

(2012) 04 GUJ CK 0025
In the Gujarat High Court

Case No : Criminal Revision Application No. 509 of 2011

Naranji Rajaji Dhobi

APPELLANT

Vs

State Of Gujarat and Anr

RESPONDENT

Date of Decision : 30-04-2012

Acts Referred:

Hindu Marriage Act, 1955 — Section 9

Citation : (2012) 2 DMC 342

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : N.L. Ramnani, for the Appellant; K.L. Pandya, APP For the Defendant No. 1 and Mr. Anil H. Soni, Advocate For the Defendant No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The original opponent of Criminal Misc.Application No. 414 of 2007, husband of the original applicant has filed this Revision Application against the order dated 20.9.2011 passed by the learned Principal Judge, Family Court, Ahmadabad, whereby the learned Judge partly allowed the application of the opponent No. 2, wife and awarded maintenance of Rs. 1,500 per month in favour of the opponent No. 2, wife. Heard Mr. N.L. Ramnani, learned Advocate for the applicant - original opponent, Mr. K.L. Pandya, learned APP for opponent - State and Mr. Anil H. Soni, learned Advocate for the opponent No. 2 - original applicant.

2. The applicant submits that after service of the notice of the Court, the applicant appeared in the proceedings and filed reply denying all the allegations levelled by the applicant's wife. It is submitted that as per the case of the applicant, the opponent - wife was not ready and willing to stay with the present applicant as he belongs to poor family and also for the reason that the opponent - wife has love affair with one another boy, who is serving in barber shop near the shop of the opponent - wife. The applicant, his family members and other respected members of the society tried to settle the dispute and the applicant is ready and willing to keep the opponent - wife with him, but the wife is not

interested in joining life and society of the present applicant and with a view to pressurize the applicant, she has filed maintenance proceedings. The applicant has examined witness in support of his contentions. The applicant and other respected persons of their caste have tried to bring amicable solution between the parties, but the said efforts have failed as the opponent wife was not interested in staying with the present applicant. It is further submitted that the said witnesses have not been cross-examined by the opponent-wife.

3. Mr. Ramnani, learned Advocate for the applicant has read the contents of the maintenance application of the opponent No. 2 wife and contended that looking to the allegations made against the present applicant the same are totally vague, irrelevant and baseless. He has read the observations made by the learned Judge in the order and contended that looking to the evidence produced on record, it does not appear that present applicant is earning Rs. 15,000. Looking to the deposition of the opponent No. 2 - wife, the allegations made against the present applicant as well as family members of the applicant are vague. From cross-examination it appears that opponent No. 2 - wife was asked to come to house of the applicant but she was not ready to come to in-laws house. He has also read the oral evidence of one independent witness, namely, Vashantkumar Dhobi Ex.22 who has tried to settle the dispute between the parties. Even before him opponent No. 2 - wife was not ready and did not agree to come with the present applicant. He has further contended that Family Court has not considered the oral evidence of the independent witness and awarded maintenance amount. This independent witness is not cross-examined by the opponent No. 2. When the sufficient cause is shown on record yet learned Judge has considered that present applicant has committed cruelty to opponent No. 2 - wife. That the order passed by the learned Judge is perverse. Lastly he has contended that the order passed by the learned Judge is required to be quashed and set aside.

4. He has relied on the decision in the case of Deb Narayan Halder Vs. Smt. Anushree Halder, , wherein the Apex Court in paras 18, 19, 20 and 21 observed as under:

18. From the evidence on record we are satisfied that the findings recorded by the learned Magistrate were fully justified as they were based on the evidence on record and appear to us to be reasonable. In her application the respondent had given two reasons for her ill-treatment by the appellant namely his greed for dowry and that she was not good looking. So far the second reason is concerned, in the course of her deposition, the respondent has not said a word about it. So far as the first reason is concerned, on a careful scrutiny of the evidence on record, we have also come to the conclusion that no dowry was ever demanded either before the marriage or after the marriage. Even PW-2, the mother of the respondent had to admit that the appellant had never demanded any dowry or gift. Of course she added that all this was in his mind. We are, therefore, satisfied that the Trial Court properly appreciated the evidence on record while recording the finding that there was never any demand for dowry by the

appellant. There was, therefore, no reason for him to ill-treat his wife for this reason. We, therefore, find that both the reasons given in the application for her ill treatment are non-existent.

19. We have also perused the evidence on record with a view to ascertain whether for any other reason the respondent was ill-treated by the appellant. We have found from the evidence on record that the behaviour of the appellant has been throughout normal. It is admitted by the parties that they frequently went during vacations to visit different places. On some occasions they were even accompanied by the relatives of the respondent. The appellant permitted the respondent to continue her studies even after her marriage and that is how she secured her B.A. degree after marriage. He also arranged an agency of the UTI to keep her engaged and also opened a joint account in a bank which she could operate. All these facts go to indicate that for several years after their marriage they enjoyed normal marital relationship. In fact, there is evidence to show that the appellant used to praise his wife in the presence of others by complimenting her and giving her credit for the good performance of their son in his studies. This even the respondent has admitted in the course of her deposition. Apart from these we find it difficult to believe that if the appellant started torturing the respondent within 15 days of the marriage, the respondent would not have reported this matter at least to her mother. According to her mother, she came to know about her ill-treatment 5 to 6 years after marriage. According to the respondent in her complaint Ex. 1 she had mentioned about such happenings to her mother about eight years after her marriage. While there is reference to reports lodged by the respondent to the police regarding torture by the appellant, not one such report has been brought on record which may have been lodged before the respondent left her matrimonial home. Even relevant particulars are not disclosed. The only police report brought on record is one lodged after the respondent left her matrimonial home. We do not attach much importance to this report. There is no contemporaneous document in the form of letters which may have been written by the respondent to her friends or relatives mentioning about her being subjected to torture or harassment by the appellant. The respondent being an educated lady, it is difficult to believe that she would not have written letters to her friends and relatives during the twelve years that she lived with the appellant as husband and wife. Apart from her mother, the respondent has produced no evidence to prove that she was tortured and harassed by the appellant. The learned Magistrate also noticed that though they lived at different places around Calcutta during the period of twelve years after their marriage, not one witness was examined by the respondent to prove that the appellant treated the respondent with cruelty. On the other hand, some witnesses have been examined by the appellant to prove that they lived a normal life and there was no question of the respondent being tortured by the appellant for any reason whatsoever. Even the other facts which we have found support the case of the appellant that he had not treated the respondent with cruelty for any reason whatsoever. Learned Counsel for the respondent laid great emphasis

on the observation of the Magistrate that the appellant being a bank employee leaving for his work in the morning and returning late in the evening hardly had any time to ill-treat the respondent. No doubt, there is such an observation in the order of the Magistrate, but that is not the basis of his findings. Too much emphasis on such a stray observation in the order is not justified.

20. We therefore hold that the High Court was not justified in setting aside the findings recorded by the learned Judicial Magistrate. We have reached this conclusion after appreciating the evidence on record since there is no discussion of the evidence in the judgment of the High Court. Counsel for the respondent posed before us a question as a part of his submission as to why the respondent should leave her matrimonial home without any reason. In cases where there is a dispute between husband and wife it is very difficult to unravel the true reason for the dispute. After separation when the relationship turns sour, all sorts of allegations and counter allegations are made against each other. Evidence of contemporaneous nature therefore plays an important role in such cases as it may reveal the thinking and attitude of the parties towards each other at the relevant time. Such evidence is usually found in the form of letters written by the parties to each other or to their friends and relatives or recorded in any other document of contemporaneous nature. If really the respondent was subjected to cruelty and harassment in the manner alleged by her, we have no doubt she would have written about such treatment to her friends and relatives with whom she may have corresponded. The reports allegedly made by her to the police may have thrown some light on this aspect of the matter. Such evidence is completely absent in this case. It appears to us that the parties lived happily for many years after the marriage till about the year 1996, whereafter there was some misunderstanding which ultimately resulted in their separation. Why this happened, it is difficult to fathom, but the evidence on record does not convince us that the respondent was subjected to torture and harassment by the appellant, and certainly not for the reasons alleged by her. The Court is not permitted to conjecture and surmise. It must base its findings on the evidence produced before it by the parties. The inquiry by the Court is restricted to the evidence on record and the case pleaded by the parties. It is not permissible to the Court to conjecture and surmise and make out a third case not pleaded by the parties only to answer the query such as the one posed to us.

21. In the result, this appeal is allowed and the impugned judgment and order of the High Court is set aside.

5. Heard Anil Soni, learned Advocate for the opponent No. 2. He has read the contents of cross-examination of the applicant and contended that present applicant has made vague allegation against wife regarding character. Looking to the act of the present applicant, he filed divorce petition u/s 9 of the Hindu Marriage Act before the learned Judge which was dismissed for want of prosecution. It is contended that intention of the present applicant is not to call wife at his home. It is contended that looking to the evidence of the wife it is

proved beyond reasonable doubt that the income of the present applicant is around Rs. 6,000. He has lastly contended that learned Judge has not considered prevailing market position and awarded only Rs. 1,500 p.m. as maintenance. He has prayed that present Revision Application is required to be dismissed when prima facie it appears that the order of the learned Judge is perverse.

6. I have heard the learned Advocates of both the sides at length and in great detail. I have also gone through papers produced before me and the judgment and order passed by the learned Judge.

7. From the oral version of the present opponent No. 2 - wife it appears that she has prayed for maintenance. It appears from the observation of the learned Judge that present applicant has rudely behaved with the wife and subjected the opponent No. 2 to cruelty. I have also considered prevailing market position. The amount of maintenance of Rs. 1,500 p.m. awarded by the learned Judge is just and proper. The present applicant has filed application for divorce u/s 9 of the Hindu Marriage Act which was dismissed for want of prosecution. Here, the question which is involved is amount of maintenance. The learned Judge has awarded the maintenance amount of Rs. 1,500 p.m. to legally wedded wife opponent No. 2. I have perused the provisions of Child Marriage Restraint Act. As per the provisions of the said Act the issue in question cannot be challenged after such a long period and, therefore, it is not necessary to discuss that issue at length. So far as the decision relied on by Mr. Ramnani in the case of Deb Narayan Halder (supra), is concerned, here in the present case question of dowry does not arise but the question of ill-treatment which is given to the wife is proved. The order passed by the learned Judge is not perverse and not against the provisions of law. I find that the findings recorded by the learned Family Judge are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by the learned Judge below. From the contents of the application, I do not find any substance in the same. This application, therefore, deserves to be dismissed and is accordingly dismissed. Rule is discharged. Record and proceedings, if any, be sent back to the Trial Court concerned, forthwith.