
(2013) 03 MP CK 0124
In the Madhya Pradesh High Court
Case No : First Appeal No. 11 of 2012

Smt. Jyoti Parihar

APPELLANT

Vs

Munendra Singh

RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Hindu Marriage Act, 1955 — Section 13, 13(1)(i), 13(1)(i)(ia), 22, 9
Penal Code, 1860 (IPC) — Section 498A, 500

Citation : (2013) 3 MPHT 467 : (2013) 1 MPJR 307 : (2014) 1 MPLJ 469

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : H.K. Shukla, for the Appellant; K.N. Gupta and Miss Sweta Bothra, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Saxena, J.—This appeal is by the appellant-wife against the judgment dated 16th December, 2011 in a Civil Case No. 40-A/2007 (HMA) of the Additional Principal Judge, Family Court, Gwalior (M.P.), granting a decree of divorce on the ground of adultery and cruelty in favour of respondent-husband u/s 13(1)(i)(i-a) of the Hindu Marriage Act, 1955, while dismissing her petition filed u/s 9 of the Act for restitution of conjugal rights by the same judgment in Civil Case No. 39-A/07. The facts are quite simple. The appellant married the respondent on 21st May, 2005 according to the rights of the Hindu religion. Immediately, after the marriage, the husband and wife lived together at their permanent residence at Gwalior and later the respondent went back to join his duty. On 7th February, 2006, when the respondent-husband came on leave to his house he marked some changes in the behavior of his wife. She did not allow him to perform conjugal relations. On 14th February, 2006, he saw his wife in an objectionable position in making sexual relations with his younger brother Satyendra Singh. In the month of June, 2006, she and his younger brother left the house of Gwalior for Pithampur, District Dhar where they resided for six months" period as husband and wife and led immoral life. She began to act in a cruel manner

towards her husband and sometimes even using physical violence. He tolerated this, hoping that her conduct would improve but it went in vein. Ultimately, she expelled her husband-respondent and started living in her parental house. In order to implicate her husband, the FIR also lodged by her for demand of dowry at Police Station against her husband and his relations. She also moved criminal complaint u/s 498-A, IPC against her husband and his family before a Criminal Court. During prosecution of the complaint, the respondent-husband had to suffer three days" judicial custody. The respondent-husband so apprehended actual danger to his life and, therefore, he filed the petition seeking divorce on the ground of adultery and cruelty against his wife.

2. The wife/appellant accepted the fact of marriage with the respondent, but she denied allegation of adultery, i.e., extra marital relations with Satyendra Singh, brother of her husband and the mental as well as physical cruelty against her husband. She asserted that her husband and other members of family in connection with an illegal demand of Maruti 800 car tortured her and expelled her out of her matrimonial house. She stated that her husband imputed false allegations regarding extra marital relations with her brother-in-law (Dewar) whereas she is willing to save her marital life and ready to resume her conjugal relations with her husband for which she had filed a petition u/s 9 of the Act. Accordingly, she prayed for dismissal of the petition filed by her husband for divorce.

3. The respondent-husband in reply to the petition filed by the appellant denied that he had without any reasonable excuse withdrawn of his wife from the society and, therefore, prayed for dismissal of the petition.

4. The learned Trial Judge tried both the petitions together, which were presented respectively by the husband and wife and decided by one and the common judgment.

5. While dealing with Civil Case No. 40-A/07, preferred by the respondent-husband, the Trial Judge framed the following issues for consideration:--

(i) Whether the non-petitioner/wife had developed extra marital relations during the subsistence of her marriage with Satyendra Singh?

(ii) Whether the non-petitioner/wife had treated cruelly with petitioner-husband?

(iii) Whether petitioner-husband is entitled to a decree of dissolution of marriage?

(iv) Relief and costs?

6. On the other hand, in Civil Case No. 39-A/07 moved by the petitioner-wife for restitution of conjugal rights, the Trial Court framed the following issues:--

(i) Whether the non-petitioner-husband without reasonable excuse has withdrawn of his wife from the society?

(ii) Whether the petitioner-wife is entitled to a decree of conjugal rights against

her husband/non-petitioner?

(iii) Relief and cost.

7. The learned Trial Judge after recording and considering the evidence of the parties passed the decree of divorce in favour of respondent/husband on the ground of cruelty and adultery and thereby dissolved their marriage but dismissed the petition for restitution of conjugal rights u/s 9 of the Hindu Marriage Act, moved by the appellant-wife. Hence, against the judgment and decree of divorce and dismissal of her petition for restitution of conjugal rights, the appellant/wife has knocked the doors of this Court.

8. It is contended by the learned Counsel appearing for the appellant that the learned Trial Judge passed the impugned judgment and decree of divorce without considering the evidence as adduced by the parties and hence same being perverse to the factual and legal aspects of the matter is liable to be set aside. It is submitted that the circumstances as appeared from the evidence were not considered in proper perspective. The respondent/husband could not be able to discharge burden of proof regarding extra-marital relationship of his wife with Satyendra Singh by adducing strong and cogent evidence. So also committal of cruelty on the part of the appellant-wife against her husband is not proved from the evidence on record. Therefore, it is prayed that by allowing the appeal, the decree of divorce passed by the Trial Court for dissolution of their marriage on the ground of adultery and cruelty may be set aside and the petition filed by the appellant for restitution may be allowed.

9. On the other hand, learned Sr. Counsel appearing for the respondent-husband by supporting the averments raised in the petition regarding grave cruelty, contended that the appellant-wife was leading an immoral life that she deserted her husband and, therefore, the learned Trial Court has not committed any mistake in passing the impugned decree against her and dismissing her petition for restitution of conjugal rights. It is, therefore, prayed that the appeal may be dismissed.

10. Heard the learned Counsel for the parties. Also perused the record of the Trial Court and the law applicable to the case.

11. Following questions arise for consideration in this appeal, which are as under:--

(i) Whether, after solemnisation of marriage, the appellant-wife had voluntary sexual intercourse with Satyendra Singh brother of respondent/husband?

(ii) Whether the appellant-wife after solemnisation of marriage, treated cruelly with her husband?

(iii) Whether the appellant/wife due to extra marital relations with Satyendra Singh deserted her husband without any reasonable cause?

12. Now, we are going to deal with the legal proposition on the aspect of cruelty.

13. The legal concept of cruelty which is not defined by statute is generally described as conduct of such character as to have caused danger to life, limb or health (bodily and mental) or to give rise to reasonable apprehension of such danger. The general rule in all question of cruelty is that the whole matrimonial relations must be considered, that rule is of a special value when the cruelty consists not of violent act but of injurious reproaches, complains accusations or taunts. It may be mental such as indifference and frigidity towards wife, denial of a company to her, hatred and abhorrence for wife or physical, like acts of violence and abstinence from sexual intercourse without reasonable cause. It must be proved that one partner in the marriage however, mindless of the consequences has behaved in a way which the other spouse could not in the circumstances be called upon to endure, and that misconduct has caused injury to health or a reasonable apprehension of such injury. There are two sides to be considered in case of cruelty. From the appellant's side, ought this appellant to be called on to endure the conduct? From the respondent's side, was this conduct excusable? The Court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently serious to say that from a reasonable person's point of view after a consideration of any excuse which the respondent might have in the circumstances, the conduct is such that the petitioner ought not be called upon to endure.

14. The modern law of cruelty of one spouse to another in the eye of law has been summarised as follows in (1977) 42 DRJ 270, Halsbury Laws of England, Vol. 12, 3rd Edition, page 270:--

The general rule in all kinds of cruelty that the whole matrimonial relations must be considered and that rule is of special value when the cruelty consists not of violent acts, but of injurious reproaches, complaints, accusations of taunts, Before coming to a conclusion, the Judge must consider the impact of the personality and conduct of one spouse on the mind of the other, and all incidents and quarrels between the spouses must be weighed from the point of view. In determining what constitutes cruelty, regard must be had to the circumstances of each particular case, keeping always in view the physical and mental condition of the parties, and their character and social status.

15. In the case of A. Jayachandra Vs. Aneel Kaur, , the Hon''ble Apex Court observed:--

It has been ruled that the question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status and environment in which they live. If from the conduct of the spouse, it is established and/or an inference can legitimately be drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse about his or her mental welfare, then the same would amount to cruelty. While dealing with the concept of mental cruelty, enquiry must begin as to the nature of cruel treatment and the impact of such

treatment in the mind of the spouse. It has to be seen whether the conduct is such that no reasonable person would tolerate it.

16. Further, in the case of Geeta Jagdish Mangtani Vs. Jagdish Mangtani, , Hon"ble Apex Court held:--

5. We are of the view that these observations of the High Court are fully justified in the facts of the present case. One has to particularly note the fact that the parties knew even prior to marriage whatever they were earning. The earnings of the wife from a Government job before the marriage was more than double of that of the husband. With the knowledge of this fact the parties entered into matrimonial alliance. The marriage survived only for a brief period of about seven months. After 2nd June, 1993 till the exchange of notices and replies during September to December, 1996 and filing of the divorce petition ultimately by the husband on 31st December, 1996, there has been no attempt on the part of the wife to stay with the husband. She is a school teacher and it is common knowledge that in schools, there are long vacations during summer months, more so, in Government schools where the wife teaches..... From this fact alone, animus deserendi on the part of the wife is clearly established. She has chosen to adopt a course of conduct which proves desertion on her part. In the facts and circumstances of the case, it cannot be said that this desertion on the part of the wife was with a reasonable cause. Such a course of conduct over a long period indicates total abandonment of marriage and cannot be justified on ground of monetary consideration alone as a reasonable cause to desert. It also amounts to willful neglect of the husband by the wife.

17. After amendment in the Marriage Laws while introducing Act, 1976, Section 13(1)(i) of the Hindu Marriage Act, 1955 is amended and at present to prove the ground u/s 13(1)(i) of the Act, the respondent No. 1-husband has to plead and prove that "other party has after solemnisation of the marriage, voluntary sexual intercourse with any person other than her spouse". Thus, after amendment in Hindu Marriage Act, 1955, the respondent-husband who desirous to obtain divorce decree on the ground mentioned in Section 13(1)(i) of the Act has to prove that the other party of the spouse after solemnisation of marriage had voluntary sexual intercourse with any person other than her spouse.

18. It is settled proposition that illegitimate sexual relations are usually developed in secrecy and not in open. Therefore, it is not necessary and really possible to prove adultery by any direct evidence. Only strong presumption on the basis of evidence can be drawn or rebutted by the either party. In the present case, respondent-Munendra (P.W. 1) specifically stated that on 7th February, 2006 as he came on leave to home at Gwalior, he marked the substantial change in the behavior of his wife and so as to clear his doubts he made a watch on his wife and on 14th February, 2006, he found his wife having sexual intercourse with his younger brother Satyendra Parihar. He raised serious objection on her illegal sexual affairs with his brother. Thereafter, his wife Jyoti left her matrimonial house and on her persuasion, she and his brother left their

residence and started living together at Pithampur for a considerable period. Mrs. Manjula Tiwari (P.W. 3) who was well-wisher and related to the family of respondent stated in his support. She corroborated the contention of respondent about unchastely of appellant. Such witnesses who are related to the family and having knowledge about the affairs of family of ones should not be rejected on the basis of relations. At this juncture, it would be useful to refer the decision in the case of Vishwanath Agrawal Vs. Sau. Sarla Vishwanath Agrawal, , wherein the Hon"ble Apex Court observed:--

In a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose. The family members and sometimes the relatives, friends and neighbours are the most natural witnesses. The veracity of the testimony is to be tested on objective parameters and not to be thrown overboard on the ground that the witnesses are related to either of the spouse. Exception has been taken by the Courts below that the servants of the house should have been examined and that amounts to suppression of the best possible evidence.

19. To prove the grounds for divorce as mentioned in the petition moved by the respondent-husband-Munendra Singh Parihar, he examined himself as (P.W. 1), Surendra Singh Parihar (P.W. 2), Smt. Manjula Tiwari (P.W. 3) and Satyendra Singh @ Chhotu (P.W. 4). On the other hand, the appellant-wife who preferred a petition u/s 9 of the Act while controverting the allegations of adultery and cruelty levelled by the respondent/husband, examined herself in Civil Case No. 39-A/07 as P.W. 1 and her father Pancham Singh (P.W. 2).

20. The entire evidence produced by both the parties, reveals the admitted facts that Munendra Singh Parihar and Smt. Jyoti Parihar were married as per Hindu Rites on 21st May, 2005 at Gwalior. At the time of marriage respondent-Munendra was serving in an Indian Army. After marriage, he lived with his wife Jyoti for about 20 days during leave period. Thereafter, as and when he was permitted to remain on leave, he used to visit Gwalior and live with his wife. During his leave period from 7th February, 2006 to 18th February, 2006, he noticed that behavior of his wife was not cordial. On 14th February, 2006 in the noon he saw his wife in an objectionable position with his brother Satyendra. However, he left Gwalior to join his unit. On 25th February, 2006 in his absence, his wife Smt. Jyoti left voluntarily his house with gold ornaments. It was informed by his parents that after incident of 14th February, 2006 when he had seen his wife with his brother Satyendra in an objectionable position, his wife again compelled his brother to continue with her the illegal sexual relations. On 1st March, 2006, during Practical Examination of B.Sc. II Year Exam, on instigation of his wife, his brother left his house of Gwalior with his wife Jyoti for Pithampur, District Dhar where they stayed and enjoyed as a married couple. There his brother Satyendra and his wife Smt. Jyoti also served in a Private Sector. On 26th August, 2006, his wife Smt. Jyoti filed a divorce petition against him in the Family Court, Gwalior. This divorce petition (Civil Case No. 420-A/2006) was dismissed for want of prosecution as was taken back from Trial

Court on 21st December, 2006. His wife also filed a maintenance petition (Maintenance Case No. 92/2007) in the Family Court, Gwalior which was finally disposed of by compromise between the parties.

21. Satyendra (P.W. 4) deposed that his brother Munendra came on leave on 7th February, 2006 and on 14th February, 2006 in the noon he caught him with Jyoti his sister-in-law (Bhabhi) in an objectionable position. On 18th February, 2006 when his brother returned back to join his Army Unit, his sister-in-law (Bhabhi) Jyoti told him that she will not lead marital life with his brother and she persuaded him to be away from his residence with her. She asked him to do the job together. Thereafter, both went to Pithampur, District Dhar and served there in a Private Sector. She returned back to Gwalior in the month of August, 2006 and filed a petition for divorce against his brother Munendra in the Family Court at Gwalior and then returned back to Pithampur. In November, 2006, his brother also filed a petition for divorce against his wife Jyoti in the Family Court at Gwalior. On 20th December, 2006, Jyoti finally left Pithampur and returned back to Gwalior. She made a pressure on his family to get her married with Satyendra for which they were not ready.

22. Smt. Jyoti Parihar (P.W. 1), in her deposition denied the allegation of her voluntary sexual intercourse with Satyendra her brother-in-law (Dewar) at Gwalior. She also denied the fact that after leaving for Pithampur she lived together with Satyendra for a considerable period. She alleged that she was expelled without cause from her matrimonial house on 18th February, 2006. She admitted that her husband-Munendra came to home at Gwalior on 7th February, 2006 on leave and lived up to 18th September, 2006. She also alleged that her signatures were taken in belief on blank papers which might have been used in the petition of divorce presented on her behalf.

23. The petitioner-husband's evidence is corroborated by Surendra Singh (P.W. 2) and Smt. Manjula Tiwari (P.W. 3), who depose to the same incident. On the contrary, the appellant neither in her written statement nor by adducing cogent evidence, rebutted that she did not have illegal marital relations with her brother-in-law and she did not go with him to Pithampur, District Dhar and lived with him there. On this evidence, the learned Judge has granted the decree that we have earlier referred to.

24. We have carefully scrutinised the evidence and are satisfied that there is sufficient evidence, both of the respondent-husband and the witnesses who corroborate him, concerning the grave cruelty of the appellant-wife towards her husband. It is settled in law that mere cruelty is not enough but adultery coupled with cruelty, or adultery coupled with desertion for two years or more, must be established before the relief of divorce can be claimed. Considering the evidence, we have no hesitation to accept that there is ample evidence in this case with regard to the alleged adultery, upon which we could arrive at a reasonable inference against the appellant-wife. As precedents have repeatedly laid it down, adultery is the matrimonial offence of sexual intercourse with another, by one of

the spouses, during the subsistence of the marriage, as a consensual act or relationship. The respondent-husband has proved that there was such adulterous relationship between his wife and his brother. The evidence on this aspect is totally satisfactory. The statement "she is living in adultery with the brother of the husband" is not bare but supported by other material evidence on record. The statement of the husband is not based on personal knowledge.

25. So, on going through the present case, after detailed discussions on the factual and legal aspects of the matter, we are of the view that respondent-husband successfully proved the mental as well as the physical cruelty on the part of his wife towards him who is working in an Indian Army and was/is posted at different places. It is not possible for him to keep his family with him on every place of posting. Due to the circumstances that the respondent-husband was working in remote areas of country and being in active service in Indian Army, he could not satisfy the natural desire of his newly married wife but this cannot be a ground for appellant who certainly failed to discharge her corresponding duty. This will be certainly a cause of mental agony against her husband. More so, after filing the petition of divorce by the respondent, the appellant dragged her husband and other his family members in relations with the illegal demand of dowry for an offence punishable u/s 498-A of IPC. That criminal case lodged by the wife was ultimately dismissed by the Trial Magistrate and also confirmed by the Appellate Court. Another criminal case in relation with defamation u/s 500 of IPC moved by the appellant was also pending against the respondent-husband.

26. Where cruelty alone is a proved and not adultery, we are competent to grant a decree for judicial separation u/s 22 of the Act, on the ground of the established grave cruelty. But in the present case, we find that the alleged adulterous relationship between the appellant and the brother of the husband stands established. Not only this, we further find that the prayer in the petition is one for grant of divorce and the allegations made in the petition speak of adultery coupled with cruelty. In the evidence also, the respondent-husband has spoken about the cruelty and adultery. Therefore, the learned District Judge, after accepting the evidence of respondent-husband, has granted a decree for divorce as prayed for in the petition.

27. The appellant-wife by filing the petition u/s 9 of the Act prayed for decree for restitution of conjugal rights against her husband. As mentioned earlier, on evidence of both parties before the Trial Judge, it is clear that her husband was in active service of Indian Army and his posting was all times in remote areas of the country and as and when permission was given to avail remedy of leave, he usually visited his native place. In the month of February, 2006, when he visited his native place at Gwalior, he found his wife having sexual relations with his brother Satyendra Singh. It is admitted that thereafter, his wife left her matrimonial house for her parental house at Gwalior. In the month of March, 2006, she alongwith her brother-in-law (Dewar) proceeded to unknown place where she lived for a considerable period with Satyendra Singh. In the month of

August, 2006, she filed a divorce petition u/s 13 of the Act against her husband on the ground of desertion and cruelty. That petition for divorce was on the request of petitioner-wife was taken back and was dismissed for want of prosecution. During prosecution of present divorce petition, she prosecuted her husband and relatives for non-satisfaction of illegal demand of Maruti 800 car for offence u/s 498-A of IPC, which was ultimately decided in favour of her husband. This factual scenario clearly indicates that the parties travelled in different directions and therefore, the chances for their reunion are bleak. It is not possible for them to return back to resume their conjugal relations. The respondent has thus contributed to the alleged breakdown of the marriage. If a party to a marriage, by his own conduct brings the relationship to a point of irretrievable breakdown, he/she cannot be allowed to seek decree for restitution of conjugal rights as he/she cannot be permitted to take advantage of his/her own wrong. Furthermore, we reach at this conclusion because it is evident that for whatever be the reasons this marriage has broken down and the parties can no longer live together as husband and wife and if such is the situation it is better to close the chapter. Hence, we affirm the finding of Trial Court that restitution of conjugal rights between parties is not permissible in present facts of the case. In such situation, a decree of divorce on available ground u/s 13(1)(i) (i-a) of the Act is passed and the marriage of parties is dissolved.

28. At this juncture, as agreed to between the learned Counsel for the parties, after considering the economic condition of the respondent-husband, his present salary status in the Army of the same cadre and keeping further in view the educational qualification of the appellant-wife, her future prospects of earning, we direct the respondent-husband to pay a sum of Rs. 3,00,000/- (Rupees Three lacs only) by way of permanent alimony to appellant-wife within a course of six months. After payment of permanent alimony, all civil and criminal disputes in regard to matrimonial matters and other related matters including maintenance cases whether compoundable/non-compoundable between the parties before the Courts having jurisdiction shall stand withdrawn in the light of the compromise to be arrived at between the parties. However, appellant-wife shall be at liberty for recovery of the amount by adopting legal recourse against her husband in case of failure to pay a sum by him fixed by this Court.

29. Accordingly, by dismissing the appeal, a decree of dissolution of marriage between the parties u/s 13(1)(i)(i-a) of the Act is passed subject to compliance of the following conditions:--

(a) The respondent-husband shall pay a sum of Rs. 3,00,000/- (Rupees Three lacs only) as full and final settlement towards permanent alimony to his wife (appellant).

(b) The respondent-husband shall pay the amount of Rs. 3,00,000/- (Rupees Three lacs only) in lump-sum within a period of six months from the date of this judgment to the appellant-wife.

(c) After full and final payment of lump-sum settlement amount towards permanent alimony by respondent-husband to appellant-wife, all civil and criminal disputes in regard to matrimonial matters and other related matters including maintenance cases whether compoundable/non-compoundable pending before the Courts having jurisdiction shall stand withdrawn in the light of the compromise to be arrived at between the parties.

The parties shall bear their own Court expenses.

The decree be drawn up accordingly.