

(2007) 05 RAJ CK 0109
In the Rajasthan High Court

Sanjay Sharma

APPELLANT

Vs

Smt. Aradhana Sharma

RESPONDENT

Date of Decision : 25-05-2007

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 18
Hindu Marriage Act, 1955 — Section 10, 13, 23, 24, 9
Penal Code, 1860 (IPC) — Section 323, 324, 379, 397, 398

Citation : (2008) 1 RLW 253

Hon'ble Judges : Shiv Kumar Sharma, J;Guman Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—The VEDAS suggest division of human life into four stages viz. Brahamacharya, Grihastha, Vaanprastha and Sanyaasa, commonly known as four Aashramas. In the Brahamacharya Aashrama one passes through the life of studen-thood, in the Grihastha Aashrama one passes through the life of house-holder, in the Vaanprastha one retires from worldly pursuits, and in the Sanyaasa Aashrama one renounces all worldly attachments. The Grihastha Aashrama begins with marriage. Here the married couple face the hard realities of life. In the stability of families depends the stability of nation. The institution of marriage was established with the purpose of achieving stability in our social life. Marriage is not just a social contract. It is much more than that. As a family is the nucleus of a nation, it has to be protected with great care and all costs. The facts of this case however reveal that the young couple did not rise cheerfully to the occasion and failed to recognise their responsibility in the marital home.

2. In all the three appeals husband (Sanjay) is the appellant and wife (Aradhna) is the respondent. They got married according to Hindu rites on December 25, 1994. Somehow their marital relations became strained and Sanjay had to file a petition in the Family Court No. 2 Jaipur u/s 13 of the Hindu Marriage Act, 1955

(for short "the Act") seeking divorce from Aradhana on the grounds of cruelty and desertion. In the year 2000 while the said petition was pending, Aradhana filed another petition u/s 9 of the Act claiming restitution of conjugal rights. Both the petitions were decided by the learned Family Court conjointly vide decree and judgment dated February 26, 2002 granting relief to Aradhana. Being aggrieved by the findings, appeals bearing Nos. 584/2002 and 581/2002 have been filed by Sanjay. The petition moved by Aradhana u/s 18 of the Hindu Adoption and Maintenance Act claiming maintenance from Sanjay was however decreed on August 26, 2003. This decree has been assailed by Sanjay in appeal No. 2353/2003. Since the questions of law and fact involve in these appeals are identical, we proceed to decide them by a common judgment.

3. The averments made by Sanjay in the petition u/s 13 of the Act are as under:

(i) Aradhana had an affair with one Toni, who was Devar (Brother in law) of her sister. On January 10, 1995 she insisted to meet Toni and when Sanjay did not allow her to do so she rebuked Sanjay and caused him mental agony.

(ii) On January 15, 1995 Aradhana became angry from Sanjay and left for her parental house,

(iii) On January 19, 1995 Aradhana came back to Sanjay's house and quarreled with him. She told him that she wanted to marry with Toni but she was forced by her family members to marry with Sanjay.

(iv) Aradhana used to quarrel with her handicapped motherinlaw.

(v) On January 21, 1995 Aradhana finally declared that she would not reside with Sanjay and left his house along with her brother with all her house hold goods and jewellery etc. She also took with her golden chain and ring of her mother-in-law.

(vi) On January 17, 1996 Aradhana informed Sanjay that if she was paid a sum of Rs. 30,000/- as lump sum maintenance allowance, she would not claim maintenance in future. Sanjay accordingly on January 18, 1996 issued a cheque of Rs. 15,000/- and paid in cash Rs. 15,000/- to Aradhana.

(vii) On June 20, 1996 when Sanjay suffered from paralysis, Aradhana was informed about that, but she did not come to attend Sanjay.

(viii) Aradhana deserted Sanjay without any reason for the past two years and caused mental cruelty to him.

4. Aradhana submitted reply to the petition denying all the allegations. She pleaded that in fact it was Sanjay who deserted her and left her on January 21, 1995 to the house of her Mama. She did not bring any house hold goods and jewellery with her. She never demanded sum of Rs. 30,000/- from Sanjay. On the contrary Sanjay purchased stamp paper in her name and on blank stamp paper got her signatures. She was never informed about the paralytic attack on Sanjay in time. It was on January 19, 1997 that she was informed about the

paralytic attack on Sanjay. She immediately rushed to the house of Sanjay where she found Sanjay quite normal. On January 25, 1995 Aradhana along with her mother went to the house of Sanjay, but his mother, declined to keep her in the house. In the year 1995, on the occasion of Karwachauth she again went to the house of Sanjay, but Sanjay did not permit her to live with him. On April 14, 1995 her mother and Mausi went to house of Sanjay where her Nanad and Nandoi were present. As a token of love and affection, her mother handed out them sweets and a sum of Rs. 251/-. Sanjay did not like this gesture and returned the sweets and money to the brother of Aradhana at his shop. On March 30, 1996 and April, 1996 Sanjay denied for the visit of Aradhana and assured to have talked by telephone. Aradhana expressed her desire to live with Sanjay and prayed for dismissal of the petition.

5. In the petition u/s 9 of the Act Aradhana prayed to restore her conjugal rights. Opposing the prayer Sanjay pleaded that she was not entitled to the decree for conjugal rights.

5.1 In the petition filed by Aradhana u/s 18 of the Hindu Adoption and Maintenance Act she pleaded that in the petition u/s 13 of the Act filed by Sanjay a sum of Rs. 800/- per month as interim maintenance was awarded to her. Since she has no source of income she was entitled to be maintained by Sanjay who was employed in Indian Bank for the past 12-13 years and his monthly income was Rs. 12,000/- to 15,000/-. She claimed Rs. 5,000/- per month as maintenance allowance.

6. Sanjay filed reply to petition stating therein that he was regularly paying the maintenance as awarded by the court. He further stated that Aradhana was serving as Teacher in a private school and earning Rs. 2000/- per month. He further pleaded that he was simply a clerk and earning small amount not sufficient to maintain himself. He also stated that Aradhana was receiving Rs. 1,500/- per month as maintenance allowance and he paid her lump sum maintenance allowance Rs. 30,000/-, therefore she was not entitled to maintenance allowance.

7. Having heard the submissions, learned Family Court vide judgment dated August 26, 2003 enhanced the maintenance allowance from Rs. 1500/- to Rs. 3,000/- per month.

8. Petitions filed u/s 13 and 9 of the Act were consolidated and out of the pleadings of the parties following issues were framed:

(1) Whether the wife behaved cruelly with husband as per the facts stated in the petition?

(2) Whether the wife deserted the husband for more than two years prior to filing the petition?

(3) Relief?

9. Sanjay examined himself as PW. 1 and in support of his testimony he produced Smt. Chandra Kanta (PW. 2), Vikas Mathur (PW. 3) and Dev Karan Kumhar (PW. 4). Aradhna on the other hand appeared as, DW. 1 and in order to corroborate her contentions she examined Deepak Sharma (Dw. 2), Prem Sharma (DW. 3), Yogesh Bhatia (DW. 4) and Hargobind Nirbhik (DW. 5).

10. The evidence adduced by the parties was discussed in detail by the learned Family Court and it was indicated that Sanjay could not establish that Aradhana deserted him and that behaviour of Aradhana was cruel to him. It was further held that Aradhana was entitled to decree for restitution of conjugal rights.

11. Efforts were made by us to bring reconciliation between the parties but they did not succeed because Sanjay was not prepared to keep Aradhana with him. Before considering the submissions of learned Counsel for the parties we deem it appropriate to have a look at the relevant statutory provisions.

12. Clause (1)(ia) of Section 13 of the Act specifies cruelty as one of the grounds of divorce. In so far as relevant Section 13 reads thus:

(1) Any marriage solemnised, whether before or after commencement of the Act may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(ia) has after the solemnization of the marriage treated the petitioner with cruelty.

13. Cruelty may be physical as well as mental. "Mental Cruelty" cannot be defined exhaustively. Lord Reid in Collins v. Gollins 1964 AC 644 observed as under:

No one has ever attempted to give a comprehensive definition of cruelty and I do not intend/try to do so. Much must depend on the knowledge and intention of the respondent, on the nature of his (or her) conduct, and on the character and physical or mental weakness of the spouses, and probably no general statement is equally applicable in all cases except the requirements that the party seeking relief must show actual or probable injury to life, limb or health.

14. Lord Pearce also adopted the view of Lord Reid and indicated thus:

It is impossible to give a comprehensive definition of cruelty, but when reprehensive conduct or departure from normal standards of conjugal kindness causes injury to health or an apprehension of it, I think, cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would consider that the conduct complained of is such that this spouse should not be called on to endure it.... The particular circumstances of the home, the temperament and emotions of both the parties and their status and their way of life, their past relationship and almost every r circumstance that attends the act or conduct complained of may be relevant.

15. Lord Pearce and Lord Reid referred the words injury to life, limb or health in

the context of the requirement of the law of divorce prevailed in United Kingdom. This requirement is no longer present in Section 13(1)(ia). Decree of divorce could not be sought on the ground of cruelty prior to 1976. It was after the Hindu Marriage Laws (Amendment) Act 1976 came to be enacted that the cruelty was made a ground for divorce. Cruelty mentioned in Clause (ia) is now a ground for divorce as well as for judicial separation u/s 10.

16. In *V. Bhagat Vs. Mrs. D. Bhagat*, "Mental Cruelty" has been defined by the Apex court as under: (Para 17)

Mental cruelty in Section 13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

17. In *Shobha Rani Vs. Madhukar Reddi*, was the case wherein Their Lordships of the Supreme Court had occasion to interpret Section 13(1)(ia) thus:

Section 13(1)(ia) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the Court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn up by taking into account the nature of the conduct and its effect on the complaining spouse. There may however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injuries effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners.

18. In *A. Jayachandra Vs. Aneel Kaur*, the Hon'ble Supreme Court propounded thus: (para 12)

The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce.... Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day to day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

19. In the light of the principles enunciated herein above we may now examine whether the allegations made by Sanjay in the petition and the evidence adduced in support of the allegations amount to mental cruelty within the meaning of Sub-clause (ia) of Section 13(1) of the Act. For the sake of convenience we may divide the allegations into following sub heads:

(i) Aradhana's relations with Toni.

(ii) Misbehaved with Sanjay's mother.

(iii) Did not care to look after Sanjay at the time when he suffered paralytic attack.

20. It appears to us that Sanjay has become over sensitive and suspicious in regard to Aradhana's relations with Toni. Aradhana in her deposition stated that just after 2-3 days of marriage Sanjay showed her photographs of few girls and told her that these were the girls who wanted to marry him but he declined, on the same breath Sanjay asked Aradhana whether any "rishta" for a boy was offered to her? Aradhana, then informed Sanjay that "rishta" for her sister's Devar Toni was discussed in the family but her family members did not agree for it. She further deposed that:

esjh nhnh ds nsoj Vksuh dh "kknh esjh "kknh ls ,d o"kZ igys gks xbZ gS A

Having discussed the entire evidence on the point learned Family Court concluded thus:

;g Hkh LokHkkfod gS fd fookg ls iwoZ yM+ds o yM+dh ds fy, vusd LFkkuks ls vusd O;fDr;ksa ls "kknh IEcU/k ds fy, izLrko vkrs gS rks ;g vko;"d Hkh ugh gS fd tks izLrko vk;s gks muls dksbZ izse IEcU/k cus gks vkSj bl vk/kkj ij fd vizkfFkZ;k vkjk/kuk ds fookg ls iwoZ Vksuh uked O;fDr ds lkFk izse IEcU/k jgs gks vFkok og mlls fookg djuk pkgrh gks IR; izrhr ugh gksrk A

21. Similarly from the testimony of the witnesses examined before the Family Court it could not be established that Aradhana ever misbehaved with the mother of Sanjay. On the contrary this fact came on record that her mother-in-law hit Aradhana with broom. In so far information about paralytic attack on Sanjay is concerned it could not be established that Aradhana was informed about the illness of Sanjay in-time.

22. That takes us to the issue of desertion. For the purpose of the Act "desertion" means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. Having scanned the material on record in the instant case we find that Aradhana never deserted Sanjay and she still wants to reside with him.

23. On analysing the evidence adduced before the Family Court we find that the incidents demonstrated by Sanjay in his testimony come within the purview of petty quibbles, trifling differences and quarrels that happen in day to day married life of the spouses and these trivial irritations do not amount to cruelty. The incidents illustrated by the husband in his statement cannot be termed "more serious than ordinary wear and tear of married life." We also do not find sufficient material to return a verdict of desertion having been proved. Despite the decree for restitution of conjugal rights passed in favour of Aradhana, Sanjay did not resume cohabitation with her. In Smt. Gopi Bai v. Sh. Govind Ram 2007 (2) WLC 368 the Division Bench of this Court indicated thus: (Para 14)

14. Moreover, once the decree for restitution of conjugal rights was granted in favour of the wife, it was the husband's legal duty to resume his cohabitation with the wife. In the age of gender justice and women emancipation and empowerment, it cannot be argued that it is the duty of the wife to go back to the matrimonial home.

24. We do not find any substance in the argument of learned Counsel appearing for Sanjay that since marriage had broken down irretrievably, no purpose would be served by prolonging the agony of the parties. In the facts and circumstances of this case where Sanjay did not obey the decree passed u/s 9 of the Act for restitution of conjugal rights in favour of Aradhana provisions contained in Section 23 of the Act would be attracted and Sanjay would not be allowed to take advantage of his own wrongs. In Chetan Dass Vs. Kamla Devi, , their Lordships

of the Supreme Court propounded thus: (Para 19)

...Let the things be not misunderstood nor any permissiveness under the law be inferred, allowing an erring party who has been found to be so by recording of a finding of fact in judicial proceedings, that it would be quite easy to push and drive the spouse to a corner and then brazenly take a plea of desertion on the part of the party suffering so long at the hands of the wrongdoer and walk away out of the matrimonial alliance on the ground that the marriage has broken down. Lest the institution of marriage and the matrimonial bonds get fragile easily to be broken which may serve the purpose most welcome to the wrongdoer who, by heart, wished such an outcome by passing on the burden of his wrongdoing to the other party alleging her to be the deserter leading to the breaking point.

25. Their Lordships of the Supreme Court had occasion to consider the object and purpose of Hindu Marriage Act, 1955 in *Hirachand Srinivas Managaonkar Vs. Sunanda*, , and it was observed thus: (Para 16)

...At the cost of repetition it may be stated here that the object and purpose of the Act is to maintain the marital relationship between the spouses and not to encourage snapping of such relationship.

26. In *Naveen Kohli Vs. Neelu Kohli*, , on which reliance is placed by learned Counsel for Sanjay, Neelu Kohli filed series of criminal case against Naveen Kohli, details of which have been incorporated in para 82 thus:

82. The High Court ought to have examined the facts of the case and its impact. In the instant case, the following case were filed by the respondent against the appellant:

1. The respondent filed FIR No. 100 of 1996 at Police Station Kohna under Sections 379/323 IPC.
2. The respondent got a case registered under Sections 323/324 registered in Police Station Panki, Kanpur City.
3. At the behest of the respondent FIR No. 156 of 1996 was also filed in Police Station Panki.
4. The respondent filed FIR under Sections 420/468 IPC at Police Station Kotwali.
5. The respondent got a case registered under Sections 420/467/468 and 471 IPC.
6. The respondent filed a complaint against the appellant under Sections 498A/323/504/506 IPC at Police Station Kohna.
7. The respondent had even gone to the extent of opposing the bail application of the appellant in criminal case filed at Police Station Kotwali.
8. When the police filed final report in two criminal cases at Police Station Kotwali

and Police Station Kohna, the respondent filed protest petition in these cases.

9. The respondent filed Complaint No. 125 of 1998 in the Women's Cell, Delhi in September 1997 against the appellant's lawyer and friend alleging criminal intimidation.

10. The respondent filed a complaint under Sections 397/398 before the Company Law Board, New Delhi.

11. The respondent filed a complaint in Case No. 1365 of 1988 against the appellant.

12. Again on 8-7-1999, the respondent filed a complaint in Parliament Street Police Station, New Delhi and made all efforts to get the appellant arrested.

13. On 31-3-1999, the respondent had sent a notice for breaking the nucleus of HUF.

14. The respondent filed a complaint against the appellant u/s 24 of the Hindu Marriage Act.

15. The respondent had withdrawn Rs. 9,50,000 from the bank account of the appellant in a clandestine manner.

16. On 22-1-2001 the respondent gave affidavit before the High Court and got non-bailable warrants issued against the appellant.

17. The respondent got an advertisement issued in a national newspaper that the appellant was only her employee. She got another news item issued cautioning the business associates to avoid dealing with the appellant.

The findings of the High Court that these proceedings could not be taken to be such may warrant annulment of marriage is wholly unsustainable.

27. In paras 85 and 86, the Apex Court proceeded to observe as under:

85. Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality.

86. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of

salvage, public interest of all concerned lies in the recognition of the fact and. to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

28. In the instant case, we have noticed that despite all odds Aradhana did not file even a single criminal case against Sanjay. On the contrary she filed a petition seeking decree of restitution of conjugal rights and she still wants to live with Sanjay. In T. Srinivasan Vs. T. Varalakshmi (Mrs), Their Lordships of the Supreme Court dismissed the appeal of husband on the ground that despite obtaining decree for restitution of conjugal rights the husband deprived his wife to perform conjugal duties by driving her away and not allowing her to join him. It was held that this constituted misconduct u/s 23(1)(a) inasmuch as husband was taking advantage of his own wrong and hence he was rightly denied relief u/s 13(1-A).

29. in the ultimate analysis we hold that Sanjay, who did not allow Aradhana to live with him cannot be allowed to take advantage of his own wrong. When Sanjay himself is guilty, the marital ties between him and Aradhana cannot be snapped.

30. We also do not see any illegality in the finding of learned Family Court where by sum of Rs. 3000/- per month as maintenance allowance was awarded to Aradhana. Since Sanjay being husband of Aradhana is duty bound to maintain her, we cannot find fault in the decree and judgment of learned Family Court.

31. For these reasons we find no merit in the appeals and the same accordingly stand dismissed. There shall be no order as to costs.