedings for relief have been commenced, desertion comes to an end and if the deserted spouse unreasonably refuses the offer the entire position would become different and the latter of

the former would become the deserter."

From the correspondence exchanged between the parties, I find that in her letter, although she expressed her intense desire and keen anxiety to meet the husband, but at the same time again referred to the misunderstanding that was created between him and her father. Before concluding the letter, she merely expressed a fond hope and invited him to her arms, but did not clearly express any desire to go to him. Her letter was replied by the husband vide Ex. P/16 and he gave her a clear option to either live with the father or return to him. He also expressed his willingness to come up to Bilaspur Station to receive her. No attempt on the part of the wife thereafter to return to the husband was made and it was, therefore, a clear indication that her offers earlier made to meet him were either not genuine or in any case she could not muster sufficient courage to disobey her father, who wanted that the husband should live as Ghar Jamai at Katni, like husband of his other daughters. In my opinion, on the basis of evidence led in the case, it can be safely held that where a wife submits herself meekly to the dictates of her father and has no courage to disobey and leave the parental house to go to the husband, she is guilty of wilful neglect. The husband in this case made all possible efforts to persuade and bring back the wife to his home and even after setting totally frustrated, made last attempt by filing a petition for restitution of conjugal rights, although, in the alternative, he claimed a relief of divorce. As I have said above, this is a tragedy, which has been fallen on the wife due to her own shyness and timidity coupled with the tactless handling of the entire situation by her father, who appears to have given undue importance to the frivolous quarrels and minor irritations, which were caused, in initial period of their married life.

At the end, the learned counsel for the wife submitted that the husband has taken another woman from whom he has children and, therefore, her going back to him to now an impossibility. He prayed for fixing a lump-sum amount as a permanent alimony. In this case before me, there is no application for fixing permanent alimony u/s 25 of the Act which, when made, will have to be decision the basis of evidence with regard to the husband's income and the requirement of the wife.

So far as the alleged second marriage of the husband is concerned, the trial Court held that the marriage was not proved. In deciding the above controversy, I had tried to remain completely uninfluenced by that fact, because even if the husband has gone through a second marriage during the subsistence of the first, with the present wife, the second marriage would be a nullity in law and has to be overlooked for the purpose of deciding this case.

The trial Court, keeping in view the fact that the wife will require some money for her maintenance, has fixed a sum of Rs. 200/-per month, which will be paid by the husband to the wife till her remarriage. The amount of Rs. 200/ - per month appears to me rather on lower side, taking into account the financial status of the parties, as disclosed from the evidence on record. The husband is doing private service and is earning a fixed salary. Keeping in view the fact that his income is likely to increase as also the needs of the wife,

I think it proper to increase the monthly maintenance from Rs. 200/- to Rs. 300/- per month.

Consequently, with the above slight modification in the amount of maintenance, the appeal fails and is hereby dismissed, but without any order as to costs.