
(2013) 02 MP CK 0082
In the Madhya Pradesh High Court
Case No : First Appeal No. 102 of 2011

Smt. Kavita Verma

APPELLANT

Vs

Narendra Kumar Shrivastava and Another

RESPONDENT

Date of Decision : 07-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 10, 13(1)(i), 13(1)(ia)
Penal Code, 1860 (IPC) — Section 498A

Citation : (2013) 2 DMC 737 : (2013) ILR (MP) 619 : (2013) 2 JLJ 138 : (2013) 2 MPHT 207 : (2013) 3 MPLJ 258

Hon'ble Judges : G.D. Saxena, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : S.S. Kushwaha, for the Appellant; Pratip Visoriya, Advocate for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Saxena, J.—This Appeal is by the appellant-wife against the Judgment dated 28th January, 2011 in a civil case No. 48/08 (HMA) of the First Additional Sessions Judge, Datia (M.P.), granting a decree of divorce on the ground of adultery and cruelty to the respondent No. 1-husband u/s 13(1)(ia) of the Hindu Marriage Act, 1955. The facts are quite simple. In the petition, the petitioner-husband states that he fell in love and both of them (appellant and respondent No. 1) decided to get tied in matrimonial relationship. Accordingly, their marriage was performed against the wishes of their parents on 26th June 2002 in Arya Samaj Temple at Gwalior in the presence of witnesses, namely, Devendra Pansari (respondent No. 2) and one Rajendra. After sometime, the parents of the couple consented to their decision. The marriage was duly consummated and one son, namely, Tanish was born out of their wedlock. It is stated that at the time of marriage, her husband was unemployed and she was in Government Job. It is the case of the respondent No. 1/husband that after marriage Devendra Pansari (respondent No. 2) who was his friend usually went to meet Smt. Kavita in his

absence. When he took an objection on frequent visit of Devendra in his absence, appellant-wife was enraged and insulted her husband-petitioner Narendra. She sometimes abused and threatened him to receive share in the property of his father. She also insulted his parents. In such a situation, father of the respondent No. 1-husband decided to separate both husband and wife from them. He arranged money for their separate residence in the house of Durga Prasad Soni. Even then, the appellant-wife was not satisfied. It is stated by him that his wife began to act in a cruel manner towards him, sometimes even using physical violence. He tolerated this, hoping that her conduct would improve. Ultimately, she expelled her husband-respondent No. 1. She continued her daily contacts with Devendra Pansari. In order to implicate her husband, the FIR was also lodged by her for demand of dowry at Police Station Bhandar against her husband and his relations. In the bail proceedings before criminal court, she vehemently opposed grant of bail to their in-laws. Simultaneously, a maintenance proceeding for the son was also initiated against the respondent No. 1-husband before the Criminal Court. Under these circumstances, the respondent No. 1 presented the petition praying for divorce on the ground of cruelty as well as adultery.

2. The respondent-wife accepted the fact of marriage and a birth of her son out of their wedlock. However, she denied allegation of adultery i.e. extra-marital relations with Devendra Pansari as well as the mental and physical cruelty to her husband and his family members. It is specifically stated by her that father of her husband is well renowned Advocate in Criminal law of the local vicinity and the respondent No. 1 is also a registered practitioner Advocate who used to appear in the courts apart from doing the business of Jewellery business in the name and style of "Girija Jewellers." It is admitted that at present she is working as a teacher on contract basis "Samvida Shikshak" in Government School and earning monthly salary. However, she specifically denied the extra-marital relations with Devendra Pansari and of committing any kind of cruelty against her husband. She admitted that she lodged FIR u/s 498-A of I.P.C. on which a criminal case is also pending before the court of law. She also admitted to have filed a petition for maintenance of her infant son u/s 125 Cr.P.C. She also admitted that Devendra Pansari is her witness of the both cases pending before the criminal courts. Raising aforesaid grounds, she ultimately requested to dismiss the petition for divorce filed by her husband-respondent No. 1.

3. While dealing with the matter, the trial Judge framed the following issues for consideration:-

(1) Whether the non-petitioner/wife had developed extra marital relations after her marriage with Devendra Pansari and on opposition by the petitioner-husband, she committed cruelty with him ?

(2) Whether the non-petitioner/wife compelled the petitioner-husband for demand of share in the property of his father and for separate living ?

(3) Whether the non-petitioner/wife threatened her husband for false implication in criminal proceedings under Dowry Prohibition Act ?

(4) Whether the non petitioner/wife due to extra marital relations with Devendra Pansari, deserted her husband without any plausible reason ?

(5) Whether the petitioner-husband is entitled to a decree of divorce against non-petitioner/wife ?

(6) Whether the petitioner-husband has paid proper court fee ? If so, its effect.

(7) Relief and court fee.

(8) Whether the petitioner in order to cause harassment to non-petitioner/wife and lower down her dignity and prestige, has unnecessarily impleaded her in the case as non-petitioner ?

(9) Whether the non-petitioner No. 2 is entitled to get special compensation amount of Rs. 20,000/- from the side of the petitioner-husband ?

4. The learned trial Judge after recording and considering the evidence of the parties passed the decree of divorce in favour of petitioner/husband on the ground of cruelty and adultery and thereby dissolved their marriage, hence against the same judgment and decree, the appellant/wife has preferred the instant appeal.

5. 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 prospective way. The respondent No. 1/husband could not be able to discharge burden of proof regarding extra-marital relationship of his wife with Devendra Pansari by adducing strong and cogent evidence. So also committal of cruelty on the part of the appellant-wife to desert her husband without reasonable cause 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.

6. On the other hand, learned counsel appearing for the respondent No. 1-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. It is therefore prayed that the appeal may be dismissed.

7. Heard the learned counsel for the parties. Also perused the record of the trial court and the law applicable to the case.

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

(i) Whether, after solemnization of marriage, the appellant-wife had voluntary sexual intercourse with Devendra Pansari (respondent No. 2) ?

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

(iii) Whether the non petitioner/wife due to extra marital relations with Devendra Pansari, deserted her husband without any reasonable cause.

9. The respondent No. 1-husband has examined himself and he has given evidence in some detail about the cruelty by the appellant-wife towards him. He then adds that the appellant-wife was later living an immoral life and that she is living in adultery with respondent No. 2-Devendra Pansari, who is distantly related to him.

10. To prove the grounds for divorce as mentioned in petition, the petitioner-husband examined himself as PW-1 and other witnesses, namely, Madan Mohan Shrivastava (PW-2), Retd. Naib Tahsildar and his father Janki Vallabh Shrivastava (PW-3). To counter the allegation of adultery and cruelty raised by the petitioner/husband, the non-petitioner/wife examined herself as DW-1 and Janved Singh (DW-2). On these evidence, the learned Judge has granted the decree that we have earlier referred to.

11. On perusal of the entire evidence produced by both the parties, the admitted facts that have come to notice are that prior to the marriage of petitioner and non-petitioner, due to intimacy, they fell in love with each other four years back and after that they married against the wishes of their families on 26th June 2002 in the presence of Devendra Pansari (respondent No. 2) and Rajendra Khare, son of Madan Mohan Shrivastava (PW-2). After marriage, the couple lived in a rented house of teacher Arya for certain years. Their son Tanish was born on 25th September 2009 in Kamla Raja Hospital Gwalior. The marriage of the younger sister of the petitioner-husband was solemnized on 30th January 2005 from the house of his father. On that occasion, his parents called him and his wife (non-petitioner) for living with his family in his parental house. Looking to the disputes between husband and wife, his father Janki Vallabh Shrivastava arranged a separate residence on rent in the house of Durga Prasad Soni. During living in separate house of Durga Prasad Soni, the mutual disputes between the parties flared up to extent of breakage of their marital ties. Consequently, due to cruel behaviour of non-petitioner/wife, the petitioner was compelled for his return to live with his parents. It also appeared that the petitioner/husband was enrolled as an Advocate and his father is also renowned Advocate of the local area. Due to disagreement on the point of their love marriage, the petitioner could not get assistance of his father and so became unsuccessful in legal practice which effected his earning capacity. On the other hand, the non-petitioner Kavita was working as a contact teacher in Govt. school and her earning was regular. Being the non-earning member of the family, the petitioner-

husband either willingly or unwillingly was doing household work during their separate living. It also appeared from the evidence that Devendra Pansari and Rajendra Khare both were the witnesses who sworn in affidavits filed by the petitioner and non-petitioner at the time of their marriage. They were also the witnesses of their marriage solemnized in Arya Samaj Mandir at Gwalior. It also appears that after marriage during their separate living, one witness of the marriage Devendra Pansari (respondent No. 2) had developed the intimacy with the couple and this possibility can not be ruled out that in order to take advantage of grave differences formed between the couple, the said person might have took an opportunity to develop relation with the non-petitioner, which caused mental agony to the petitioner-husband. Suffice it to say, their Lordships of Hon. Supreme Court, in various decisions held that 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 and the parties cannot reasonably also be expected to live together or that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party.

12. In the case of A. Jayachandra Vs. Aneel Kaur, the Hon. 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.

13. Further, in the case of Geeta Jagdish Mangtani Vs. Jagdish Mangtani, , Hon. 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.

14. Now, 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 solemnization of the marriage, voluntary sexual intercourse with any person other than her spouse". Thus, after amendment in Hindu Marriage Act 1956, the respondent No. 1-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 solemnization of marriage had voluntary sexual intercourse with any person other than her spouse.

15. In the light of the above decisions, we have carefully scrutinized the evidence and we are satisfied that there is sufficient evidence, both of the respondent No. 1-husband and the witnesses who corroborate him, concerning the grave cruelty of the appellant-wife towards her husband. But, unfortunately for the husband, such cruelty per se is not a ground for dissolution of the marriage u/s 10, though it is a ground in itself for the grant of a decree for judicial separation between the parties. It is trite in law that mere cruelty is not enough and that 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.

16. We are quite unable to accept that there is any 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 No. 1-husband no doubt, alleges, that there was such adulterous relationship between the appellant-wife and respondent No. 2, named in the petition. But, except for the bare averment, the evidence on this aspect is totally unsatisfactory. The statement "she is living in adultery with respondent No. 2 is bare, and without amplification. We are not certain whether this is based on personal knowledge and conceivably. It may be pure hearsay. Where the status of matrimony as well as the interests of society is involved, the Court has the right and duty to see that the matrimonial offence of adultery, if alleged by either spouse, is properly established by evidence that a Court can accept. Collusion is one of the matters that will have to be wholly excluded before any relief can be granted, and for this reason also, the Court must not be satisfied with the mere assertion of a party, where the source of knowledge is not revealed and the party does not even purport to give evidence from personal

knowledge as distinguished from hearsay. We find, on a careful perusal of the case that the facts of the case are involving other evidence including unemployment of the respondent No. 1-husband that the learned trial Judge should have incidentally made an observation, in accepting and acting on the evidence for adultery. As we find that u/s 10, no decree for divorce can be granted on the ground of cruelty, but there should be adultery coupled with cruelty. Cruelty must be such as would entitle the respondent No. 1-husband to get divorce. In this case, what all the respondent No. 1-husband has proved is only cruelty and desertion. Where cruelty alone is proved and not adultery, like present one, we are not competent to grant a decree of divorce for dissolution of marriage. In other sense, what we find from the evidence on record is that the appellant-wife has deserted her husband on account of her extra-marital relationship with respondent No. 2 herein on which after issue was framed by the learned trial court and recording the evidence, the desertion of the husband on such ground was found established. So, in the present case, the learned trial court instead of granting a decree for dissolution of marriage on the ground of cruelty as well as adultery ought to have granted a decree on the ground of the established grave cruelty coupled with desertion. It is well settled that the standard of proof required in a case of cruelty or desertion need not be over-empathized. Though strict proof of beyond reasonable doubt, as required in a criminal case is not necessary, the preponderance of probabilities at least should indicate that the appellant-wife treated the respondent No. 1-husband with cruelty and deserted him or that a matrimonial offence has been committed. In this case, the testimony of respondent No. 1-husband that the appellant behaved cruelly towards him and that she deserted him is corroborated by other evidence and material adduced by him.

17. Thus, viewed from any angle, we find that the respondent No. 1-husband has successfully established his case for dissolving the marriage by a decree of divorce u/s 13(1)(ia) and (ib) of the Act on the ground of cruelty and desertion. Accordingly while modifying the judgment and decree to that extent, the appeal is hereby dismissed. The decree be drawn up accordingly. Subject to above observations, the appeal stands hereby dismissed. The cost of this appeal will be borne by the respective parties.