

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

MAT APPEAL No.36 of 2008

% Judgment reserved on: 14th May, 2008

Judgment delivered on: 23rd May, 2008

Sh.Naveen Kumar Gupta
S/o Sh. Vinod Kumar Gupta,
R/o AA-81, Shalimar Bagh,
Delhi.

.....Appellant

Through: Mr.Manohar Singh Sahi,
Adv.

Versus

Smt. Rashu Gupta
D/o Sh. R.D. Gupta
R/o 74, Sharda Niketan,
Pitampura, Delhi.

.....Respondent

Through: Nemo.

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? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

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 and decree dated 05.03.08 passed by Sh. Gurdeep Singh, Additional District Judge, Delhi,

praying that the observations in respect of Issue no. 1 of cruelty decided against the Appellant/Husband vide Para no. 22 of the Judgment may be deleted or in alternative specific orders may be passed to the effect that the observations made in para no. 22 of the said judgment in respect of Issue no.1 decided by the Court of Sh. Gurdeep Singh, ADJ, Delhi, shall not be used in criminal trial court or in any other court in respect of case FIR no. 493/2000 under section 498-A/406 IPC, P.S. Saraswati Vihar, Delhi as against the Appellant/Husband and his other family members.

2. The marriage between the appellant and the respondent was solemnized on 23.11.89 as per Hindu rites and ceremonies at Delhi. After the marriage the parties lived as husband and wife and cohabited with each other and no issue was born from this wedlock. A male child was adopted by the parties. Later on, there started differences between the parties and the parties started residing separately from each other from 15.05.97. The wife moved an application before the CAW cell, Nanak Pura, New Delhi against the husband and his family members which is

pending before the Trial court. Apart from the above criminal case, the wife also filed a divorce petition under section 13 (1) (ia) of the Act against the Appellant/husband. On 23.10.2000, the Appellant also filed a divorce petition against the respondent/wife under section 13(1) (ia) and 13 (1) (ib) of the Act. Later on, both the cases were clubbed together for joint trial.

3. The petition was contested on merit. The averment of the appellant were controverted and on the other hand the counter allegations were levelled.

4. From the pleadings of the parties, vide order dated 31.7.03 the petition filed by the respondent/husband was also clubbed alongwith this petition and following issues were framed.

1. Whether after solemnization of marriage, the respondent has treated with cruelty?

2. Relief.

5. The respondent examined herself as PW1 and filed her evidence by way of affidavit. The cross examination of

the respondent was deferred on 18.2.05 and thereafter she was not further cross examined.

6. On 5.3.08 when both the parties were present in person before the trial Court, it enquired from the appellant/husband that, when both parties were interested for dissolution of their marriage then why he was contesting the case. On this the Appellant/Husband, replied that he had no objection if his marriage with the respondent/wife is dissolved. On this, the Trial Court asked the Appellant/Husband to give a statement. Consequently statement of the Appellant/Husband was recorded in the divorce petition titled as "Smt. Rashu Gupta v. Sh. Naveen Kumar Gupta", which is as follows:

"I am the respondent in this case. I have also filed petition for dissolution of marriage against the petitioner. We are living separately for the last 11 years and the marriage has already been irretrievably broken down. I have no objection if the marriage is dissolved. I may also be permitted to withdraw my petition for dissolution of marriage as the same stands infructuous in view of my above statement."

7. At the same time, the Trial court passed one short order, which is as follows:

"In view of the statement of respondent, I am of the opinion that there is no collusion between the parties. Arguments heard. Since the petition is not contested on account of statement of respondent vide separate judgment marriage between the parties stands dissolved. Decree sheet be prepared accordingly. File be consigned to record room."

8. The Trial court while passing a decree for dissolving the marriage between the parties, held;

"Parties under these circumstances cannot be expected to live together. They are now living separately for about 11 years. Accordingly I am of the opinion that the cruelties have not been condoned and the petitioner cannot be said to have taken advantage of her own wrong. There is no collusion between parties, although statement has been made by the husband giving no objection for the grant of divorce but it cannot be called as collusion as admittedly divorce case filed against each other and they are logger heads facing various litigations, therefore it can only be termed as natural outcome of irretrievably broken down of the marriage and cannot be called as collusion. In these circumstances petitioner is not expected to live with respondent.

22. Accordingly I am of the opinion that the petitioner has succeeded in proving that the respondent has treated her with cruelty since the solemnization of the marriage. Issue No.1 is accordingly decided in favour of the petitioner."

9. It has been contended by Ld. Counsel for the Appellant that when the Appellant made the above said statement before the trial court on 05.03.2008 he was not having any intention to admit the issue no.1 in respect of the alleged allegations of cruelties leveled against him and his family members by the respondent. He had only stated that as both the parties were living separate from each other for the last 11 years and their marriage has already been irretrievably broken down he had no objection for dissolution of marriage. Therefore, either the observations of the Trial Court in respect of Issue no. 1 of cruelty decided against the Appellant/Husband should be deleted or in alternative, specific orders should be made to the effect that the observations in para no. 22 of the said judgment in respect of Issue no.1 of cruelty shall not affect the criminal cases under section 498-A/406 IPC pending against the Appellant/husband and his other family members.

10. Ld. Counsel for the Appellant has relied upon a decision of the Apex Court in ***Iqbal Singh Marwah & Anr.***

v. Meenakshi Marwah & Anr., 2005 (2) RCR (Criminal) 178.

11. In ***P. Swaroopa Rani Vs. M. Hari Narayana @ Hari Babu 2008 (3) SCALE 501***, the Apex Court has observed as under;

“It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.”

12. A constitution bench of the Apex Court, dealing with the same question, in ***Iqbal Singh (supra)*** has observed as under;

“Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an

appeal against an order directing filing of a complaint under Section 476 of old Code, the following observations made by a Constitution Bench in ***M.S. Sheriff v. State of Madras, AIR 1954 SC 397*** give a complete answer to the problem posed:

"As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust."

13. In ***M. Krishnan v. Vijay Singh & Anr., JT 2001 (8)***

SC 540, the Apex Court has observed as under;

“Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of.”

14. The wife has leveled the allegations regarding her ill-treatment on account of demand of dowry. The demand of dowry from the wife or her parents & relation amounts to cruelty. But this should be distinguished from the section 498-A, Indian Penal Code (for short as the “Code”) where under it, this is a criminal offence.

15. Cruelty is a ground for matrimonial relief under all matrimonial laws. Cruelty is a ground of divorce under the Act, whereas section 498-A of the Code, punishes an act of cruelty caused to the newly married woman. It *inter alia* punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her. Hence both are different proceedings under the different law.

16. In the present case, since the offence entails both civil and criminal liability, the para no.22 of the judgment of Trial court cannot be deleted.

17. In view of what has been observed above, the complaint filed by the wife under the Code discloses the commission of an offence and the circumstances which weigh with the Court for taking the cognizance against husband, are legally sustainable.

18. In view of the above discussion, the present appeal is not maintainable and same is hereby dismissed.

19. No order as to costs.

V. B. GUPTA, J.

May 23, 2008

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