

Item-13. 20-03-2023

FA 23 of 2015
CAN 2 of 2014 (old CAN 1807 of 2014)

^{sg} Ct. 8

Dr. Samir Adhikari
Versus
Dr. Rama Adhikari (Chakraborty)

Mr. Probal Kumar Mukherjee, Sr. Adv.
Mr. Suhrid Sur, Adv.

...for the appellant

Ms. Priyanka Jana, Adv.

...for the respondent

The appeal and the application for additional evidence are taken up together and disposed of by this common order.

The appeal is arising out of an judgement and decree dated 30th September, 2013 passed by the learned Additional District Judge, 3rd Court, Hooghly in an application filed under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage on the ground of desertion and cruelty.

Both the parties are doctors by profession. The evidence shows acrimonious relationship between the parties.

The wife has initiated a proceeding under Section 498A/406 of the Indian Penal Code being Case No. GR-615/2007 IR 36/09 State vs. Samir Adhikari & Ors. The suit for dissolution of marriage was filed subsequent to the said complaint. In order to prove cruelty, the appellant has referred and relied upon the criminal complaint lodged against him and his family members with false accusations as an act of cruelty. It was contended before the learned District Judge that the said complaint is false and it was filed with an ulterior motive in order to humiliate the appellant and his family members. The learned Trial Judge

refused to rely on the said criminal complaint of the respondent and did not take cognizance of the fact that the brother of the respondent is a Police Officer and because of such relationship, the appellant and his family members have been under threat and proceedings have been initiated against them on the ground that filing of a criminal case by itself is not material support in absence of any judgment or any record showing that the respondent with some ill and ulterior motive initiated such criminal case. The learned Trial Judge, however, noted that a certified copy of the judgment dated 21st April, 2012 in connection with GR Case No. 615/2007 passed by the learned Judicial Magistrate, Additional Court, Hooghly was tendered in evidence and marked as Exhibit-13.

In course of hearing, Mr. Probal Kumar Mukherjee, learned Senior Counsel has produced the order passed by the learned Additional and District and Sessions Judge in Criminal Motion No. 191/2012 wherefrom it appears that the criminal motion/revision against the order of acquittal was dismissed on the ground of jurisdiction.

Admittedly, the order of acquittal is not under challenge.

The learned District Judge although had referred to the judgment of acquittal but did not consider the said order in its true perspective. The accused persons were acquitted not on the ground of benefit of doubt or lack of evidence. The criminal complaint was decided on merits upon consideration of the evidence of the respondent parties. This judgment has been completely overlooked.

It appears from the order of the learned Judicial Magistrate

that on 28th May, 2007, a meeting was fixed by DLSA, Barasat, on the basis of the complaint which was, however, shifted to 19th June, 2007 but before any such meeting could be held on 2nd June, 2007 she lodged the FIR. She has admitted to have filed the said FIR after she has received summons of MAT Suit No.248/2007. In the present case, the wife initiated a proceeding under Sections 498A/406 I.P.C. making serious allegations against the appellant and his family members for which the appellant and his family members had to undergo trial which, however, ultimately resulted in their acquittal. In the said proceeding, not only the acquittal has been recorded, but observations have been made that the allegations are all serious in nature which from the evidence of the wife could not be established. The said proceeding has resulted in mental agony and humiliation of the appellant and his family members. The appellant and his family members have suffered mental pain, agony and serious accusation of criminal breach of trust. It has caused profound and lasting disruption and driven the appellant to feel deeply hurt and reasonably apprehend that it would be dangerous for him to live with her. The case made out by the appellant seeking decree of divorce on the ground of cruelty, in our view, has been established. The order of acquittal has attained finality.

In this regard, we may refer to the decision of the Hon'ble Supreme Court in *Rani Narasimha Sastry v. Rani Suneela Rani* reported in (2020) 18 SCC 247. In paragraphs 12 and 13 of the said judgment, the consequence of acquittal in a proceeding under Section 498 I.P.C. was considered, vis-à-vis, cruelty. The said paragraphs read:-

“12. This Court has laid down that averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under section 13(1)(i-a) of the Act. This Court in Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate has laid down the following in para 7: (SCC p. 339)

“7. The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under section 13(1)(i-a) of the Act. The position of law in this regard has come to be well settled and declared that leveling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of any educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial

home impossible.”

13. In the present case, the prosecution is launched by the respondent against the appellant under Section 498-A IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498-A IPC not only acquittal has been recorded but observations have been made that allegations of serious nature are levelled against each other. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established. With regard to proceeding initiated by the respondent under Section 498-A IPC, the High court made the following observation in Para 15:(Rani Narsimha Sastry case, SCC Online Hyd)

“15....Merely because the respondent has sought for maintenance or has filed a complaint against the petitioner for the offence punishable under Section 498-A IPC, they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty”. The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal of his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto be treated as cruelty. But, when a person undergoes a trial in which he is acquitted of the allegations of offence under Section 498-A IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has been meted out on the husband. As per the pleadings before us, after parties having been married on 14-8-2005, they lived together only 18 months and, thereafter, they are separately living for more than a decade now.” (emphasis supplied)

In view of the aforesaid discussion, it is established that on the basis of unfounded baseless allegation, the appellant and his family members had to face trial. The learned Judicial Magistrate

has recorded that the evidence on record does not prove that the accused person had driven the respondent-wife to commit suicide and/or has caused any grave injury to life, limb or health whether mentally or physically. In fact, P.W.-2 and P.W.-3 have not stated anything regarding breach of trust or appropriation of Stridhan properties of their daughter.

Filing of false complaint against husband and his family members under Section 498-A read with Section 406 constitutes matrimonial cruelty. The respondent seems to have made unfounded/defamatory allegations against the appellant and his family members. The situation is of such a nature that the parties cannot reasonably be expected to live together.

Under such circumstances, we have no hesitation to conclude that the respondent has treated the petitioner with cruelty and for which the petitioner/appellant is entitled to get decree of divorce under Section 13(I-A) of the Hindu Marriage Act, 1955. We allow the appeal of the appellant granting decree of divorce.

The appeal and the connected application are, thus, disposed of in the facts of the case without cost.

The department is directed to draw up the decree as expeditiously as possible.

(Uday Kumar, J.)

(Soumen Sen, J.)