

(2007) 01 RAJ CK 0097

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 36 of 1990

Hari Mohan Sharma

APPELLANT

Vs

Smt. Santosh Pareek

RESPONDENT

Date of Decision : 19-01-2007

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)(ia)

Citation : (2007) 1 RLW 820 : (2007) 1 WLN 161

Hon'ble Judges : Shiv Kumar Sharma, J;R.S. Chauhan, J

Bench : Division Bench

Judgement

Shiv Kumar Sharma, J.—?You know better

Your relations with the other.

But would it be a crime

To spare some time.

And ask about me

about how I am??

And where I am??

These words appear to have been uttered in the instant matter by the respondent wife in response to the allegations of "mental cruelty and desertion" leveled by the appellant husband against her. Learned Family Court, Jaipur where the appellant husband filed the petition for divorce found these allegations unfounded and dismiss the petition vide decree and judgment dt. 12.12.1989 that are under challenge in his appeal.

2. As per the facts stated in the petition the appellant entered into the marriage with respondent on 11.06.1978 according to Hindu rites and from their wedlock a female child was born on 13.07.1979, thereafter from 21.12.1980 the respondent started living separately. It was averred in the petition that the

respondent from the very beginning of marriage had superiority complex. She used to compare her prosperous parental family with that of the simple family of the appellant. Many a times she expressed her proud feeling that she was the daughter of a Police Officer. The behaviour and conduct of the respondent caused immense emotional stress and mental agony. It was also pleaded that in the petition filed on behalf of her daughter Shruti, claiming maintenance, the respondent made false allegation against the appellant that he had illicit relations with another female doctor. According to the appellant this false allegation caused mental cruelty to him. The Appellant also averred that the respondent and deserted him for the past six years prior to filing of the petition. She left his house on 21.12.1980 without any just cause and started living with her parents and there being no sharing of the bed and co-habitation, prayer was made to grant decree of divorce for dissolving the marriage between the parties.

3. The respondent in her reply pleaded that the petition for divorce was filed on unfounded allegations. It was stated that the appellant himself ousted her and did not allow her to live with him. In fact when the respondent was to undergo an operation in February, 1980 the appellant left her and her daughter in the house of her parents. After the operation when the respondent went to the house of appellant, he openly told her that he did not want to live with her since he intended to marry with Dr. Urmil Katyal. In the year 1982 the appellant was posted at Sawai Madhopur and the respondent was residing with her in-laws at Jaipur. On 27.06.1982 the respondent along with her brother and parents went to Sawai Madhopur to reside with the appellant but he misbehaved with her and did not allow her to stay with him. In such circumstances it could not be said that the respondent deserted the appellant and caused mental cruelty

4. On the basis of pleadings of the parties learned Family Court framed as many as three issues related to cruelty, desertion and relief. The appellant examined himself and Dr. Mahendra Bag, whereas the respondent in addition to her own statement, adduced the evidence of Ashok Kumar, Gartesh Narain Vyas, Dr. am Lata Bhardwaj, Sita Ram Pareek, Raj Kumar Pareek and Mahesh Pareek. Thereafter on hearing final submissions learned Family Court decided all the issues against the appellant holding that neither the respondent deserted the appellant nor her behaviour was cruel to him.

5. Mr. Sagar Mal Mehta, learned Senior Counsel appearing for the appellant canvasses as under:

(i) Family Court while deciding issue No. 1 gave undue importance to the letter dt. 11.04.1983 (Ex.-A1) addressed to Dr. Urmil Katyal. Family Court took a very restricted and orthodox view of the said letter though the appellant had explained the circumstances in which the said letter was written by him. The Family Court drew wrong inferences from the said letter which resulted in miscarriage of justice to the appellant. It is an admitted position that making false allegations of illegal relations with some other woman amounts to mental cruelty but the Family Court failed to appreciate the facts and circumstances

regarding his relationship with Dr. Urmil Katyal.

(ii) Family Court erred grossly in deciding issue No. 2 against the appellant in spite of the fact that he had proved all the essential ingredients of desertion in this case.

(iii) There has been an irretrievable break down of marriage and reunion was impossible, there was therefore no other option but to pass the decree of divorce. Reliance is placed on Durga Prasanna Tripathy Vs. Arundhati Tripathy,

6. Per contra Mr. Ajeet Kumar Sharma, Learned Counsel for the respondent supported the impugned judgment and urged that no case of desertion and mental cruelty could be established by the appellant. We were taken through the statements of the witnesses and the documents and attempt was made to show that it was appellant who ill treated the respondent since he had illicit relations with Dr. Urmil Katyal. According to learned Counsel in the letter dt. 11.04.1983 (Ex.-A1) the appellant addressed Dr. Urmil Katyal as "My Sweet heart, Ummu". Special letter-head whereupon sketch of young male and female embarrassing each other was drawn used for this purpose. The appellant admitted to have written the said letter. In deciding the issue relating to mental cruelty, Family Court discussed in detail the letter Ex. A1 and observed that the appellant had illicit relationship with Dr. Kaltyal. In respect the issue of desertion Family Court after having discussed the evidence adduced by the parties held that since the appellant wanted to marry with Dr. Urmil Katyal he did not allow the respondent to live with her and as and when she made attempt to reside with him he insulted her and did not allow her to live with him.

7. We have reflected over the rival submissions

8. At the outset we proceed to scan the letter EX. A1. It reads as under:

My sweet heart, Ummu, 11.4.1983

Dear I have reached here at 12.45 A.M. This evening train is useless I would have missed even the Agra forte if the train could have delayed 20 mt. more. I had some meeting at 10.10 AM. Today I have received the form from BHEL Orthodox. I have gone through whole the from. Please fill it very preciously. You have not to attach any documents along with it. I am late in writing this letter as I could not find your photograph I think you must have got photo attest on passport form. For that I have written to Tak Studio. Subhashji will collect the photograph & passport. This is the last photograph I am sending you. Please send the form duly filled upto 17th duly filled by black ink may be ball pen. Following things keep in mind while filling it.

(1) applied for - Sr. Medical Officer Pead Adv. No. T.I. Dt.

Page 2 : 6 Permanent address mailing address

Dr. Urmil Katyal M.D. Dr. Urmil Katyal C/o Katyal Medical Stores C/o Dr. Haxmohan ENT Specialist Near Govt. Hospital, ESI Hospital Sawai Madhopur.

Baran Pin Code Pin code

8. Father's Guardian's name Dr. Hari Mohan Occupation Doctor ENT Specialist
ENT Specialist Dr. Hari Mohan ESI Hospital Sawai Madhopur Page 7

12. Membership 1. Indian Medical Association

2. Rajasthan Medical Association

3. Association of Peasants of India

4. Rajasthan PG Association

9. A look at the statement of appellant reveals that he admitted have written the letter Dr. Urmil Katyal but stated that Dr. Urmil Katyal was like his sister. Refuting the statement of appellant the respondent deposed that from the very beginning the appellant wanted to marry with lady doctor and because of his relationship with Dr. Urmil Katyal, he did not allow her to reside with him and persuaded her to give her consent for his marriage with Dr. Urmil Katyal. She further deposed that appellant and Dr. Urmil Katyal resided at Sawai Madhopur under one roof and the appellant used to carry saris of Dr. Urmil Katyal from Sawai Madhopur to Jaipur for the purpose of dry-cleaning. Dr. Omlata Bhardwaj (DW-4) deposed that, when she had gone to Delhi, she had seen the appellant with Dr. Urmil Katyal in a restaurant. Raj Kumar Pareek (DW-6) and Mahesh Pareek (DW-7) also stated that in June, 1983 when they had gone to Sawai Madhopur and went to the house of appellant it was Dr. Urmila Katyal who opened the door.

10. Mr. Sagar Mal Mehta learned Senior Counsel, vehemently contended that there was nothing unusual in the letter Ex.-A1. The words "My Sweet heart" written in the letter did not denote to have addressed necessarily to a fiancée. Even a father may address his daughter as "sweet heart" as late Pt. Jawahar Lal Nehru used to address his daughter Indira Priyadarshini. Learned Counsel placed for our perusal "Glimpses of World History" written by Jawaharlal Nehru, wherein at page 1 he wrote to his daughter Indira Priyadarshini thus:

You know, sweet heart, how I dislike sermonizing and doling out good advice.

11. We have carefully gone through the book placed for our perusal and the letter EX.-A1. We find following peculiarities in the letter Ex.-A1:

(i) It is written on the letter-head whereon sketch of young lovers of opposite sex embarrassing each other is drawn.

(ii) Dr. Urmil Katyal is addressed as "My sweet-heart Ummu"

(iii) Address of Dr. Urmil Katyal written on the letter, is in fact the address of the appellant where he was residing at Sawai Madhopur.

12. In the "Glimpses of World History" Pandit Jawaharlal Nehru wrote the letter to his daughter Indira Priyadarshini from Central Prison, Naini on 26.10.1930. Since he was missing his daughter badly and could not see her, he wrote thus:

Priyadarshini dear to the sight, but dearer still when sight is denied. But in the instant matter the appellant and Dr. Urmil Katyal both were posted at the relevant time at Sawai Madhopur. Dr. Urmil Katyal was the colleague of the appellant and addressing a colleague as "my sweet-heart" does not mean to denote that the letter was written by a brother to his sister. In our Indian culture relations between brother and sister have not touched such a height. No brother would ever write a letter on an indecent letter-head by addressing his sister as "my sweet-heart".

13. We thus find that the allegations of the respondent that the appellant had illicit relations with Dr. Urmil Katyal were not false and ground of "mental cruelty" pleaded by the appellant is unfounded. The words "treated with cruelty" appearing in Section 13(1)(ia) of the Hindu Marriage Act, 1955 emphasis that to harsh conduct of certain intensity and persistence must emanate from the spouse against whom the petition for divorce is made and it does not take within its fold the cruel treatment meted out to the spouse howsoever close he or she may be to the respondent spouse unless there is evidence to warrant interference that he or she was cruel to the petitioner spouse at the behest of incitement of the respondent spouse.

14. That takes us to the ground of "desertion" pleaded by the appellant in the petition. Desertion means intentional permanent abandonment of one spouse by other without the other's consent and without reasonable cause. A deserting spouse has locus paenitentiae and can purge the consequences of such desertion by offering to live with the spouse who has been deserted. In the instant matter in order to establish that the respondent had deserted the appellant, it was essential for the appellant to establish two conditions - (i) factum of separation and (ii) intention of respondent to bring cohabitation permanently to an end. Essence of desertion is abandonment of one spouse by the other for no good cause and so there can be no desertion by a wife who lives separately from her husband if in law she is entitled do so. Refusal by the wife, to live with her husband who has another wife living does not make her deserter. A petition for divorce on the ground of desertion, however, would be liable to be dismissed when the Court holds that the party is not genuine and aggrieved and that the party failed to prove the ground on the basis of which the petition was presented. In the instant case, we notice that it was the appellant, who did not allow the respondent to reside with him because he wanted to live with Dr. Urmil Katyal. There is no reason to disbelieve the evidence adduced by the respondent and we are of the view that the appellant could not establish that it was the respondent who deserted him.

15. Coming to the ratio indicated in *D.P. Tripathy v. A. Tripathy* (supra) we notice that in that case reunion of the wife and husband was impossible and they were living away for the last 14 years and the end was not in sight. Parties were not ready to forget their past as bad dream. In such a situation there was no other option except to grant decree of divorce. But in the instant case it is the

appellant who has shattered the matrimonial home and he can not take advantage of his own wrongs in view of Section 23 of the Hindu Marriage Act, 1955 which provides that before passing the decree the Court has to be satisfied that the party seeking relief was not taking advantage of his or her own wrong. In the Instant case we are satisfied that the appellant is not aggrieved and genuine party and he is not entitled to any relief.

16. For these reasons, the appeal being devoid of merit stands dismissed. No costs.