

Item-25. 16-01-2023

FA 14 of 2016

sg Ct. 8

Anita Malkhandy nee Goswami
Versus
Susanta Malkhandy

Mr. Subrata Bhattacharya, Adv.
Mr. Indranuj Dutta, Adv.
Mr. Surojit Ghosh Dostidar, Adv.
...for the appellant

Mr. Abhijit Basu, Adv.
Sk. Md. Masud, Adv.
...for the respondent

The Court: The appeal is arising out of a judgment and decree dated 15th May, 2015 in a suit filed by the appellant for dissolution of marriage on the ground of cruelty.

We have heard the learned Counsel for the parties. We have also read the pleadings and the evidence adduced by the parties before the learned Trial Court. The principal ground for divorce appears to be the ill-treatment and abuse the appellant faced in her matrimonial home, during her stay from 24th November, 2008 till 1st August, 2009 when she finally left the matrimonial home presumably on being asked to leave the said home at the instance of her husband and her mother-in-law.

The Trial Court has extensively dealt with the evidence. The evidence would show that the principal accusation is against the mother-in-law. The mother-in-law is a widow. She needs to be looked after by her son. The wife does not wish to live with her mother-in-law. The evidence on record would show that she was given her rightful place in the matrimonial home by the husband. Isolated incidence of exchange of words are not sufficient to

constitute cruelty as in a matrimonial relationship it is not unusual that there may be instances of heated exchange of words. Unless the situation is of such an egregious nature and unbearable, it would not constitute cruelty.

Although cruelty may not depend upon any particular period or number of incidents of cruel treatment or continuous course of conduct and it depends upon intensity, gravity and stigmatic impact of it when meted out even once as observed in *Vijay Kumar Ramchandra Bhate vs. Nella Vijay Kumar Bhate* reported at **2003(6) SCC 334** it clearly excludes “mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life” as held in *Samar Ghosh vs. Jaya Ghosh* reported in **2007(4) SCC 511**. Cruelty must be inferred from the whole facts and atmosphere disclosed by the evidence.

In *Kaslefsky v. Kaslefsky* reported in **1950(2) All ER 398 at 403** Denning LJ (as he then was) sounded a note of caution in considering matters cases involving allegation of cruelty in His Lordship’s inimitable style:

“if the door of cruelty were opened too wide, we should soon find ourselves granting divorce for incompatibility of temperament. This is an easy path to tread, especially in undefended cases. The temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperiled.”

This piece of prudent warning has been noticed with approval in *Dastane v. Dastane*; **(1975) 2 SCC 326**, by the Supreme Court of India and has been followed in other cases, namely, *J.L. Nanda v. Veena Nanda*; **(1983) 2 DMC 135 (DB) (Del)**.

The diary written by the wife which forms part of evidence

would show that the husband has taken due care of his wife and even all three of them used to visit different places together. We also could not find from evidence of any abominable behaviour of husband or his mother, which may constitute cruelty. In fact, her story of being compelled to leave her matrimonial home is belied by the evidence as it is proved that on 31st July, 2009 husband left for Dalsingh Sarai for company work in the evening. He was not present at Asansol on 1st August, 2009. This evidence read with other evidence on record would show that the appellant has failed to establish cruelty as a ground for dissolution of marriage. In fact, the husband is ready and willing to lead a happy conjugal life.

The learned Trial Court on correct appreciation of law as laid down in the case of ***Samar Ghosh*** (*supra*) has held that the case of cruelty is not proved.

We concur with the said findings of the trial court. The appeal stands dismissed. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)