

IN THE HIGH COURT OF ORISSA AT CUTTACK
MATA No.55 of 2019

Asit Kumar Biswal

.....

Appellant

Mr. P.Panigrahi, Advocate

Vs.

Niharika Pradhan

.....

Respondent

Mr. S.B.Udgata, Advocate

CORAM:

JUSTICE S.TALAPATRA
JUSTICE SAVITRI RATHO

ORDER

17.11.2022

Order No.
07.

1. This matter is taken up through hybrid mode.
2. Heard Mr. P.Panigrahi, learned counsel appearing for the appellant and Mr.S.B.Udgata, learned counsel appearing for the respondent.
3. This is an appeal under Section 19 (1) of the Family Courts Act, 1984 from the judgment dated 02.03.2019 delivered in the Civil Proceeding No.95 of 2016 by the Judge, Family Court, Dhenkanal. By the said judgment, the matrimonial suit instituted by the appellant, seeking the decree of divorce, has been dismissed. The matrimonial suit was framed on the ground of cruelty within the meaning of Section 13 (1) (i-a) of the Hindu Marriage Act and also on the ground of unsoundness of mind of the respondent, within the meaning of Section 13 (1) (iii) of the Hindu Marriage Act.
4. It has been observed by the Judge, Family Court, Dhenkanal that to prove the mental disorder of wife – burden of proof is very heavy on the party [the husband] who approaches the Court for breaking a marriage and for branding the wife as unfit for marriage and procreation of children on account of the mental disorder. It

needs to be established that the mental ailment suffered by her is of such kind or to such an extent that it is impossible for her to lead a normal married life. It has been further observed that the evidence that has been led on that aspect is limited to a few prescriptions etc. No expert was examined to prove those records or to state the degree of mental disorder as alleged. It has been observed further that there is no evidence to show that it is not impossible for the appellant to lead a matrimonial life with the respondent. In other words, there is no evidence to show that the alleged mental disorder is incurable and there is no possibility of procreation of children. From the medical documents, filed by the appellant, it does not surface that the respondent is suffering from incurable mental disorder. Moreover, the doctor who had treated the respondent has not been examined. Mere filing of some medical documents is of no worth as far as the mental soundness of the respondent is concerned. Those documents become irrelevant when the doctor who prepared them are not examined. Thus, taking note of the aforesaid position of law, it has been finally held that the petitioner – husband has utterly failed to discharge the heavy burden to prove that his wife has been suffering from the acute mental disorder which is incurable. It has not been proved that there was suppression of such disease at the time of marriage by the respondent - wife and her parents.

5. The respondent was also examined in the Court and her way of behaving was observed by the Judge, Family Court. Even, a direct suggestion was made to her in respect of her mental health, which she denied totally by clearly stating that she is not suffering from any mental disorder, as alleged.

6. Thereafter, while appreciating the evidence in support of the

ground of mental cruelty, the Judge, Family Court has observed that the allegation that the respondent ill-treated the parents of the appellant when he had been away from them. But no sustainable evidence has been placed in that regard.

7. It has been stated by the appellant that the respondent had threatened his parents. On getting such information from his parents, he came to his house and took her to his place of posting at Hyderabad. It has also been alleged that she ill-treated him and tortured him by various means. To prove those allegations, the appellant and the father of the appellant (P.Ws.1 and 2 respectively) and one co-villager (P.W.3) have been examined. They have testified that the appellant used to remain unfed as the respondent did not cook for him.

8. On appreciation of the evidence, the Judge, Family Court came to a definite finding that there is no allegation in the petition as regards [the plaint] misconduct of the respondent. There is no proof that the appellant while staying with the respondent in the matrimonial home caused danger to his life or to degrade his mental state, and according to the Judge, Family Court, materials, placed to prove cruelty are not adequate to prove cruelty within the meaning of Section 13 (I) (ia) of the Hindu Marriage Act.

9. Mr. Panigrahi, learned counsel appearing for the appellant has fairly submitted that he cannot improve the medical evidence as recorded in the trial, but he has contended that the appellant (P.W.1) has stated in details that the respondent's behaviour was not normal and her behaviour if juxtaposed with the medical records, would prove that the respondent is not fit to live and lead a happy conjugal life. Mr. Panigrahi has taken us to the thick of evidence, particularly

to the depositions of P.Ws.1, 2 and 3 to show that the respondent behaved in an extremely cruel manner towards the appellant. Two doctors, P.Ws 4 and 5 were examined in the proceeding. They were merely adduced to prove some medical records. They are not the doctors who treated the respondent. However, it appears from the testimony of P.W.5 that he had treated the respondent for sometime.

10. At this stage, Mr. Udgata learned counsel for the respondent has pointed out P.W.5 has categorically testified that he did not submit any document which reflects that the respondent has been suffering from the mental disorder. He has further submitted that the burden of proof is heavy on the appellant inasmuch as Section 13 (1) (iii) of the Hindu Marriage Act requires that the mental disorder which has to be proved that has to be proved in such a manner that it would be apparent that the said mental disorder was incurable and that the person has been suffering continuously or intermittently from the mental disorder of such a kind and to such an extent that the petitioner [the appellant] cannot reasonably be expected to live with that person. The expression “mental disorder” has been explained under Section 13 (1) of the Hindu Marriage Act, 1955. While appreciating the submission of learned counsel for the parties and scrutinizing the records closely, we find that the respondent was treated in an eminent medical institution when she was suffering from a mild mental issue. The evidence of treatment is not enough to infer that the respondent has been suffering from a kind of mental disorder, basing on which a decree of divorce can be passed. The statutory provisions in this regard are unambiguous. It provides, inter alia, that the extent of the disease is of paramount importance.

11. It is therefore apparent from the statutory provision that the

mental disorder for purpose of divorce has to be persistent or of permanent causing serious disability of mind. Any temporary incapacity cannot be taken as the ground of divorce.

In ***Ram Narain Gupta vs Smt. Rameshwari Gupta***, reported in (1988) 4 SCC 247, the Apex Court has observed, *inter alia*, that burden of proof of existence of the requisite degree of mental disorder is on the spouse who places reliance on such state of mind, to claim a decree of divorce. In the said decision, it has been further observed that the degree must be of that level that *it caused derangement into a functional non-entity and as a negative- unit in family or society*. It has been further observed that the minimum requirement in order to prove that phenomenon is that the doctors who had treated the respondent are examined as the witnesses. What had been brought on record in that case are a few prescriptions made by the doctors and those were sought to be proved by examining the Medical Superintendent of Suderjang Hospital. A plea was advanced that an inference could be drawn that as the respondent had been suffering from Schizophrenia, she had been suffering from a mental disorder which is incurable. The appellant had claimed to have discharged that burden. However, the said plea had been rejected by the Apex Court.

12. No decision of the Apex Court is essential as the provision of the statute are determinative and unambiguous in respect of nature of evidence that required for the said purpose. The evidence shall establish the mental disorder of an extent can be basis for divorce. So far as the ground of cruelty is concerned, the materials those have been placed in the form of evidence indicate casual wear and tear in the matrimonial life and those cannot be taken as the evidence for

mental cruelty.

13. In *A.Jayachandra vs Aneel Kaur* reported in (2005) 2 SCC 22, the Apex Court [in paragraph-13] has clearly observed what should be the nature of evidence in order to prove the mental cruelty for obtaining the decree of divorce. Relevant part of paragraph-13 is reproduced herein below:

“.....But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it.”

The Apex Court has been consistent in their subsequent decisions, viz. *Vinita Saxena vs Pankaj Pandit*, reported in (2006) 3 SCC 778. The Apex Court while dilating how to establish the mental cruelty for the purpose of divorce has observed that the legal concept of cruelty is not defined by the statute. It has been generally described as conduct of such character as to cause danger to life, limb or health (bodily and mental) or to give rise to reasonable apprehension of such danger. The general rule is that the whole matrimonial relationship must be considered, and that rule is of a special value when the cruelty consists not of violent act but of injurious reproaches, complaints, accusations or taunts. It may be also indifference, denial of company hatred and abhorrence or physical acts of violence and abstinence from sexual intercourse without reasonable cause. It must be proved that one partner in the marriage however mindless of the consequences has behaved in a way which the other spouse could not, in the circumstances be called upon to endure, and that misconduct has caused injury to health or reasonable apprehension of injury.

14. On taking note of those observations as made by the Apex Court, it may be briefly summarized that *conduct* be weighed by the court on the touchstone whether consequence or apprehension, as highlighted in *Vinita Saxena (supra)* has visited the spouse or not. In the present case, we are constrained to observe that the requisite factors for drawing inference of mental cruelties are not available in the evidence.

15. Hence, we do not find any reason to interfere with the findings of the Judge, Family Court, Dhenkanal in the impugned judgment dated 2.3.2019 delivered in the Civil Proceeding No.95 of 2014. It does not suffer from any infirmity. We do affirm the judgment, as challenged in this appeal.

16. In the result, the appeal, being devoid of merit is dismissed.

17. Draw the decree accordingly.

(S.Talapatra)
Judge

(Savitri Ratho)
Judge

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