

Item-10	18-02-2022	FA 75 of 2018 CAN 3 of 2021
sg	Ct. 8	Hafiza Hasen (nee Hafiza Shaikh Jamal) Versus Dr. Imam Hosen (Through Video Conference)

Mr. Swagata Datta, Adv.
...for the appellant

Ms. Sohini Bhattacharyya, Adv.
...for the respondent

This appeal is directed against the judgment and decree passed by the Additional Principal Judge, Family Court at Kolkata, in Matrimonial Suit No. 40 of 2007 allowing the suit filed by the opposite party/husband for dissolution of marriage under Section 27(1)(d)(e) of the Special Marriage Act, 1954.

The suit was instituted on 22nd February, 2007. The opposite party/husband alleged that the appellant/wife was abusive and suspicious in character. She used to misbehave with the family members of the husband. She is also a psychiatric patient and in spite of all arrangements being made, she did not cooperate with the husband in continuing with her treatment. As a result of her suspicious character, the reputation of the husband was tarnished and her behaviour was not at all conducive to live with her peacefully. She continued with such mental cruelty towards her husband throughout her marital life, in spite of request being made to mend herself. Moreover, false case under Section 498A of

the I.P.C and under Protection of Women from Domestic Violence Act was initiated by her discharging the conjugal relationship. In order to create further pressure on the husband/respondent, the appellant/wife made attempts to commit suicide three or four occasions.

The appellant/wife in her written statement denied all the allegations. She asserted that one of her neighbour was used to look and comment indecently, but her husband did not care. She was not a psychiatric patient. Due to wrong diagnosis of the doctor, she became physically weak. The petitioner exerted to create pressure upon her to bring money and assets of her parents and she was tortured mentally and physically by the petitioner. As she was a divorcee before marriage with the petitioner, so she tolerated everything. The petitioner's brother and wife and some other in-laws used to create pressure on her and behaved rudely. She alleged that the petitioner was involved in an extra-marital affair with Kaveri Sen, a student of his college. Such extra-marital relationship has ruined the relationship of the appellant and her husband.

The learned Trial Judge dismissed the claim made under Section 24(1)(i) of the Special Marriage Act but decreed the suit under Section 27(1)(d)(e) of the Special Marriage Act, 1954. The learned Trial Judge in returning the finding in favour of the respondent/husband had relied upon the contradiction in the evidence of wife in relation to her allegations against a neighbour who alleged to have disturbed

her or looked at her or made indecent comments. The respondent was able to prove that the wife was suspicious in nature and she would not even spare his students and colleagues of her husband from her imagination of illicit relation with him. The appellant made reckless remarks against a student of her husband, namely, Kaveri Sen in her complaint under Section 498(A) of the Indian Penal Code. The allegation of the wife was that due to extra-marital illicit intimacy, the husband tortured the wife/appellant. The petitioner exhibited certified copy of F.I.R. and charge-sheet in connection with Baguiati Police Station Case No. 11 of 2007 dated 11th August, 2007 being Exhibit-20, wherefrom it appears that the wife/appellant had filed a case under Section 498(A)/406 of the Indian Penal Code against the husband, Ms. Kaveri Sen, Mujibar Rahaman and Mukhtar Begum. After investigation, the police submitted charge-sheet wherein it has been that there is no evidence against Kaveri Sen. It does not appear that any application was filed by the wife against the charge-sheet or that she prayed for re-investigation. The matter was ended there. There was also no cogent evidence on record to presume that Kaveri Sen had any sort of extra-marital relationship with the opposite party/husband.

While reckless allegations relating to the character of a person having no basis certainly would amount to mental cruelty and would tarnish the image and reputation of a person who was the Professor in English. This evidence was sufficient to return a finding in favour of the husband under

the 27(1)(i) of the Special Marriage Act. The cruelty was contumacious in nature and till now, the proceeding under the Domestic Violence Act is pending.

However, we feel that while decreeing the suit in favour of the opposite party/husband, the learned Trial Court ought to have made some provision of permanent alimony of the respondent even in the absence of any application filed by the wife. Presumably, no application was filed as the wife did not accept the decree and the said decree is under challenge.

Now, we confirm the decree under challenge. We grant permanent alimony to the wife considering her age and that she is unemployed. The husband shall accordingly, pay a permanent alimony for a sum of Rs.20,000/- per month from the month January, 2022. The husband shall bear all medical expenses including hospitalization, electricity charges, municipal rates and taxes and society charges in connection with the residential house. The flat presently under the occupation of the wife shall remain in her occupation till her death. The arrears maintenance i.e. from the months of January, 2022 and February, 2022 shall be paid by 28th February, 2022 and on and from March, 2022, the permanent alimony shall be paid on or before 7th of each succeeding month.

The wife/appellant though her learned Counsel has given an undertaking that she would withdraw all pending cases against her husband.

The appeal and the application stand disposed of with the aforesaid modification.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)