

* **HIGH COURT OF DELHI : NEW DELHI**

MAT App. No.12/2007

% Judgment reserved on: 16th July, 2008

Judgment delivered on: 1st August, 2008

Sh.Jitender Singh
S/o Shri Ram Singh
R/o House No.20,
Dwarkadheesh Colony,
Gandhi Road, Murar,
Gwalior, (M.P.)

....Appellant

Through: Mr.Param Singh with
Mr.G.P.Singh, Adv.

Versus

Smt.Yashwanti
W/o Shri Jitender Singh,
and D/o Shri Gulab Singh,
R/o Village Lado Sarai,
Mehrauli, New Delhi.

...Respondent.

Through: Mr.Inderpal Khalkar,
Adv.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

The present appeal under section 28 of the Hindu Marriage Act, 1955 (for short as the "Act") has been filed against the judgment dated 24.11.06 passed by Ms. Anju Bajaj Chandna, Delhi vide which, the Trial Court has dismissed the divorce petition filed by the Appellant/Husband under section 13(1)(ia) of the Act on the ground of cruelty, by holding that Respondent/Wife has not committed any cruelty upon the Appellant so as to grant the decree of dissolution of marriage.

2. The brief facts of this case are that the marriage between the parties was solemnized on 26.02.01 at Delhi as per Hindu rites and ceremonies. After the marriage, parties lived and cohabited in the matrimonial home, but no issue was born to them.

3. Later on, there started differences between the parties. It is alleged by the Appellant that on 03.03.01,

the mother of the Respondent created scene in the matrimonial home of the Respondent at village Chamarian in Rohtak on an inconsequential issue of birthday of her husband not being attended by the newly wedded couple i.e. parties herein.

4. It is further stated that on 09.03.01, the respondent again created a scene in the house of Maternal uncle of the Appellant which made a very awkward situation for the Appellant and the entire occasion of Holi was poisoned by the misbehavior of the Respondent, which aggravated the differences.

5. Further, the Respondent not only created bitterness in the relations in the family by her conducts but also disclosed that she was in love with some other boy prior to marriage and the present marriage was under the pressure of her parents. The Respondent flatly asked the Appellant to divorce her as she wanted to remarry with her earlier love.

6. It is asserted by the Appellant that the grandmother of the Appellant expired on 04.08.01 at native village Chamarian in Haryana, where the Respondent came only for a day with her parents on the request of the Appellant and disclosed that she was pregnant and had aborted as she did not want to be a 'Mother'.

7. It is further alleged that on 10.04.02, the Respondent left her matrimonial home and came to her parental home. The Appellant tried to take her back to matrimonial home but she flatly refused to join him and his society and she had made up her mind to get divorce from the Appellant.

8. The Appellant and their family members did their best to persuade the Respondent and her parents to restore the matrimonial life and not finding any conducive atmosphere sought the intervention of mediators and common relatives and friends but the Respondent was hell bent to sever the matrimonial ties

with the Appellant. Thus, the Appellant had no other option but to file the petition of Divorce.

9. It is also alleged that Respondent after getting the information that a divorce petition has been filed by the Appellant, started misusing and abusing the provisions of the law meant for those wives who are victimized by their delinquent husbands with a view to ulterior motives and under the unscrupulous influence of her parents. A complaint was made to CAW Cell, Friends Colony, against the Appellant and his family members including the relatives. This complaint was intended to harass and extract material considerations from the Appellant and his family members. The complaints dated 04.03.03 and 25.03.03 were withdrawn as an effort had to be actualized for restoration of marital status. But the Respondent revived her complaint dated 25.03.03 on 11.12.03 against the Appellant and his family members which led to the registration of FIR No.1052/03, under section 406/498-A/34 IPC. Six accused persons had to

get bail from the Courts and had to face false and frivolous allegations by the Respondent.

10. The Respondent filed petition for maintenance under section 125 Cr.P.C. on 08.04.03 after the filing of the divorce petition by the Appellant and the Appellant has been making regular payment of Rs.3,000/- per month to the Respondent in compliance of the order of the M.M., New Delhi on the maintenance application of the Respondent.

11. In reply filed on behalf of the Respondent, it is stated that the Appellant has caused utmost mental and physical torture, beatings and cruelties upon the Respondent for the sake of demand of dowry and therefore the Respondent had filed an application before the CAW, but the Appellant compromised with the Respondent on 07.06.03 with an assurance that he will not harass and torture the Respondent in future. Thus, the Respondent joined the matrimonial home on 07.06.03, but after one month, the Appellant again

started causing mental and physical torture and cruelties upon the Respondent. The Appellant threatened the Respondent and gave merciless beatings and did not allow the Respondent to live peacefully in the matrimonial home. The Appellant thereafter, again turned out the Respondent from the matrimonial home on 07.07.03 in three wearing clothes.

12. The Respondent therefore filed an application against the Appellant in the office of CAW. The Respondent denied that she came only for a day or that she disclosed that she was pregnant and had aborted as alleged. Further, it is stated by the Respondent that the Appellant did not make any effort to reconcile and live together though Respondent offered her willingness to live with the Appellant, but the Appellant neglected and refused to allow her to live at the matrimonial home.

13. It is further denied by the Respondent that the marriage has gone to the stage of irretrievable break down and all the scope of restoration had been failed as alleged. There is no question of breaking down of the marital tie between the parties as the Respondent is willing to reconcile and live together with the Appellant, which offer was made repeatedly by the Respondent, but the Appellant himself wants to break the marital relations and remarry and fetch more dowry articles. The Appellant could not prove and substantiate his said false averments of breaking down of the matrimonial relationship and as such there is no question of entitlement for decree of divorce. Thus all the grounds as stated by the Appellant are false, frivolous and baseless and have been made just to harass, humiliate and torture the Respondent.

14. It has been contended by Ld. Counsel for the Appellant that the Trial court has failed to appreciate the factual circumstances enveloping the grounds of cruelties not only in the minds of the Appellant and

Respondent but also in their matrimonial and individual lives and gravely erred in factualizing the isolatory events in the light of technical compliance of the evidentiary principles, which apparently led to the Court to the subjective satisfaction that the cruelties were not reasonably sufficient to make up the mind for granting a decree of divorce in favour of the Appellant, against the Respondent. The matrimonial offence is a continuing offence and the elements of the said offence should have been brought before the Court below through the Counsel by some applications and proceedings during Trial.

15. Further, the Trial Court has failed to appreciate that the reconciliation efforts had miserably failed and the parties had not been in a situation to restore their matrimonial ties. The marriage between the Appellant and the Respondent had already gone to the stage of irretrievable breakdown and all the scope of restoration had already failed and thus the Court ought to have accepted the most relevant factum of

irretrievable breakdown of matrimonial relationship and award a decree of divorce in favour of the Appellant against the Respondent.

16. On the other hand, it is contended by Learned Counsel for the Respondent that Appellant could not prove any incidence regarding cruelty qua the Respondent. No independent witness has been examined by the Appellant regarding the incidence which took place in the house of maternal uncle, as no one from his family including his maternal uncle had come to depose in his favour. With regard to the harassment and torture being caused to the parents of the Appellant, none of his parents and family members had appeared in the witness box.

17. Regarding the abortion, it is contended by Learned Counsel for the Respondent that as per the statement of the Appellant, no abortion took place in his presence nor he could give the date or the hospital

where the abortion was done. So, no ground of cruelty has been proved by the Appellant.

18. The cruelty is a ground for divorce under Section 13 of the Hindu Marriage Act, 1955 (for short as the “Act”). Section 13 provides, so far as it is material:

“13. Divorce.- (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(i) x x x

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) to (vii) x x x

Explanation- x x x”

19. The *Shorter Oxford Dictionary* defines “cruelty” as “the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness”.

20. The term "mental cruelty" has been defined in *Black's Law Dictionary* [8th Edition, 2004] as under:

"Mental Cruelty - As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse."

21. In 24 *American Jurisprudence* 2d, the term "mental cruelty" has been defined as under:

"Mental Cruelty as a course of unprovoked conduct toward one's spouse which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable. The plaintiff must show a course of conduct on the part of the defendant which so endangers the physical or mental health of the plaintiff as to render continued cohabitation unsafe or improper, although the plaintiff need not establish actual instances of physical abuse."

22. In ***Dr. N.G. Dastane v. S. Dastane, AIR 1975 SC 1534***, the Apex Court has observed as under;

"...whether the conduct charged as cruelty is of such a character as to

cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the Respondent".

23. In the case of ***Shobha Rani v. Madhukar Reddi***, ***AIR 1988 SC 121***, the Apex Court has observed as under;

"Section 13(1)(ia) uses the word "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behavior. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the Court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking

into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.”

The Court further observed;

“The context and the set up in which the word “cruelty” has been used in the Section seems to us, that intention is not a necessary element in cruelty. That the word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, that act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.”

24. In ***Praveen Mehta v. Inderjit Mehta, AIR 2002 SC 2582***, the Apex Court has laid down as to what constitute cruelty;

“Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behavior by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. Unlike the case of physical cruelty the mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehavior in isolation and then pose the question whether such behavior is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the

evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

25. The Apex Court in ***Vinita Saxena v. Pankaj Pandit***, AIR 2006 SC 1662, has observed as under;

“As to what constitute the required mental cruelty for purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home.

If the taunts, complaints and reproaches are of ordinary nature only, the court perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer.”

26. Human mind is extremely complex and human behavior is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behavior in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to

evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

27. In the instant case, the Appellant has alleged cruelty firstly, on the ground that mother of the Respondent misbehaved with the Appellant on the pretext that birthday of Respondent's father was not attended by the parties on 03.03.01. Nowhere in his appeal, it is pleaded that Respondent herself misbehaved or abused the Appellant on this ground. However, it is stated that on 09.03.01, Respondent quarreled with the Appellant on this account at the place of Appellant's maternal uncle's residence. On this occasion, the Appellant was allegedly insulted in presence of his maternal uncle and other family members and Respondent created scenes to such an extent that neighbours accumulated there.

28. In order to prove this incident, Appellant has failed to give any independent and supportive evidence as no one from his family including his maternal uncle

had come to depose his favour. There is no independent evidence on record that such kind of rude behaviour was adopted by the Respondent shortly after the marriage. Thus, in the view of the fact that the Respondent denied this incident in her pleadings as well as evidence, so in the absence of any evidence, this solitary incident cannot be a ground of cruelty, so as to grant dissolution of marriage and at the most, it is the normal wear and tear of domestic life.

29. Further, the Appellant has failed to establish the allegations regarding Respondent asking for divorce and the Respondent wanted to remarry her first love. Even during the cross examination of Respondent before Trial Court, no specific suggestions or questions were put to the Respondent in order to confront her with the pleadings of the Appellant. In such circumstances, no question of mental cruelty arises to the Appellant on this ground.

30. The Appellant has further detailed another ground of cruelty that Respondent informed the Appellant on 04.08.01 that she had become pregnant and got herself aborted. There is nothing on record to suggest that respondent ever became pregnant or got the child aborted without the consent of the Appellant. In fact the Appellant has no knowledge as to when and where the abortion was done. The Appellant has failed to establish this allegation.

31. The Appellant has also mentioned about the incident dated 28.03.02, whereby Respondent quarreled with the younger brother of the Appellant on the festival of Holi. No evidence has been brought on record to prove this incident, as neither the younger brother of the Appellant has come in evidence nor the Respondent was confronted by putting suggestion in this regard. Further, this incident nowhere constitutes cruelty on the part of the Respondent qua the Appellant.

32. The Appellant has filed the present petition for divorce and thus the onus lies upon him to prove the same. Here, both the parties stayed together as husband and wife even after filing of the divorce petition and this leads to the clear conclusion that the alleged cruelty stands condoned on the part of the Appellant.

33. In the view of the above discussion, it is clear that the Appellant has failed to prove the allegations of cruelty levelled against the Respondent. No grounds of cruelty are made out against the Respondent.

34. Therefore, the Appellant is not entitled to the relief of dissolution of his marriage with the Respondent on the ground of cruelty.

35. As regards to the contention of irretrievable breakdown of marriage, in the words of Justice Krishna Iyer, as early as 1971 in a case involving Muslim parties in ***Abu Baker Haji v. Manu Koya, (1971) ILR Ker 338;***

“ Trivial differences get dissolved in course of time and may be treated as teething troubles of early matrimonial adjustment. The stream of life lived in married mutuality washes away smaller pebbles, but that is not the case when the incompatibility of minds breaks up the flow of stream. In such cases breakdown of marriage is evident. So we recognize fact and accord divorce.”

36. In ***Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC***

511 the Apex court has observed as under;

“Now, we deem it appropriate to deal with the 71st report of the Law Commission of India on *‘Irretrievable breakdown of Marriage’*.

The 71st Report of the Law Commission of India briefly dealt with the concept of irretrievable breakdown of marriage. This Report was submitted to the Government on 7-4-78. In this Report, it is mentioned that during last 20 years or so, and now it would be around 50 years, a very important question has engaged the attention of lawyers, social scientists and men of affairs, should the grant of divorce be based on the fault of the party, or should it be based

on the breakdown of the marriage? The former is known as the matrimonial offence theory or fault theory. The latter has come to be known as the breakdown theory. It would be relevant to recapitulate recommendation of the said Report."

The Court has further observed as under;

"In the said Report, it is mentioned that restricting the ground of divorce to a particular offence or matrimonial disability, causes injustice in those cases where the situation is such that although none of the parties is at fault, or the fault is of such a nature that the parties to the marriage do not want to divulge it, yet such a situation has arisen in which the marriage cannot survive. The marriage has all the external appearances of marriage, but none in reality. As is often put pithily, the marriage is merely a shell out of which the substance is gone. In such circumstances, it is stated, there is hardly any utility in maintaining the marriage as a facade, when the emotional and other bonds which are of the essence of marriage have disappeared."

The Court has further observed as under;

“Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.”

37. In ***Naveen Kohli v. Neelu Kohli, AIR 2006 SC***

1675, the Apex Court has observed as under;

“We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The

marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist."

38. In the instant case, even though the Appellant has filed the divorce petition, but the matrimonial bond has not been ruptured beyond repair. The ground of irretrievable breakdown of marriage cannot be invoked when one of the spouses is genuinely interested to live with the other forgiving and forgetting existing bitterness. Courts have declined to invoke the theory

of breakdown, when it felt that doing so would be unfair to the one party and giving advantage to the underserving other party.

39. Thus, in the backdrop of the spirit of a number of decided cases, the learned Additional District Judge was fully justified in not decreeing the Appellant's petition for divorce.

40. The present appeal is accordingly dismissed.

41. No order as to costs.

42. Trial court record be sent back.

August 01, 2008
Bisht

V.B.GUPTA, J.