

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Madhuresh Prasad

F.A.T. 525 of 2019

Smt. Sutapa Chakraborty

Vs.

Sri Gautam Chakraborty

For the Appellant : Mrs. Kakali Samajpathy,
Mrs. Sangita Jangra,
Mr. Subhranil Roy.

For the Respondent : Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Abhirup Halder,
Mr. Anirban Saha Ray.

Judgment on : 7th October, 2024

Madhuresh Prasad, J.:

1. The husband (respondent) had approached the Court seeking a decree of divorce on the grounds of cruelty and desertion. The same has been allowed. The present appeal is by the defendant wife assailing the Judgment and Decree passed in M.A.T Suit No. 72 of 2013 under Section 27 of the Special Marriage Act whereby and whereunder the marriage solemnized between the appellant, with the respondent on 19.04.2006 was ordered to be dissolved.

2. The case of the plaintiff respondent at the trial was that the marriage was solemnized on 19.04.2006. Prior to the marriage being solemnized the plaintiff claims that the plaintiff and respondent were known to each other as they were residing in the same village. The

plaintiff claims that the respondent allured the petitioner into marriage by presenting herself to be suffering and in a miserable condition, requiring support. She invoked the sympathy of the petitioner.

3. As per the plaint, just two days after the marriage was solemnized, the defendant appellant started intimidating the plaintiff by threatening him with implication in proceedings under Section 498 A I.P.C. by taking help of her Advocate boyfriend. When the petitioner went to his in-laws along with the respondent on the occasion of 'Asthamangala', the respondent's father was found to be ill. The petitioner claims to have arranged for his treatment and requested the respondent to attend to his illness from her matrimonial home situated near to the house of the respondent. The respondent did not pay heed to such request, and on her own started staying in her father's house.

4. During this period, which was immediately after the marriage, the petitioner's relatives and acquaintances came to meet with the respondent but could not meet her because she was not residing in her matrimonial home. This prompted the relatives and acquaintances to make certain disparaging remarks upon the petitioner's family. The act of abandoning the conjugal life just couple of days after the marriage was solemnized, and the consequence of her staying at her father's house, inviting such remarks from the relatives and acquaintances has been alleged to constitute cruelty. The plaintiff/ husband has, further, stated that

the respondent's behavior towards him was very cruel. She used cheap, filthy and caustic language. Her relatives (mother, maternal uncle and brother) would also often come to the house of the petitioner threatening him and his family with dire consequences. Subsequently, they started pressurizing him to leave his joint family and live as 'ghar jamai' at the respondent's father's home. There is also an allegation that Rs. 2 lakhs was demanded from the petitioner for facilitating a business venture of respondent's brother.

5. The plaintiff goes on to allege that the respondent had many soul mates and was leading an immoral life. On objections being raised, she would become furious, used filthy language and sometimes also beat the petitioner with stick, shoes, brooms etc. It is alleged that even on a trivial issue the respondent would sometimes slap the petitioner in front of everyone and that she would often deprive the petitioner of conjugal intercourse; and often during intercourse she would cause bodily injury upon the petitioner husband.

6. Finally, it is alleged that on 14.03.2010 after receiving a telephonic call regarding her father's illness she went to her father's house, never to return. The expenses over treatment of her father was being incurred by the petitioner and on 15.06.2010, he lodged a station diary entry at the Noapara Police Station bearing Noapara P.S. being GDE No. 1678 in respect of the cruelty being meted out to him. He also tried counselling for which he took the help of a local counselor Smt. Sabita Chakraborty.

7. On 02.09.2010, however, the respondent took all her belongings including her bedding, clothing, furniture, utensils, book etc. Thereafter, she lodged a case bearing Barrackpore P.S. case No. 167 dated 30.09.2010 under Section 498A/ 34 I.P.C. It is also alleged that she instituted proceedings under Section 125 Cr.P.C. It is alleged that on account of false allegations under Section 498A, the petitioner husband was arrested; and suspended from service for months together.

8. The respondent appellant, on the other hand, has a different story to tell. According to her, the petitioner husband demanded a huge sum as dowry. Her father could somehow manage and gave an amount of Rs. 1 lakh before the marriage hoping that in future, further demand would not be made. The amount was paid by an account payee cheque bearing no. 698001 in account No. 11223428919 maintained with the State Bank of India, Ichapur Branch. Just few days after the marriage, he started demanding further amount of Rs. 5 lakhs which the respondent's father was in no condition to meet. Thereafter, she was subjected to physical and mental torture. The appellant wife was also restrained from visiting her father and her family. While she was being afflicted with mental and physical torture, she continued to reside at her matrimonial home performing the household work.

9. It is also the case of the appellant that the petitioner husband had an illicit relationship with one Sujata Bhattacharjee, which was protested by the petitioner, for which she was subjected to physical

and mental torture at the hands of the petitioner husband. In spite of her best efforts to reconcile the situation, the same could not be done due to the hostile and cruel attitude of the petitioner husband.

10. At the trial, the petitioner husband has supported his allegations in his affidavit-in-chief. He has tendered as exhibits, copy of bank statement relating to house building loan (Exhibit-1), the photocopy of marriage certificate (Exhibit-2), a receipt of the General Diary Entry No. 1676 dated 15.06.2010 (Exhibit-3), certified copy of orders and FIRs in connection with Barrackpore P.S. Case No. 167 of 2010 under Section 498A/34 I.P.C. (Exhibit-4), application filed by the respondent wife under Section 125 Cr.P.C. and the notice received from the Court of learned 3rd Judicial Magistrate at Barrackpore, in this connection (Exhibit-5). The six pages have collectively being marked as Exhibit-6. The notice of suspension along with envelope marked as Exhibit-7. And copy of the notice served on him in C. Case No. 878 of 2010 under Section 406/ 506 I.P.C. by his wife (Exhibit-8). He has also denied the allegations levelled by the respondent appellant. During his cross-examination, the petitioner husband has admitted to the fact that he went to Digha in the month of August, 2006 with the respondent appellant as husband and wife. Thereafter, he also went to Puri, Kamakhya, Shilong and Guahati. He has admitted to receiving the amount of Rs. 1 lakh by cheque from his father-in-law prior to his marriage. He has also admitted that his wife used to participate in the celebrations at

the family gatherings/ ceremonies. He also admits to the fact that he went to his in-law's home in 'Jamai Sasthi' in the year 2010.

11. The petitioner husband has denied the other allegations levelled against him by the instant appellant. It would be relevant to take into consideration 11 photographs taken during the petitioner's tour with his wife, which have been marked as Exhibit-A series on admission. During his further cross-examination, he has stated about recovery of articles from his house on 31.09.2010, by the police. He has however volunteered to say that he intended to hand over originals of his wife's (appellant's) medical papers after keeping photocopy of the same, which were required for processing the divorce suit. It would be worthwhile to notice here that no specific date, time and manner of subjugation to torture at the hands of his wife was mentioned in the petition filed for divorce.

12. He has also examined his mother as PW2. The sum and substance of the affidavit-in-chief is that she was a resident of the same village and in fact it was the appellant who frequently visited their house and expressed her desire to marry her son. She has alleged being subjected to insult by the appellant. She disliked her relatives and did not behave well with anyone. She would spend most of her day at her parent's house, did not cook rice more than what was required for her to consume and later she did not cook at all. She was also not doing any of the household work. She was mostly living at her paternal house and when she was at the matrimonial home, she would create trouble if the petitioner had any conversation

with the mother. She alleges that she was often beaten by the appellant, who wanted the petitioner to live at her paternal house. She did not want the petitioner to look after his parents and desired that he live in her paternal house as 'ghar jamai'. She alleges that the criminal case has falsely been filed by the appellant and based on such false implication, her husband (the appellant's father-in-law) was taken by the Police. She further corroborates the fact that the petitioner was also arrested and suspended from service for a few days. Details with reference to any specific date or incident of alleged cruelty by the appellant is conspicuously absent even in the evidence of PW2. That apart there is corroboration of the fact that the appellant's medical papers were not given to her on 02.09.2010, and only after copies of the same were prepared, the same were to be handed over. PW2 in her cross-examination had admitted that before marriage, Laxmi Puja was being performed at a banana plant; and after marriage of the appellant with the petitioner, she founded a brass idol of Laxmi at the matrimonial home.

13. The appellant also has filed her affidavit-in-chief. According to which, her marriage with the petitioner was solemnized on 19.04.2006 before the Marriage Officer under the provisions of the Special Marriage Act, 1954. It was socially celebrated on 01.05.2006 at her paternal place according to Hindu Rites and Customs. The marriage was a negotiated one in which her mother-in-law played a pivotal role. She has denied that she in any manner had allured the petitioner or expressed her desire of marrying the petitioner. In fact,

it is alleged that after negotiations, her father gave Rs. 1 lakh dowry to the petitioner through an account payee cheque. The petitioner had promised not make any subsequent demand, but post marriage, he did not keep his promise and demanded Rs. 5 lakh cash, expressing dis-satisfaction with the quality and quantity of gifts given to him at the time of marriage. She has asserted that post marriage the conjugal life was happy at her matrimonial home. She used to perform all the household work including cooking, washing of clothes and house cleaning. She took good care of all her in-laws, including her husband. She has stated that she used to take her mother-in-law to the doctor for periodical checkups and also took her to her Gurudev at Barrackpore. She has asserted that she had started Laxmi Puja at the matrimonial home which continued till she was forcefully driven out from the matrimonial home on 02.09.2010. She has even stated that her father accompanied her father-in-law at the time of his eye surgery at Disha Eye Hospital. The cordial matrimonial relation is apparent from the fact that together they visited touring spots. The last visit being to Shilong, Asam, Kamakhya and Kajiranga in November, 2009.

14. According to her, the conjugal life was made miserable by one Sujata Banerjee who resided near her matrimonial home. Along with her husband the said Sujata Banerjee misbehaved with the appellant and terrorized her, agonizing her life. Sujata Banerjee used to interfere in all family matters including the personal relationship of the appellant with her husband (petitioner). It is alleged that later, in

her conjugal life the petitioner started to exploit the appellant verbally, emotionally and financially with different kinds of fancy pleas. The intention according to her was that she would leave the matrimonial home under such duress enabling the petitioner and Sujata Banerjee to continue their free and unauthorized life. The appellant somehow was able to endure all of these indecency, whereafter the husband and in-laws became violent and drove her out of the matrimonial home on 02.09.2010, retaining all her personal belongings and articles. Having no income of her own she had no option but to initiate a case for maintenance against petitioner and to initiate criminal proceedings under Section 406 to recover her 'stree dhan'. She has specifically denied the allegation that she ever asked the husband to reside in her parental home as a domesticated son-in-law. According to her the petitioner lastly visited her parental house on the occasion of 'jamai sasti' in June 2010. He left after taking meal and blessings from her father. She has expressed eagerness to live conjugal life with the petitioner. She has gone on to state that her father was a retired Central Government employee and entitled to medical facility and treatment at recognized hospital of Kolkata. He was thus never in need of financial help from her husband. She has stated that even though her father was sick, she was compelled to live at the matrimonial house after she visited them on the occasion of 'Ashtamangala'. She was thereafter restrained from attending to her father. She has stated that false allegations have been levelled by the husband in the petition for

divorce and during his deposition to somehow obtain a decree of divorce. She has tendered in evidence certified copy of the Judgment in complaint case No. 878 of 2010 in support of her statement that the same was dismissed by holding the allegations to be baseless and ended in acquittal. She has also stated about the petitioner's sister and their children residing at her matrimonial home. Her relationship with her in-laws started deteriorating one year after her marriage and from 02.09.2010 onwards she was subjected to torture by the petitioner and his family members. It is under such circumstances that the criminal case was lodged and the petitioner was arrested remaining in custody for 4 days. Regarding her husband's suspension she has stated that she was suspended from her service because he took leave without intimation to the office. She has stated about the case under Section 498A being pending and given certified copy of her deposition and her father's deposition in the said case which have been marked as Exhibit-10 and 10/1 as public documents. She has also admitted that she was medically treated at the instance of her husband for conceiving a child. The medicines which were prescribed, however, were supplied by her father to her.

15. During further cross-examination, she has stated about going to Digha after her marriage, on honeymoon and also regarding going to Kamakhya, Kaziranga, Shivori, Puri etc. In spite of the marriage being consummated, she was not conceiving and, therefore, she has stated about her husband taking her to the doctor for treatment. She

has denied that her husband did not have illicit relation with Sujata @ Sonali Banerjee and stated that she came to know about her relationship just after her marriage, yet she did not complaint about the same. All other suggestions regarding her demanding her husband to be a domesticated son-in-law and other such suggestions have flatly been denied.

16. The Trial Court has framed 5 issues. Issue No. 2, whether the applicant had any cause of action to file the suit has been answered by observing that after considering evidence and material there is nothing to hold that the petitioner has no cause of action to file this case. The issue has not been answered in positive terms. After recording the facts emerging from the pleadings and the allegations made at the trial such a finding has been recorded to frame the issue No. 2. The finding is not based on consideration of the case with reference to any specific instance on any specific date, corroborated by any specific evidence. In fact, the finding with reference to this issue is based on surmises.

17. Issue No. 3 whether the applicant was subjected to cruelty by the respondent has affirmatively been held to have been established in favour of the petitioner husband. This finding also, however, is preceded by mere recording of the case put forth by both the parties; and the allegations and contra-allegations. The findings are also self-contradictory and again without reference to any details such as specific dates, specific events or specific evidence supporting the factum of alleged cruelty. The Court has taken into consideration the

fact that the appellant filed 3 cases against the petitioner. He has been acquitted in the case lodged under Section 406 I.P.C., namely C. case No. 878 of 2010. The allegations made by the appellant have thus been discredited. The Court has thus proceeded to find that filing of such false criminal case, would indubitably constitute matrimonial cruelty and thereby entitle the victim spouse to claim divorce on the ground of cruelty. Surprisingly, the Court while considering the plea for divorce has recorded a finding that the amount of 1 lakh admittedly received by the husband petitioner was not by way of dowry but was, in fact, a loan for house construction to provide a suitable accommodation to the appellant wife. By resorting to a hypothesis the Court has concluded that since the petitioner was an educated person in a Government job having average intelligence he would never dare to accept dowry by an account payee cheque. The allegation of the amount being given by way of dowry thereby has been disbelieved and such false allegation has been made the basis of concluding that it tantamounts to cruelty, being a basis for seeking divorce. While arriving at such finding during pendency of the criminal proceedings arising out of Barrackpore P.S. Case No. 167 of 2010 lodged under Section 498A/34 I.P.C., the Court has virtually given a finding on the pending allegations in the criminal trial. There is a further finding that there is no allegation of any physical torture against the petitioner husband and his family members either in the written statement or affidavit-in-chief filed by the appellant O.P.W.1, which

finding is contrary to the allegations made in the W.S. filed by the appellant as well as her affidavit-in-chief in clear and explicit terms. The appellant O.P.W.1 in her affidavit-in-chief has stated about the manner in which her husband in connivance with Sujata Banerjee used indecent and disparaging language against her, terrorized her and agonized her life. She has also specifically stated that she was subjected to exploitation, verbally, emotionally and financially on different fanciful pleas. It is also her specific case that when she did not yield to such pressures and was able to endure the same she was driven out from her matrimonial home. She has stated instances of being abused and humiliated by petitioner and his family members along with Sujata Banerjee. It is specifically stated during the further cross-examination of the appellant that “on and from 02.09.2010 I was subjected to torture by my husband along with family members of my matrimonial house both physically and mentally”. The Trial Court’s Findings to the contrary while considering issue No. 3, therefore, is clearly unsustainable. The Trial Court seems to have overlooked the fact that the petitioner husband was seeking divorce on the grounds of cruelty. The 11 photographs which were taken as evidence was taken on record as evidence without objection showed that the petitioner and the instant appellant were touring different tourist spots, and would only go to suggest that there was cordial relationship between the petitioner and the present appellant. Such photographs cannot lead to a conclusion that the petitioner was being subjected to cruelty. Rather than considering whether the

photographs would support the plea of divorce, the Court has proceeded to conclude on the basis of these photographs that the respondent wife happily toured with the petitioner husband and that her desire of touring with the husband was fulfilled.

18. The Trial Court has also taken into consideration the allegations levelled against Sujata Banerjee in a perspective which may be said to be perverse. The petitioner nowhere in his divorce petition has made allegation or raised an issue that any cruelty has been caused by allegations of illicit relation with one Sujata Banerjee. In fact, such allegations have been made by the wife appellant during the trial because as per her case, Sujata Banerjee has been intermeddling with all the affairs in the matrimonial home including the personal relationship of the appellant wife with the petitioner husband. She has been participating and in fact inciting perpetration of mental and physical abuse and torture upon the appellant. The Trial Court however has made out a third case by relying on a fact which emerged at the trial that Sujata Banerjee was a distant cousin of the petitioner, to conclude that the applications made by the appellant wife against Sujata Banerjee would constitute mental cruelty upon the petitioner which tantamounts to cruelty. Such finding is in our opinion, clearly unsustainable.

19. In So far as issue No. 4 and 5 regarding the petitioner's entitlement to a decree of divorce, we find that the same has been answered in favour of the petitioner by highlighting and relying upon the perceived weakness and several counter allegations made by the

appellant wife and her defense to the plea of divorce based on cruelty taken by the petitioner husband.

20. The conclusion of the Court that cruelty has been made out, primarily appears to be based on the lodging of C. case No. 878 of 2010 under Section 406 I.P.C. which culminated in acquittal prior to decision in the matrimonial case. We find that there are two relevant factors in this regard worth consideration. The first is that the petitioner during his evidence has admitted that on 31.09.2010 the Police recovered articles from his house. This was admitted during further cross-examination of the PW1 on 16.01.2018. This was an admission in the matrimonial suit itself. Ignoring such evidence which emerged in the course of the proceedings, reliance placed on acquittal of the petitioner in C. Case No. 878 of 2010 is clearly unsustainable. In view of the specific admission of PW1 in the instant proceedings, the Trial Court ought not to have relied solely upon acquittal of the petitioner in the criminal case under Section 406 which being a criminal proceeding was decided by applying the strict rule of evidence applicable to a criminal trial. The same could not be considered in isolation to arrive at a finding of cruelty so as to make out a ground for divorce. It was required by the Court to rely upon the evidence emerging in the course of the instant civil proceedings for divorce with respect to the allegations made by the appellant regarding her 'stree dhan' being retained by the petitioner and his family members. We, therefore, do not approve of the finding in this regard recorded by the Trial Court.

21. We have already held that the other finding on cruelty based on the allegations made by the present appellant regarding the illicit relationship of the petitioner with Sujata Bhattacharjee would not constitute cruelty as there was no allegation of any cruelty based on such allegations made by the petitioner. We, therefore, are of the opinion that the finding that series of acts of cruelty are made out is clearly unsustainable on the basis of the case of the parties and evidence adduced at the trial.

22. Having held so, we must also consider the consistent stand of the appellant (wife) that she has all intentions of continuing her conjugal relationship with the petitioner.

23. Keeping in view the totality of the circumstances and having regard to our findings above, we hereby set aside the Judgment and decree of divorce passed by the Additional District Judge, Barrackpore on 13.09.2019.

24. The appeal is accordingly allowed.

(Madhuresh Prasad, J.)

25. I agree.

(Harish Tandon, J.)