
(2015) 07 BOM CK 0064

In the Bombay High Court

Case No : Family Court Appeal No. 119 of 2014

Sanjay Tularamji Bhange

APPELLANT

Vs

Sau. Ujwala Sanjay Bhange

RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)(ia)
Penal Code, 1860 (IPC) — Section 498-A

Citation : (2015) 07 BOM CK 0064

Hon'ble Judges : V.A. Naik, J;P.B. Varale, J

Bench : Division Bench

Advocate : R.D. Bhuibhar, for the Appellant

Final Decision : Allowed

Judgement

V.A. Naik, J—Heard.

2. By this Family Court Appeal, the appellant-husband challenges the judgment of the Family Court, Nagpur, dated 21.01.2010, dismissing a Hindu Marriage Petition filed by the husband for a decree of divorce on the ground of cruelty and desertion.

3. Few facts giving rise to the Family Court Appeal are stated thus-

The appellant-husband had filed a petition against the wife for dissolution of marriage under Section 13(1)(ia) & (ib) of the Hindu Marriage Act, 1955 in the Family Court at Nagpur. The marriage between the parties was solemnized at Ballarpur on 26.11.1992 as per the Buddhist rites and custom. After the time of the marriage, the husband was residing at Indora, Nagpur along with his parents and his three unmarried sisters. According to the husband, the wife behaved properly with the husband for some time after the marriage and then started misbehaving with him and his family members. It is pleaded that the wife used to quarrel and abuse the husband and his parents in filthy language. It is pleaded that the wife insisted that the husband should reside away from the joint family.

It is pleaded that with a view to ensure peace and harmony in the house, the husband and the wife started residing separately from the parents from April, 1993 in a rented house in New Subhedar lay-out. It is pleaded that despite the separate residence, the wife was not happy and continuously created a disharmonious atmosphere in the house, that caused mental agony to the husband. It is pleaded that though, the husband is the only son of his parents and the three sisters of the husband were required to be married after his marriage, the wife did not mend her ways and refused to reside in the joint family. It is pleaded that in July, 1993, the wife went to her parents house for completing her B.Sc. degree course and stayed there till April, 1994. It is pleaded that the husband constructed a house on a plot purchased by him in New Subhedar lay-out, after securing loan and the parties started residing in the house constructed by the husband. It is pleaded that in May, 1995, two sisters of the husband were married and as the wife had delivered a baby girl at the relevant time, she was not present in the marriage ceremony. It is pleaded that after the wife returned to the matrimonial home in July, 1995, the wife persisted in quarreling, abusing and behaving adamantly with the husband and his parents. It is pleaded that the behaviour of the wife caused great mental tension and agony to the husband. It is pleaded that the husband used to take the wife on short tours and excursions and also on tours like Maharashtra and Goa darshan, Nepal, Darjeeling, Buddha Gaya, Varanasi etc. It is pleaded that despite the efforts of the husband to change the behaviour of the wife, the wife continued to behave badly with the husband. It is pleaded that despite the birth of a baby girl on 07.07.1997, the wife did not mend her ways and behaved arrogantly with all her in-laws including the husband. It is pleaded that on 21.06.1999, the third sister of the husband also got married. It is pleaded that due to the insistence on the part of the wife, the husband was required to effect a partition in the same house and the husband and wife were residing in one part and his parents were residing in the other. It is pleaded that the wife used to abuse his parents and also admonished them for living in the house of her husband free of cost. It is pleaded that the mother of the husband was allotted a servant's quarter on 14.05.2001 and therefore, she started residing separately. It is pleaded that though, the husband is the only son of his parents, he was deprived of their company in view of the adamant behaviour of the wife. It was pleaded that in the academic session 2002-03, the younger sister of the wife had sought admission in D.Ed. Course at Nagpur and she resided with the parties for a considerable time. It is pleaded that despite the arrogant behaviour of the wife, the husband behaved properly with her. It is pleaded that the wife adopted the tactics of non-cooperation, adamancy, speaking falsehood and black mailing the husband. It is pleaded that in June 2004, the mother of the husband received a notice for vacating the quarters in which she was residing and the husband being the only son of his parents, she decided to reside with him. It is pleaded that the wife did not wish that the mother of the husband should reside with them and therefore, she hatched a plan to quarrel with the husband on 20.06.2004. It is pleaded by the husband that on 25.06.2004, when he was in the office, the parents of the wife

and two other ladies came to the matrimonial home and took the wife and her daughter with the ornaments, letters and photo albums. It is pleaded that the wife and her parents lodged a false police complaint against the husband, his parents and two married sisters. It is pleaded that the Police Station Officer registered an offence punishable under Section 498-A of the Indian Penal Code against all of them. It is pleaded that the husband was asked to attend the police station and since, he was unable to secure the bail for two days due to holidays, he was detained in the jail for more than a couple of days and was released on 29.06.2004. It is pleaded that the mother of the husband and his two sisters were also arrested and released on bail only on 29.06.2004. It is stated that the action on the part of the wife to lodge the false complaint against the husband and his family members tantamounts to cruelty. It is pleaded that the wife has left the company of the husband on 25.06.2004 on her own accord and hence, on the basis of the allegations made in the petition, the husband is entitled to a decree of divorce on the ground of cruelty and desertion.

4. The wife filed the written statement and denied the claim of the husband. It was denied by the wife that she had ill-treated the husband and his family members. It is pleaded that the wife was required to do all the household work in the matrimonial home. It was denied that with a view to buy peace, the parents of the husband had decided to have a separate residence for the husband and wife. It is admitted by the wife that the husband started residing in a rented house in New Subhedhar Lay-out. It is pleaded that the mother and sisters of the husband always used to taunt the wife and therefore, she was not able to enjoy her marital life. It is admitted that since the husband had purchased the plot in New Subhedhar lay-out and constructed a house thereon, the parties started residing separately in the said house. The wife denied all the adverse allegations made by the husband in the Hindu Marriage Petition. It was pleaded by the wife that the husband and his family members harassed the wife and demanded money from her parents. It was pleaded that the husband behaved properly with the wife in the long tours and excursion and as soon as they returned, the husband started behaving badly with the wife. The wife admitted that the husband took the wife to various places in Maharashtra and Goa and also to Nepal, Darjeeling, Buddha Gaya, Varanasi etc. It is admitted by the wife that in the year 2002-03, the younger sister of the wife had stayed with the parties in their house for some time. It is admitted that during this period, the parents, brother and sister of the wife used to frequently visit the matrimonial home in New Subhedhar lay-out. The wife denied that she quarreled with the husband as his mother was to reside with them in the matrimonial home in June, 2004 because she was required to vacate the government quarters. It is admitted that the wife lodged a report against the husband and her in-laws, as a result of which, a complaint was registered against them, for the offence punishable under Section 498-A of the Indian Penal Code. It was pleaded in the specific pleadings that the husband and his family members used to demand dowry from her parents and they physically tortured her for not bringing the same. It is pleaded

that the wife was treated as a maid servant in the matrimonial home. It is pleaded that the wife became aware of the plan hatched by the husband and his family members of killing her and her mother on 20.06.2004. The wife pleaded that she was extremely frightened after becoming aware of the plan and therefore, she was constrained to lodge a report against the husband and his family members for an offence punishable under Section 498-A of the Indian Penal Code.

5. On the aforesaid pleadings of the parties, the Family Court framed the issues and the parties tendered the evidence. The husband examined himself and the wife also examined herself. The parties did not examine any witnesses in support of their respective cases. Several documents were tendered by the parties on record to prove their respective cases. On an appreciation of the evidence on record, both oral and documentary, the Family Court came to a conclusion that the husband was not entitled to a decree of divorce as he had failed to prove that the wife had treated him with cruelty and/or deserted him without just or reasonable cause. The judgment of the Family Court is challenged by the husband in this Family Court Appeal.

6. Shri Bhuibhar, the learned counsel for the husband submitted that the Family Court has not considered the evidence in the right perspective while dismissing the Hindu Marriage Petition filed by the husband. It is submitted that the wife was in the habit of speaking falsehood and she has taken contradictory stands in her pleadings and evidence. It is submitted that the wife has pleaded in her written statement that since the inception of the marriage, the husband and his family members asked the wife to secure dowry from her parents. It is stated that the said statement stands falsified from the several communications that are placed on record by the husband. It is stated that the letters written by the wife to her parents till the year 2002 clearly show that the wife was extremely happy in the matrimonial home and there was no trouble whatsoever in the family. It is submitted that suddenly, when the mother of the husband was required to stay with the parties in the matrimonial home in June, 2004, the wife hatched a plan to ensure that the mother of the husband does not reside with them. It is submitted that evidence is created by the wife in the form of letters that are issued by the wife in the month of June, 2004 to her parents that she was being harassed in the matrimonial home and that a plan was hatched to eliminate her and her mother. It is submitted that if the wife was treated so well by the husband for a period of more than 12 years, as is depicted from the documentary evidence on record, it is not creditable that the husband would suddenly, in the month of June, 2004, start behaving badly with the wife and hatch a plan to eliminate her. It is stated that though, all the sisters of the husband were married, in the year 2004, the wife mischievously lodged a false complaint against the husband, his mother and two of his married sisters for an offence punishable under Section 498-A of the Indian Penal Code. It is submitted that the lodging of a false report-complaint against the husband and his family members caused great trauma and agony to the husband and his family

members and they were required to remain behind the bars for more than a couple of days. It is stated that if the sisters of the husband had behaved badly with the wife before their marriage, the wife could have lodged a complaint against them at the relevant time. It is stated that filing false complaints against the married sisters of the husband for the offence punishable under Section 498-A of the Indian Penal Code, would clearly tantamount to cruelty. It is submitted that the letters written by the wife to her parents previously and the letters written by her to her parents in June, 2004, speak volumes. It is stated that the communications are totally contradictory, as in the communications issued before June, 2004, the wife has conveyed to her parents that she was extremely happy, whereas in the communications issued in June, 2004, she had for the first time expressed the fear of residing in the matrimonial home. It is submitted that this aspect of the matter has not been considered by the Family Court while dismissing the Hindu Marriage Petition. It is submitted that the case of the wife that the husband was harassing her and demanding dowry from her parents right from the inception of the marriage and the admission of the wife that she was taken on long tours and excursion, including Maharashtra and Goa darshan, Darjeeling, Nepal, Varanasi etc., cannot go hand in hand. It is stated that if the husband was treating the wife with cruelty and was demanding dowry from her parents, he would not have taken the wife, every now and then, on tours and excursions with a view to ensure that she lives happily in the matrimonial home. It is stated that the husband tried his level best to ensure that the marital ties should not be severed, but the husband was constrained in the facts and circumstances of the case to file the Hindu Marriage Petition after he realized that it was not possible to live with the wife under one roof.

7. On hearing the learned counsel for the appellant and on a perusal of the original record and proceedings, it appears that the following points arise for determination in this Family Court Appeal -

- 1] Whether the husband has proved that the wife has treated him with cruelty?
- 2] Whether the husband is entitled to a decree of divorce ?
- 3] What Order ?

8. To answer the points for determination, it would be necessary to consider the pleadings and the evidence, both oral and documentary. We have already discussed the pleadings of the parties in detail in the earlier paragraphs of the judgment. The husband had reiterated the statements made in the Hindu Marriage Petition in his examination-in-chief, so also the wife has reiterated the facts pleaded by her in her written statement, in her examination-in-chief. Both the parties have not examined any other witness in support of their respective cases. The husband was cross-examined on behalf of the wife. The husband denied in his cross-examination that his mother was against his marriage with the wife. The husband denied the suggestion that he had demanded money in the marriage and at the time of marriage, he had also demanded a gold chain, a

gold ring, conveyance charges and cash. The husband denied the suggestion that his mother was displeased with his wife. It was admitted by the husband that he was constrained to live in a separate residence along with the wife in view of the persistent demand, in that regard, by the wife. The husband denied the suggestion that he was facing financial crisis in view of the construction of the house and the marriages of his sisters and therefore, he had demanded money from the father of the wife. The husband denied the suggestion that he started harassing his wife mentally and physically as he could not get money from the father of the wife. He denied that he was required to sell his scooter as the father of the wife refused to give money to him. The husband admitted that his father was doing the work of tailoring in a shop and his mother was an Attendant in Mayo Hospital and they were bearing the household expenses when the parties resided jointly. The husband denied the suggestion that he demanded some money from the father of the wife towards expenses for the marriage of his sister Savita. The husband stated in his cross-examination that he availed LTC (Leave Travel Concession) facility and took the wife to various places in India. The husband admitted that he was prosecuted under Section 498-A of the Indian Penal Code and his parents and two married sisters were also accused in the case, that was instituted on the basis of the false report lodged by his wife. On a reading of the cross-examination of the husband, it is clear that the case of the husband in his examination-in-chief is not weakened or shattered by his cross-examination. In fact, the case of the husband in his examination-in-chief stands supported in view of his cross-examination

9. It would be now necessary to consider the cross-examination of the wife. The wife admitted in her cross-examination that she never mentioned that she was ready to cohabit with the husband or that she had filed a petition for restitution of conjugal rights. She admitted in her cross-examination that the plot in New Subhedar lay-out was purchased by the husband before their marriage and a house was constructed by him on the said plot after the marriage. She admitted in her cross-examination that they resided together in the joint family only for few months and then started residing in a tenanted premises. The wife admitted that she is a science graduate and in order to give better environment to her, the husband and his parents shifted to the rented house in New Subhedar lay-out by selling their house in Indora. The wife denied that she quarreled with the husband and his relatives so that the husband's relatives should not start residing with them in the new house in New Subhedar lay-out. The wife, however, admitted that her mother-in-law was in government service and her father-in-law was a tailor. The wife admitted that the marriage of her two sisters-in-law was performed on 18.05.1995 and her husband had visited her parents along with the invitation card of the marriage. The wife further admitted that the husband had come to her parents house in March, 1995 on account of the sad demise of her paternal grandmother. The wife also admitted that in order to please her, the husband had taken her on a tour of Maharashtra and Goa darshan. The wife admitted that the marriage of her younger sister-in-law was

performed in June, 1999 and immediately thereafter, she had made arrangement for a separate kitchen in the same house. The wife admitted that she was taken on a long tour to Nepal, Darjeeling, Buddha Gaya, Varanasi etc. and that the husband purchased lot of clothes and a camera for her. The wife admitted that she had lodged the report against the husband in Sakkardara police station on 26.06.2004 and the husband and his family members have been acquitted in the criminal case. The wife however denied that the incidents, as stated in the First Information Report, had not occurred. The wife denied the suggestion that she had manufactured the letters and addressed them to her mother in June, 2004 with a view to create evidence in respect of the ill-treatment by the husband. The wife denied the suggestion that she had prosecuted her husband and his family members, as she did not want the mother of the husband to reside with them. On a perusal of the cross-examination of the wife and the admissions made by her, it appears that the wife is not a trustworthy person. The wife had admitted in her cross-examination that with a view to please her, the husband had taken her on a long tour of Maharashtra and Goa darshan. She also admitted that her husband had visited her parents in March, 1995 on the sad demise of her paternal grandmother. The wife admitted that her two sisters-in-law were married on 18.05.1995 and at that time also the husband had approached her parents with the invitation card. The wife admitted that she had never filed any complaint whatsoever against the husband till filing of the complaint by her in June, 2004 i.e. nearly 12 years from her marriage, in regard to the harassment by the husband and his family members. The wife admitted that her husband had purchased the clothes and camera while she was taken on the tour to Nepal, Darjeeling, Buddha Gaya, Varanasi etc. The aforesaid admissions of the wife clearly show that the wife was not ill-treated or harassed by the husband or his family members. Though, the wife had pleaded in her written statement that the husband had demanded money from her father for the construction of the house, she had admitted in her cross-examination that the husband had secured loan for the construction of the house from his employer. It appears that the case tried to be made out by the wife for the first time in June, 2004 in regard to the illegal demands by the husband and his family members, is false and baseless. The husband and his family members have been acquitted in the criminal case filed against them for the offence punishable under Section 498-A of the Indian Penal code. Even if we do not consider the judgment of acquittal, it can be gathered from the evidence that the husband had never treated the wife with cruelty. There is reason to believe the case of the husband that the wife cooked up a story of harassment by the husband and his family members when her mother-in-law was required to vacate the government quarters and was compelled to live in the matrimonial home for some time. The wife has manufactured the documents at Exhibits 49, 50 and 52 to create evidence to point out that she was being harassed in the matrimonial home and her husband and his family members were not only demanding dowry from her parents, but had also hatched a plan to eliminate her. We have perused the communications issued by the wife to her parents, dated 30.01.2004, 15.04.2004 and

24.06.2004 at Exhibits 49, 50 and 52, respectively. It is apparent from a reading of these communications, conjointly with the communications issued by the wife to her parents during the period from 1996 to 2002 that the wife was being treated respectably by the husband and his family members and the communications at Exhibits-49 to 52 were manufactured by her to create evidence in respect of the ill-treatment by the husband. It would be necessary to consider the documents produced by the husband at Exhibits 67, 68, 70 and 71. Exhibit 67 is a communication issued by the wife's mother to the wife on 20.09.2002. The communication clearly depicts that all was well in the matrimonial home and the parents of the wife were not worried about their daughter. The communication at Exhibit-68 is a letter written by the wife to her parents on 23.10.1996. This communication clearly shows that the wife was extremely happy in the matrimonial home and had no grievance whatsoever against the husband and her in-laws. At Exhibit-69, we find that the husband had purchased a refrigerator for the wife on her birthday, on 17.01.2004 i.e. just a couple of months prior to the filing of false complaint by her in the police station for the offence punishable under Section 498-A of the Indian Penal Code. Exhibit-70 is a letter written by the sister of the wife to her. The said communication also reflects that all was well in the matrimonial home. The photograph at Exhibit-71 shows that the parties, including the in-laws of the wife, were living harmoniously in the year 1996. It is very unfortunate that despite the fact that all was well in the family for more than a decade, the wife lodged false complaints against the husband, his parents and his two sisters, who were married more than 10 years earlier, in regard to the physical and mental harassment of the wife by them. We find that the report filed by the wife is absolutely false and baseless and the case of the husband that the wife had taken such a drastic step in June, 2004, just to ensure that the mother of the husband does not reside with them in the matrimonial home, appears to be correct. We find on a perusal of the documentary evidence on record that everything was going on well in the matrimonial home for nearly 12 years from the marriage and the wife had no grievance against the husband. If the husband was really demanding dowry from the wife, he would not have taken the wife on long tours and excursions like Maharashtra and Goa darshan, Nepal, Darjeeling, Buddha Gaya, Varanasi etc. and purchased clothes and camera for the wife in those tours. The case of the wife that the husband was demanding dowry from her parents and the admission of the wife that the husband took her to the various places with a view to please her, are contradictory. The admissions of the wife in the cross-examination demonstrate that the case tried to be made out by the wife in respect of the demand of dowry and harassment, is absolutely false and baseless. We have already referred to the admissions of the wife in her cross-examination in the earlier part of the judgment and we are clearly of the view that the admissions of the wife in her cross-examination and the documents tendered by the husband and referred to hereinabove, clearly falsify the case of the wife that she was harassed by the husband and his family members. No husband would ever dare to again reside with a wife under one roof, if the wife

lodges false criminal complaints against the husband and ensures that the husband and his family members remain behind the bars for some time. We can understand the mental agony and trauma the husband and his family members must have undergone during the period of their detention on the basis of the false complaint made by the wife. In the circumstances of the case, it is necessary to hold that the wife had treated the husband with utmost cruelty by filing false complaints against him, though she was treated respectably by the husband and the husband is entitled to a decree of divorce. It is unfortunate that the Family court did not consider the evidence in the right perspective and also failed to consider a part of the documentary evidence on record while deciding the matter.

10. Hence, for the reasons aforesaid, the Family Court Appeal is allowed. The Hindu Marriage Petition filed by the husband for grant of decree of divorce is allowed. The marriage solemnized between the parties on 26.11.1992 is dissolved by a decree of divorce on the ground of cruelty.

Order accordingly. No order as to costs.