

(2009) 07 CAL CK 0010**Calcutta High Court****Case No:** F.A. No. 96 of 2000

Sri Subhash Chandra Das
Chowdhury

APPELLANT

Vs

Smt. Sandhya Das Chowdhury

RESPONDENT

Date of Decision: July 18, 2009**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 498A

Hon'ble Judges: Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J**Bench:** Division Bench**Advocate:** Dilip Kumar Mondal, Mr. Sandip Roy Chowdhury and Mr. Gurudas Mitra, for the Appellant; S.S. Mukherjee and Mr. Siddheswar Chandra, for the Respondent**Final Decision:** Allowed

Judgement

Bhaskar Bhattacharya, J.

This first appeal is at the instance of a husband in a suit for divorce on the ground of cruelty and is directed against the judgment and decree dated 23rd December, 1998 passed by the learned Additional District Judge, Fifth Court, Alipore, in Matrimonial Suit No.66 of 1990 thereby dismissing the suit with a specific finding that the appellant failed to prove cruelty alleged in the application for divorce.

2. The case made out by the appellant in the pleading as amended may be summed up thus:

(a) The parties were married on 7th March, 1988 according to the Hindu rites and ceremonies at 1/15, Mall Road, Dum Dum. On the eighth day of the marriage, at the time of visit to the wife's house, the appellant was told by the mother and the brother of the respondent that he was required to stay away from his own family and start his life with his wife at the paternal house of the respondent at Dum Dum as a domesticated son-in-law. The appellant, however, did not agree with such proposal and such denial on his part annoyed the respondent, her mother, brother

and sister.

(b) Thereafter, the appellant took his wife to Puri on honeymoon and stayed there for about 10 days and after returning from Puri, the wife stayed in the house of the appellant for a few days and thereafter, left for her own house at Dum Dum on 17th April, 1988.

(c) On or about 2nd May, 1988, the appellant went to Dum Dum to take her back but she refused to come back by asserting that the appellant should forget his parents and sister and must stay at Dum Dum in their family. Subsequently, the appellant again on 12th May, 1988, 19th May, 1988 and 27th May, 1988 went to his father-in-law's house to bring his wife back but she did not come.

(d) On 12th June, 1988, the respondent made a false and baseless complaint to the local Nagarik Committee; the office bearers of such Committee, after hearing the parties and being satisfied that there was no truth in her allegations, asked her to return to her matrimonial home but she did not come back.

(e) On 27th July, 1988 at about 7 p.m., when the appellant was out of his house, the respondent came along with her brother and some antisocial persons. Although, the sisters of the appellant welcomed them, they, after going to the first floor of the house., started abusing the members of the husband's family in filthy language. Her brother and his antisocial associates started beating the appellant's sisters and even did not spare the old father of the appellant who was then aged about 76 years. One of the appellant's sisters managed to escape and informed the local people and apprehending the danger, those antisocial associates of the respondent left the place and threatened that they would come again.

(f) The father of the appellant, therefore, lodged a G.D. with the Behala Police Station on 27th July, 1988 narrating the incident. After coming back, the appellant heard the whole incident and on the next day, he lodged a written complaint before the local police station.

(g) During her first one-month stay in the appellant's house, the wife removed all her ornaments that she got as presentation to her father's house and thereafter, she approached the Nagarik Committee by making false complaint against the husband. The Nagarik Committee initially refused to interfere in the matter. However, for maintaining peace and with the hope of better days, the appellant was forced to take a separate rented house at the instigation of the respondent in her name at 48/2/1, Kabi Guru Sarani Road, P.S. Behala and shifted to that house on 20th August, 1988 leaving his paralytic mother and old father and unmarried sisters. The appellant purchased the household utensils, fan, etc. and stayed there up to March 1989.

(h) During his stay with the respondent at the rented house, the appellant passed a very miserable life. The respondent used to come at about 9 p.m. in the evening

some time on bus, minibus and on occasions, in the cars of others. On enquiry about her late coming, she used to answer in dirty language. Sometimes at the dead of night, she used to turn the appellant out of bedroom forcibly and for avoiding scandals, the appellant had to stay outside the room sitting on the floor.

(i) During the stay at rented house, the respondent sometime kept the house under lock and key for days together staying at her father's residence. These behaviours of the respondent amounted to cruelty and in view of misbehaviour of the respondent, the appellant had lost his dignity and prestige before his friends, neighbours and office colleagues. He could not sleep at night nor could he mix with his friends, neighbours and office colleagues.

(j) The respondent also used to utter insulting language towards the appellant and complain that the appellant had been living in adultery with his sisters. Such false allegation gave great shock in the mind of the appellant.

(k) On 25th March, 1989, the respondent did not allow the appellant to enter the house shouting that he was in illicit connection with his sisters and that she would not stay with him and drove him out on that ground. Since then, the appellant had been residing at her mother's house at 99, Agarwall Garden Road.

(l) On 19th April, 1989, the appellant's mother died and in spite of giving information, the respondent did not come to take part in funeral nor did she take part in the Sradh Ceremony.

(m) On 25th May, 1989, the respondent came with her brother and some associates in the house of the appellant and asked the appellant to send the two sisters to any orphanage and the father to an old age home and only in these circumstances, she agreed to come to the house of the appellant. The respondent also used filthy language towards the appellant's sisters and father. Thereafter, they left the house.

(n) After the filing of the suit, the respondent with the help of the Nagarik Committee forcibly entered into the house of the appellant and injured the inmates of the house. In view of such incident, a General Diary was lodged in the local police station and subsequently, the respondent lodged complaint u/s 498A of the Indian Penal Code against the appellant and other members of the family. All of them were arrested and subsequently, were released on bail. She forcibly occupied a portion of the house of his father after the institution of the suit.

3. The respondent contested the suit by filing written statement thereby denying the material allegations made in the plaint and the defence of the respondent may be summed up thus:

(1) All the allegations made against the wife were false. On 8th April, 1988, the appellant along with his divorced sister tried to set fire in her Sari as the respondent told that there was no talk of giving dressing table at the time of marriage. The appellant and his divorced sister began to beat her, as a result, the respondent had

fallen ill and ultimately, she left with her brother to the respondent's house at Dum Dum on 24th April, 1988.

(2) On 27th May, 1988, the respondent went to the appellant's house at Behala after being recovered from illness but the appellant's father and the divorced sister forcibly drove her out from the house and threatened her with dire consequence if the respondent came to the house of the appellant any further. The appellant told the respondent that he would marry his previous girlfriend after divorcing the respondent. The allegation that on 27th July, 1988, the wife and her brother and other antisocial elements came to the house of the appellant and abused the family-members was a false statement and the diary lodged was based on false story. It was equally false that the respondent removed all her ornaments and clothing to her father's house.

(3) The appellant at the rented house, on several occasions, forced the wife to stay outside the room and tortured her. It was absolutely a false allegation that she used to come back at late night as alleged. The respondent was attacked with Cholera in the rented house but at that time, the appellant left the respondent and lived at his father's house. The local people helped the respondent from recovering from the illness. It was absolutely false to allege that the wife ever asked the husband to send his two sisters in boarding house and the father to an old age home.

(4) The husband had a love affair with a girl from the childhood which was disclosed by the husband after the marriage, and the appellant married the respondent with an intention to grab the ornaments and the clothing of the respondent, as she was a Central Government employee. The appellant used to often beat the respondent. After returning from Puri, the appellant started beating, slapping and torturing the respondent. However, the mother-in-law of the respondent was very much kind towards the respondent and she advised the appellant not to beat the respondent. The appellant made several General Diaries before the local police station. Once the appellant and his divorced sister tried to burn the respondent when she was asleep at the house of the appellant. At the intervention of the well-wishers of the respondent, the rented house was taken but after the appellant physically assaulted the respondent, the members of the Mahila Samity helped the respondent to enter the house of the appellant on 8th March, 1990 and from that date, the parties started living as husband and wife in the same room sharing the same bed.

(5) The respondent is a service holder being an upper division clerk at A.G. Bengal and wants to live with the appellant as husband and wife but the intention of the appellant was to drive out the respondent with a motive to marry another girl and to grab the ornaments of the respondents. Even after the institution of the suit, the parties were leading conjugal life as a husband and wife and therefore, the suit was liable to be dismissed.

4. At the time of hearing, five witnesses including the appellant gave evidence in support of the case of the appellant while six witnesses including the respondent deposed in opposing the claim.

5. As pointed out earlier, the learned trial Judge by the judgment and decree impugned herein has disbelieved the case of the appellant and, therefore, dismissed the suit.

6. Being dissatisfied, the husband has come up with the present first appeal.

7. After hearing the learned counsel for the parties and after going through the materials on record, we find that the parties were unhappy from the very beginning of the marriage. The allegation of the husband in this regard was that the wife wanted to make him a domesticated son-in-law and that is the cause of all trouble, while the wife alleged that the two sisters of the husband made her life miserable in the matrimonial home and they even tried to kill her by setting fire on her wearing apparel. There is no dispute that the Nagarik Committee and the local Mahila Samity intervened at the instance of the wife and on their advice, a separate tenanted accommodation was taken in the name of the wife in a nearby place. Such effort, however, was not found to be successful. According to the husband, due to cruel treatment of the wife in the rented accommodation, he was compelled to leave the said rented house and come back to his father's house, whereas, according to the wife, it was the husband who misbehaved with her and left her in the said rented accommodation. The wife, however, spoke high of her mother-in-law and stated that she used to protect her from the misbehaviour of her son and daughters. The mother of the husband died in the year 1989.

8. The suit was filed in the month of February 1990 when the wife was not staying in the house of her father-in-law. During the pendency of the suit, the wife with the help of the local people forcibly entered in the house of the father of the husband and occupied one of the rooms and further trouble started leading to the initiation of the criminal case u/s 498A of the Indian Penal Code against all the members of his family and consequently, all of them were arrested and subsequently released on bail. The said proceedings are still pending after framing of charges. The wife in her deposition admitted that with the help of the Mahila Samity, she got entry in the said house in the month of March 1990 and she claimed that she had been staying in the said house with the appellant as a husband and wife till the death of her father-in-law. There is no dispute that one of the sisters of the husband has also died in the meantime.

9. The learned trial Judge was of the view that initiation of the criminal proceedings against the husband and the other members of the family could not amount to cruelty as charge has already been framed and at that stage, one could not presume innocence of the husband. Moreover, according to the learned trial Judge, the wife had every right to start criminal proceedings if any crime was committed by the

husband against her. We fully subscribe to the aforesaid view taken by the learned trial Judge. However, we, in this matrimonial proceeding for divorce, cannot approve the action of the wife of forcefully entering the house of the husband when a suit for divorce had already been filed against her on the ground of cruelty. She had her rented accommodation where she was staying and had also the paternal house at Dum Dum. She is an employee of the Central Government and is not a helpless lady in that sense of the term and not even dependant upon the husband in anyway. In our view, once a matrimonial suit has been filed, the wife has no right to have a force entry in the house of her husband against his will if she is provided with maintenance by the husband. In the case before us, the respondent being an employee of the Central Government, she is quite capable of maintaining herself and thus, she had no right to enter the house of the husband by the help of the local people. The sole object of the respondent was to frustrate the suit by contending that she had been staying in the same room as husband and wife and she has actually taken such plea in this proceeding. We, however, do not believe such assertion of the wife after taking into consideration the fact that the she has initiate proceedings u/s 498A of the Indian Penal Code during the pendency of the suit and all the members of the family were arrested: No reasonable person will believe the statement of the wife that the husband is staying with her notwithstanding the pendency of the criminal case where charge has been framed and he is an accused person along with other members of the family. Such wrongful entry in the house with the help of local people has definitely caused humiliation of the husband, an employee of the defence service, in the estimation of the local people and in the facts of the present case positively amounts to cruelty. We further find that the wife in her written statements made specific allegation that the husband, in order to marry his girlfriend and to misappropriate her ornaments, filed the suit for divorce. In evidence, however, the respondent did not lead any evidence in support of such allegation about the moral character of the husband and no suggestion was even given in cross-examination of the husband that he had any illicit relation with any girl. We, therefore, find that the wife has made baseless allegation against the husband in the written statement about the desire of the husband to marry any other lady and such act also amounts to cruelty.

10. Therefore, even if we hold that the husband has failed to prove that the wife used to allege his illicit relation with his own sisters, we are satisfied that the subsequent behaviours of the wife towards the husband definitely amount to cruelty. It appears that on the pressure of the wife and the members of the local Nagarik Committee, a separate rented accommodation was taken and that too, in the name of the wife but in spite of such fact, the parties could not live peacefully. No specific cause could be pointed out by the wife showing the reason of the discord and the only defence taken in the written statement as regards the desire to marry the girlfriend has not been proved. In the rented house, the sisters of the husband were not there and therefore, they could not be blamed for the

unhappiness of the parties in that rented accommodation. The husband, however, alleged that the respondent used to come late at night and did not cook for the husband, which was denied by the wife. The fact that the husband used to take lunch in his office canteen has been admitted by the wife. We find from the deposition of the wife that she is a pathological liar as would appear from various deliberate false statements made in course of deposition. She stated that she came to know of the filing of the suit on 12th August, 1990 whereas it appears from the order-sheet that she entered appearance in the suit on 26th April, 1990 and repeatedly prayed for time to file written statement. In her cross-examination, she stated that she lodged complaint u/s 498A of the Indian Penal Code against her father-in-law and the sisters-in-law and not against her husband although it appears that the husband was one of the accused persons and was arrested. She further stated in one place of her deposition that in the rented accommodation, both of them were happy and there was no torture upon either of the parties. (See: page 112 at the penultimate paragraph of the Paper Book). Such statement is inconsistent with her other statements as regards the alleged misbehaviour of the husband in the rented accommodation. She has alleged conspiracy of killing her against the sisters of the husband and in the same breath, expressed her desire to stay with her husband along with her sisters-in-law. She specifically stated that she never created pressure to take any rented house but the facts remain that the said tenancy was taken in her name and it was not the husband who of his own took such tenancy in the name of his wife.

11. On consideration of the entire materials on record we, thus, find that from the very beginning the wife and her family, took shelter under the local organisations controlled by the political party and created pressure upon the husband, first to become a domesticated son-in-law and then to take rented accommodation for the purpose of living separately from the old parents and the dependant sisters of the husband. Even thereafter, she could not be happy and when, the suit was filed after the death of her mother-in-law, she with the help of the local political party entered forcibly in the house of her husband and started criminal proceedings against the husband and the members of his family. However, in Court she took a stance that she was ready to live with her husband. All these facts taken together will lead to the conclusion that she was intolerant in her attitude and her aforesaid acts definitely amounted to cruelty.

12. We now propose to deal with the decisions cited on behalf of the wife.

13. In the case of [Swapan Kumar Ganguly Vs. Smiritikana Ganguly](#), it was established from the evidence on record that the husband was guilty of physical and mental cruelty, and in such circumstances, it was held that there was cogent ground of the wife to stay away from the husband and thus, the husband was found to be not entitled to get a decree for divorce on the ground of desertion. The said decision, therefore, does not help the wife in this case where she was found to be guilty of

cruelty towards her husband.

14. In the case of *Chetan Dass v. Kamla Devi*, reported in AIR 2002 SC 1709, the relief of divorce was claimed by the husband on the ground that the marriage had been broken down irretrievably. It was found that the husband was leading adulterous life and in such circumstances, it was held that the husband could not take advantage of his own wrong. In the case before us, from the very beginning, the wife refused to come back to the matrimonial home and when separate rented residence was taken in her own name, she could not live peacefully and ultimately, after filing of the suit for divorce, forcibly entered into the matrimonial house with the help of the local people although at that point of time, she was staying in her rented accommodation. Thus, from the aforesaid fact, we are unable to conclude that the husband was taking advantage of his own wrong.

15. In the case of *Harish Kumar Ledwani v. Smt. Anita Ledwani*, reported in AIR 2003 M.P. 197, the husband neither specifically pleaded the particulars regarding his allegation of cruelty with him by wife, nor did he lead any satisfactory evidence in that regard. On the other hand, the evidence on record indicated that it was the husband who was maltreating and assaulting wife and was thus cruel to her. In such a situation, the Madhya Pradesh High Court was of the view that the husband could not get a decree for divorce on the ground of cruelty. In the case before us, the particulars of cruelty have been specifically pleaded and the subsequent events were also incorporated by way of amendment and wife admitted in her evidence that she took the help of the local Mahila Samity for entering into the matrimonial home during the pendency of the suit for divorce leading to the filing of the criminal proceedings. Therefore, the principles laid down in the said decision cannot have any application to the facts of the present case.

16. The decisions cited by the learned advocate for the respondent, therefore, do not help his client in any way.

17. Although Mr Mukherjee as a last resort tried to impress upon us that the divorce is a stigma on a woman in Indian society and thus, we should make endeavour of preserving the marriage. In the case before us, the wife having been found to be guilty of cruelty we do not find any reason to refuse the just prayer of divorce. At this stage, we propose to rely upon the following observations of the Apex Court in the case of [Naveen Kohli Vs. Neelu Kohli](#), in answer to the submission of Mr Mukherjee:

"Undoubtedly, it is the obligation of the Court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court

would encourage continuous bickering, perpetual bitterness and may lead to immorality.

In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond."

18. This is a case where we have decided to grant decree for divorce after being satisfied with the ground of cruelty and not on the mere ground that the marriage tie has broken down forever.

19. The learned trial Judge, as it appears from the judgment and decree impugned, did not look into aforesaid misconduct of the wife pointed out by us and erroneously held that there was no wrong on the part of the wife in forcing entry into the house of the husband during the pendency of the suit for divorce and pendency of the criminal case after filing of charge-sheet u/s 498A of the Indian Penal Code rather suggested that the husband was *prima facie* not innocent.

20. We, therefore, set aside the judgment and decree passed by the learned trial Judge and hold that the husband has successfully proved that the wife was guilty of cruelty and consequently, we pass a decree for divorce on such ground. In the facts and circumstances, there will be, however, no order as to costs.

Rudrendra Nath Banerjee, J.

21. I agree.