

(2019) 01 RAJ CK 0355

Rajasthan High Court (Jaipur Bench)

Case No: Civil Misc. Appeal No. 5711 Of 2017

Ashok Kumar Sharma

APPELLANT

Vs

Uma Tiwari

RESPONDENT

Date of Decision: Jan. 21, 2019

Acts Referred:

- Hindu Marriage Act, 1955 - Section 9
- Indian Penal Code, 1860 - Section 406, 498A

Hon'ble Judges: Pradeep Nandrajog, CJ; G.R. Moolchandani, J

Bench: Division Bench

Advocate: K.N. Sharma, Subodh Sharma, H.K. Sharma

Final Decision: Allowed

Judgement

1 . This petition is directed against the judgment and decree dt. 27.09.2017 passed by Family Judge No. 1, Jaipur, whereby learned Court below has

dismissed the divorce petition and has declined to grant decree for annulment of marriage.

2 . Brief facts as divulged by the pleadings discloses that Ashok Kumar Sharma petitioner and Smt. Uma Tiwari got married on 18.02.2006 at

Bharatpur, upon one or the other pretext Smt. Uma Tiwari expressed aspersion and reluctance for forging relations and after marriage petitioner went

back to place of her employment to other town, whenever petitioner visited Naraina, respondent did not please and uttered that petitioner has got no

reason to visit there, she often asked the petitioner to buy a good property in her name at Jaipur, where she could reside, twice she got pregnancy

terminated and uttered that she did not like petitioner, so doesn't want to permit survival of lineage of his family.

3 . In the written statement allegations levelled in the pleadings have been refuted and defendant-respondent has pleaded that she was maltreated for demand of dowry, despite bestowing of sufficient dowry she was perpetrated with cruelty and given beatings by her husband and was taunted upon and beatings were given by her mother-in-law. She was never extended with love rather was forced to pay salary amount and was always ill-treated and was forcibly ousted from in-laws' house and thus compelled to file criminal FIR against her in-laws, the primary FIR was coercively persuaded to be compromised and in subsequent one, charge-sheet has been filed and criminal trial is sub-judice against her husband and his parents. She has been forced to stay separate owing to safety and has thus denied the pleadings agitated in the plaint.

The Court below, while dealing with the evidence of both the sides, has declined to grant decree for divorce.

4. Main thrust, of the arguments as emerges from the written submissions from the side of the appellant/petitioner is that respondent wife of the petitioner has shown apathy to the matrimonial bond, she has always remained disgraceful and reluctant to reside with the petitioner husband and is willfully staying in another town, whenever petitioner visited her she became indignant and shown her displeasure, she has always insisted to get a property for her in Jaipur, she has lodged frivolous cases against her husband petitioner. Since 2011 she is disassociated and is living separate life, petitioner has been treated with cruelty, she has deserted matrimonial company, relying upon the judgment rendered by coordinate bench in Smt.

Meeta Sharma vs. Shashikant Bhardwaj & Anr. [DB CMA No. 4071/2007 decided/pronounced on 24.07.2017, it has been submitted that the petitioner was ill-treated and subjected to mental cruelty and desertion without logical reason, so he is entitled for getting the marriage annulled, therefore, a decree for divorce needs to be awarded, which the Court below has wrongly declined.

Per contra learned counsel for the respondent, while relying upon the following authorities Suman Singh vs. Sanjay Singh, 2017 (1) WLC (SC) Civil

666, Ramchander vs. Ananta, 2015 (1) WLC (SC Civil 537, Manohar Lal vs. Smt. Durgesh, 2016 WLC (Raj.) UC ,1 Smt. Sudha Devi vs.

Vedprakash Saini, 2018 (2) WLC (Raj.) UC 538, Shivanshu Atre vs. Smt. Reenu Atre, 2018 (2) WLC (Raj.) UC 67,2 has submitted in the written

submissions that petitioner has failed to adduce positive evidence in respect of the cruelty, respondent is not living separately of her own wish but she

has been ousted and compelled to live separately, she did not ask for buying any property in her name, the pleadings and evidence produced are

contradictory and has admitted that the couple is living separately since May 2011 since cruelty has been perpetrated upon defendant-respondent and

she has been tortured for demand of additional dowry, though ample bestowings, were given in the marriage but groom side is greedy, they always

insisted for bringing more dowry, respondent wife has severely tortured and beaten, even two FIRs for the offence under Secs. 498A and 406 of IPC

have been lodged and primary FIR was persuaded to be withdrawn subsequent is culminated in chargesheet, so husband is facing a criminal trial,

respondent wife has been forced to stay away from matrimonial bond and cannot live in insecure atmosphere, she can only join if atmosphere of

secured life is assured without any cruel behavior, petitioner does not deserve any sympathy and appropriate orders be passed.

5 . Heard and perused the record thoroughly, it evinces from the evidence that petitioner Ashok Kumar Sharma has stated that his marriage was

solemnized in simple way and no dowry was obtained, ratifying contents and pleadings of the plaint he has stated that his defendant wife was not

pleasant with the marriage and extended unbecoming behavior and she never behaved normally, rather on the very first night of the marriage, she was

indignant and shown herself to be wearisome and remained frigid and always behaved in a disgraceful way, she begotten a male child on 03.08.2008

but on visit to see the new born, members of his family-did not extend warmth and in laws' behaved indecently and ousted the deponent and his

family, he has asserted that FIR under Secs. 498A, 406 and 323 of IPC was lodged against him and he was arrested by the police, he has also stated

that petition seeking annulment of marriage was earlier withdrawn by him and in cross-examination he has also averred that petition seeking restitution

of conjugal rights under Sec. 9 of Hindu Marriage Act was withdrawn, he did not further visit to meet his son because of threats extended by her

family members, bridal side did not supply bio-data of bride at the time of fixation of the marriage, he has admitted that he did not file documentary evidence in respect of termination of pregnancy by his wife, he has also stated that as such he has candidly stated that his wife used to visit to his workplace amicably and resided together happily. PW2 Prahlad Ram Sharma son of Late Harnath Ram Sharma has stated that whenever defendant visited her bridal home, she used to quarrel with Ashok and his mother and would say that she won't render her salary to the parents of Ashok and was adamant to get a house in Jaipur in her name, in cross examination he has stated that he is a neighbour of Ashok Kumar and is specific in saying that Uma did not demand house or behaved disgracefully before him. PW3 Jaiprakash Sharma son of Babulal Sharma has also stated akin to the version of PW2, though in cross-examination he has stated that nothing in the nature of the salary, won't be given to the parents of Ashok was uttered by Uma before him, this witness is a neighbour as well as relative of the petitioner. PW4 Banwarilal Sharma son of Ramjilal Sharma, father of Ashok Kumar, has almost narrated all the facts alike petitioner son, in cross-examination he has stated that in dowry case Ashok was arrested and the dowry articles were recovered, he has also stated that the litigation was started from the side of his son Ashok and at the time of delivery of baby, they were not present.

6. Smt. Uma, defendant-respondent has stated that her parents had given all the articles in dowry alongwith ' one lakh cash and a bank-draft of ' 50,000/- was also given after sometime of the marriage, her mother-in-law asked to pay salary of the deponent and demanded account of retro salary also, her husband used to torture on issue of additional dowry and plaintiff also demanded dowry whenever he talked on telephone, they used to beat her for the dowry and was also compelled to obtain loan borrowings for ' one lakh from SBBJ, which were given to Ashok and his parents but they kept on harping for more money, she never demanded any immovable property in her name, when she became pregnant, she was not taken care of, rather atrocity was perpetrated upon her, so she became helpless and lodged a report No. 100/2010 on 13.09.2010 with Police Station Naraina, but to

avoid unpleasant, they tactfully persuaded the deponent for compromise, when she visited to perform family obligations at the time of engagement of her brother-in-law, then also she was compelled to bring money and it was demanded, on expressing inability, she was beaten and threatened as to why she was there and was ousted, on 16.10.2011, she and her son were threatened to be abducted and she was given beatings but was saved by the public and left after threatening of untoward, so again she lodged a FIR with Police Station Naraina and a challan has been filed by the police and criminal case is sub-judice against the husband petitioner.

She never tried to conceal her actual age and to grab her salary her greedy in-laws' always harassed her, she has been treated with cruelty, under compulsion, she is residing separate alongwith her child, in cross-examination she has stated that she is working as a lecturer in a school and Ashok is a teacher grade IInd, the subsequent FIR dt. 17.5.2012 lodged for the offence punishable under Secs. 323, 354, 504, 498A and 406 of IPC against Ashok and his parents is asserted by Smt. Uma Tiwari, she used to go Sambhar Lake Court to attend her case sub-judice against her husband under Sec. 498A of IPC, a counsel is engaged there.

7. Scrutiny of the material available on the record indisputably depicts that Smt. Uma Tiwari has lodged two FIRs for the offences punishable under Sec. 498-A, 406 of IPC against her petitioner husband being FIR No. 100/2010 which was later compromised, subsequently FIR No. 81/2012 has been lodged by Smt. Uma Tiwari against her husband and challan is stated to have been filed, besides it, petitioner Ashok Kumar Sharma earlier launched proceedings under Sec. 9 of Hindu Marriage Act for restitution of conjugal rights but withdrew the same. Proceedings under maintenance were also lodged by Smt. Uma Tiwari and monthly maintenance in the tune of Rs. 2,000/- per month towards maintenance of child ""Meet Sharma"" is being paid by the petitioner Ashok Kumar Sharma. It is also not disputed that the couple is residing separately since May 2011. Petitioner Ashok Kumar Sharma has averred that marriage took place without dowry, whereas it emerges from the evidence of Smt. Uma Tiwari that a draft of 50,000/- was given towards purchase of dowry articles by the bridal side alongwith other bestowings.

8. It is an admitted position that petitioner and respondent are employed as teachers and both are serving at different places in different towns and have shown reluctance to join matrimonial consortium. Even during the pendency of appeal an inclination was shown that parties are trying to resolve the matrimonial discord amicably but have failed to join matrimonial consortium, as such the matrimonial relations have become bitter and appears to be broken down in irreconcilable and irretrievable way.

9 . Thus, it emerges from the examination of material that multiple litigation have taken place between the couple, Smt. Uma Tiwari has been subjected to cruelty and with persistent demand of additional dowry, she has lodged two FIRs and challan in criminal proceedings is sub-judice against the petitioner husband Ashok Kumar for the offences punishable under Secs. 323, 354, 504, 498A and 406 of IPC and admittedly the couple is separated from May 2011, in that view of the matter, we are of the view that learned trial Court has faulted in not granting the decree for divorce and has thus passed erroneous order by declining the relief sought and we are of the view to annul the marriage of the couple. Therefore, the appeal is allowed and order impugned is set-aside. Marriage between the petitioner and respondent is annulled. Divorce decree be prepared accordingly.