

(2003) 12 CAL CK 0048

Calcutta High Court

Case No: F.A. No. 238 of 2001

Abhijit Das Gupta

APPELLANT

Vs

Rita Das Gupta

RESPONDENT

Date of Decision: Dec. 2, 2003

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13, 23(1)
- Penal Code, 1860 (IPC) - Section 406, 498A

Citation: (2004) 3 CHN 266 : 108 CWN 1167

Hon'ble Judges: S.K. Gupta, J; Alope Chakrabarti, J

Bench: Division Bench

Advocate: Bidyut Banerjee, Dilip Kumar Mondal and Neetu Pachal, for the Appellant; Jahar Lal De and G. Guha Thakurata, for the Respondent

Final Decision: Dismissed

Judgement

Alope Chakrabarti, J.

This appeal arises out of a judgment and decree passed in Matrimonial Suit No. 45 of 1995 initiated on an application u/s 13 of the Hindu Marriage Act, 1955 by the husband petitioner.

2. The facts which are relevant for disposal of the present appeal and stated in the petition u/s 13 aforesaid are that the petitioner appellant and the respondent wife were married according to Hindu Rites on August 2, 1993. The petitioner husband is a physician having his private practice and the respondent wife is a service holder engaged in a computer firm. After few days of the marriage, the respondent started expressing various abnormal behaviour and started inflicting cruel treatment to the petitioner both physical and mental. The respondent wife is a person of suspicious mind and is to express suspicion against the character and integrity of the petitioner. Respondent wife always abused the petitioner with filthy languages and she generally stayed at her paternal house in spite of protest by the petitioner, The

respondent wife is suffering from schizophrenic syndrome and occasionally burst out with anger without any cause and on several occasions, in such circumstances, physically assaulted the petitioner husband by fists and blows. On one occasion, she tried to throw a water bottle towards the petitioner who somehow escaped from hurting himself due to such throwing. The respondent wife intentionally never allowed the petitioner husband to have a normal sexual intercourse and probably for that reason there has been no issue of the parties. The respondent wife of and on threatened the petitioner husband and other members of the family that she would give a good lesson to them by making false allegations of torture to the police and thus she kept everybody of the family of the petitioner husband constantly frightened.

3. On such pleading of cruelty the suit was originally filed. Thereafter the. petition was amended by incorporating two paragraphs 9(A) and 9(b), wherein initiation of a proceeding u/s 498A/406 of the IPC and taking away of the goods belonging to the respondent wife from the matrimonial home, have been pleaded.

4. The wife respondent filed her written statement not only denying the allegations made in the petition but also pleaded, inter alia, that just 10/12 days after the marriage the respondent wife noticed that Smt. Rupa Das Gupta the fourth sister-in-law (Jaa) of the respondent instigated the petitioner husband against the respondent and the petitioner husband was in the love with the said sister-in-law. Allegations of certain incidents relating to the said relation between the petitioner husband and the said sister-in-law have been also stated in the written statement. It was further stated that ultimately being assaulted by the petitioner and the members of his family with fists and blows and sustaining bleeding injuries on her person she was driven out from her matrimonial home on 9th March, 1993 and she was not allowed to take any of her belongings.

5. When the suit was heard the husband petitioner deposed as P.W. 1 and also examined Smt. Rupa Das Gupta, the said sister-in-law as P.W. 2 and her husband Sri Alope Das Gupta as P.W. 3.

6. The wife respondent deposed as D. W. 1 and she also examined her brother Sri Goutam Sen as D.W. 2, her office colleagues Smt. Pritha Majumder as D.W. 3 and Smt. Sikha Goswami as D.W. 4.

7. By the impugned judgment the suit was dismissed and hence the appeal was filed.

8. Heard Mr. Bidyut Kumar Banerjee the learned Counsel for the appellant and Mr. Jahar Lal Dey the learned Counsel for the respondent.

9. On consideration of the petition u/s 13 of the Hindu Marriage Act, we find that though allegation of cruelty by the wife to the husband has been pleaded but no incident has been stated nor any particulars of any such cruelty has been pleaded.

The allegations are bald in nature. The evidence of the husband petitioner as PW. 1 shows that the first allegation of cruelty is that the respondent wife was not staying in the matrimonial house constantly and she was in the habit of coming to father's house every now and then and the respondent wife was disinclined to stay in the joint family and she used to abuse the husband and his family members with abusive language. The husband stated as a doctor he was of opinion that the wife was suffering from schizophrenic syndrome. In the evidence the husband also has not been given any particulars of any such incidents. The said ground thus has not been substantiated.

10. With regard to withdrawal from the society of the husband, it has been stated in the evidence by the husband that the respondent wife did not initially allowed him to have sex with her and there is no issue of the couple. This statement itself shows that refusal, if any, on the part of the wife was at the initial stage only and therefore, this cannot constitute a ground for relief of the husband.

11. With regard to allegation of cruelty by reason of initiation of a proceeding under Sections 498A and 406 of the IPC as the said proceeding itself is still pending, at this stage, it cannot be held that the same amounted to any cruelty.

12. About the wife's leaving the matrimonial home finally, the husband has alleged that the wife respondent left the matrimonial home on her own. There is neither any pleading nor any evidence of the husband that he tried to bring the wife back and in spite of any such attempt the wife did not come. Therefore, this allegation also does not stand. Moreover, the respondent wife has made allegations about the facts and circumstances in which she had to leave the matrimonial home. We do not find any concrete material to hold the said case of the wife respondent is frivolous and therefore, we hold that the wife respondent had to leave the matrimonial home under compelling circumstances.

13. P.W. 2 Smt. Rupa Das Gupta, sister-in-law also supported the allegation made by the husband petitioner but she has also not given any particulars of any incident which can be accepted as cruelty. Same is the position with regard to P.W. 2 the brother of the petitioner husband.

14. Therefore, the petition filed by the husband petitioner for divorce on the ground of cruelty has not at all substantiated either in the pleading or in the evidence on which such decree can be passed.

15. Mr. Bidyut Kumar Banerjee, learned Counsel for the husband contended that the wife respondent in her pleading and evidence made reckless allegations in respect of character of the petitioner husband involving the sister-in-law and this also amounts to cruelty. In support of this contention, reliance was placed on the judgment in the case of [Smt. Sneh Prabha Vs. Ravinder Kumar](#), . It is also contended that when the marriage admittedly has been broken finally and irretrievably, the decree for divorce should be passed and in this connection, reliance was placed on

the judgment in the case of Nandita Roy (Nee Ghosh) v. Asish Kumar Roy, reported in 1996(2) CLJ 504 , [V. Bhagat Vs. Mrs. D. Bhagat](#), and Sukhomoy Bag v. Jaya Bag, reported in 1996(1) CHN 210.

16. Mr. Jahar Lal Dey, learned Counsel for the respondent wife contended that allegations made by the wife in respect of character of the husband petitioner involving the sister-in-law have not only been pleaded and deposed by the respondent wife but contemporaneous documents being several letters have been proved by the respondent wife wherefrom it is apparent that the allegations made by the respondent wife against the petitioner husband cannot be alleged to be reckless or baseless amounting to cruelty and the petitioner husband is not entitled to get a decree for divorce on the said ground also.

17. In view of the above finding on facts, the judgments in this connection referred to by the learned Counsel for the husband petitioner does not require any detail discussion.

18. The last contention on Mr. Banerjee, appearing for the husband petitioner is that admittedly suit was filed on 2nd March, 1995 and the respondent wife herself has admitted that she stayed in the matrimonial home till 9th March, 1995 and therefore, the allegation by the wife as regards cruelty to her by husband petitioner as is apparent from the records, stood condoned and therefore, applying the principles underlying Section 23(1)(b) of the Hindu Marriage Act, defence of the wife in respect of such allegations are no more available to the wife. It is argued on behalf of the husband that in such view of the matter, the contention on behalf of the wife regarding the allegations made by the wife in course of the proceeding does not form a ground of cruelty, is not available and therefore, on the said ground of cruelty, this Court should pass decree for divorce.

19. We have considered the legal provisions as contained in Section 23(1)(b) and we find that the same only prohibits the petitioner from getting a decree for divorce on the ground of cruelty if he/she already condones it. But this cannot be a ground on which the wife loses her defence against the allegation made against the husband rendering such allegation as amounting to cruelty which entitled the husband to a decree for divorce. In view of the aforesaid finding no relief can be granted on the present appeal and the appeal is dismissed hereby.

S.K. Gupta, J.

20. I agree.