

(2013) 07 AHC CK 0002
In the Allahabad High Court
Case No : F.A. No. 76 of 2010

Smt. Mala Shukal

APPELLANT

Vs

Dr. Vijay Kumar

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Citation : (2013) 100 ALR 67

Hon'ble Judges : Saeed-Uz-Zaman Siddiqi, J

Bench : Single Bench

Judgement

Saeed-Uz-Zaman Siddiqi, J.—The instant appeal has been preferred against the judgment and decree dated 28.7.2010, passed by learned Additional District Judge, Court No. 1, Sultanpur, in Regular Suit No. 6 of 2008, by which the suit for divorce filed by respondent/husband has been decreed. Brief facts of the case are that admittedly the respondent was married to Gyan Suman Shukla who died issue-less due to cancer on 30.6.2002. The couple has adopted a son in the year 1988 who is studying and he was being looked after by the mother of the respondent Sheela Shukla. The father of the respondent died in the year 1996 due to cardiac attack in the District Hospital Sultanpur; the respondent married with the appellant who was posted as Principal in the Air Force School, Bamharauli, Allahabad and was unmarried. Though there was difference of caste between the parties, yet the marriage was solemnized, which was boycotted by the relations of the appellant. Due to marriage, the appellant left her job on 1.4.2003 and started living with the respondent. She has shifted her household but immediately after marriage, the wife started treating with her husband in a cruel manner; at the time of marriage the age of the adopted son of the respondent was 15 years. The appellant did not take care of the adopted son; due to medical profession the respondent was receiving telephonic calls 2-4 times per day which was causing irritation to the respondent; the respondent has provided a mobile telephone to his wife but she did not permit its use to the respondent; the appellant was indulging in abnormal activities by leaving the house in the absence of her husband and by standing on the gate and waiting for

the postman. In the year 2003, the appellant separated herself and started living in a closed room and did not use to open it in spite of knocking it by the husband, which was causing tension to the husband and his family members; there was no sexual relationship between the parties which could begin only on 29.4.2004. The appellant demanded ornaments worth Rs. 70,000/- and on denial the appellant refused sex. Compelled by the situations, the husband got a house constructed after purchasing a land but before it could be finished the appellant started living in a rented house since August, 2006 and used to come to live in the house of the respondent only in the night on the first floor room and used to live after locking it from inside. The appellant stopped taking food with family members of the husband and whenever she felt hungry she used to cook food at 12.00 O'clock in the night and 2-3 O'clock in the night and very often used to take food, outside. All these abnormal activities were having demoralizing effect in the vicinity of the respondent/husband. Due to all these circumstances a petition u/s 13 of Hindu Marriage Act was presented by the husband which was contested by the appellant. It was also alleged that the appellant has exhibited her to be an unmarried lady but later on it was revealed that she was married with one S.K. Srivastava and a female baby was born on 30.9.1993 in Kamla Nehru Memorial Hospital, Allahabad who is being maintained by the appellant herself. Not only this, mother of the appellant has died on 17.2.2007 but she did not attend to her funeral; the appellant was working in Reewa from where she left her job and surreptitiously joined in Airforce School, Bamhrauli for a short period and due to her misconduct she was dismissed. Later on she served in the Sainik School, Faizabad for two years and developed illicit relationship with some army officer whose wife has ultimately committed suicide and due to this episode she was dismissed from Sainik School, Faizabad. All pleas taken in the plaint were contested by the appellant through written statement in which it was pleaded inter alia that the family members of the respondent was not accepting her as wife of respondent. Mother in law used to quarrel and trifle and she was forbidden to enter into the kitchen; mother and younger brother of Gyan Suman Shukla polluted the brain of the minor child who became indifferent with the appellant. He stopped taking food prepared by the appellant and started taking junk food and in result he became diabetic in the minor age of 20 years; the respondent has also realized that the appellant could not live in his house due to indifferent attitude of his family members and, as such, he proposed to get a flat constructed in Vinovapuri Mohalla and the respondent is residing in that house, at present; the appellant being deserted by the respondent has again joined her earlier job style and is working as Principal in St. Xavier's High School, Sultanpur from 29.10.2007. She has denied to have taken any maternity leave while working in Reewa Sainik School. She has denied to have got married with Sri S.K. Srivastava earlier and she has also denied to have given birth to a female baby and she does not know any person by the name of Sri S.K. Srivastava. Entire pleadings of the parties shows that there has been irretrievable break down of marriage. Both the parties have reiterated the pleas taken in their pleadings in their statements as P.W. 1 and D.W. 1. Respondent, being petitioner

has also examined five other witnesses and has filed documentary evidence. Learned Trial Court has framed issue Nos. 1, 2 and 5 and has decided issue Nos. 1 and 5 together by common discussion. Learned Trial Court has rightly discussed the evidence led by the parties and has reached to the correct conclusion. The petitioner who is respondent before this Court has got success in proving cruelty as ground for divorce and has rightly decreed the petition for divorce.

2. Heard learned Counsel for the parties and perused the records.

3. I have carefully perused the evidence led by both the parties and have reached to the conclusion that both the parties are not in a position to live with each other, at any cost, at any point of time. There is a peculiar sort of desertion which is obviously cruel on the face of it. From a perusal of the pleadings of the parties before the learned Trial Court and evidence led by them it is abundantly clear that the appellant is guilty of desertion. Learned Trial Court has rightly discussed the evidence in its correct perspective and has not committed any perversity. Mental cruelty was caused by the appellant herself. The expression "cruelty" has not been defined in the Hindu Marriage Act. The Hon'ble Apex Court as well as this Court defined "cruelty" in accordance with the prevailing social circumstances of Indian society.

4. In A. Jayachandra Vs. Aneel Kaur, , the Hon'ble Apex Court has held as under:

The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. 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, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately 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 this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought

out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

The expression "cruelty" 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. Cruelty is a course or 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 in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in 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 by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious 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. (See *Shobha Rani Vs. Madhukar Reddi*,).

To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

5. In *Sujata Uday Patil Vs. Uday Madhukar Patil*, , the Hon"ble Supreme Court has held as under:

The word "cruelty" and the kind or degree of "cruelty" necessary which may amount to a matrimonial offence has not been defined in the Act. What is cruel treatment is to a large extent a question of fact or a mixed question of law and

fact and no dogmatic answer can be given to the variety of problems that arise before the Court in these kind of cases. The law has no standard by which to measure the nature and degree of cruel treatment that may satisfy the test. It may consist of a display of temperament, emotion or pervasion whereby one gives vent to his or her feelings, without intending to injure the other. It need not consist of direct action against the other but may be misconduct indirectly affecting the other spouse even though it is not aimed at that spouse. It is necessary to weigh all the incidents and quarrels between the parties keeping in view the impact of the personality and conduct of one spouse upon the mind of the other. Cruelty may be inferred from the facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence and inference on the said point can only be drawn after all the facts have been taken into consideration. Where there is proof of a deliberate course of conduct on the part of one, intended to hurt and humiliate the other spouse, and such a conduct is persisted, cruelty can easily be inferred. Neither actual nor presumed intention to hurt the other spouse is a necessary element in cruelty.

I have carefully considered the findings recorded by the learned Trial Court and in my opinion the findings are fully borne out from the material on record and cannot be faulted with on any ground. Therefore, the decree for divorce has to be granted. In *Ravi Kumar Vs. Julmi Devi*, , the Hon"ble Apex Court has observed as under:

It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.

About the changing perception of cruelty in matrimonial cases, this Court observed in *Shobha Rani Vs. Madhukar Reddi*, of the report (SCC p. 108, para 5):

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.

6. In *Gurbux Singh Vs. Harminder Kaur*, , the Hon"ble Supreme Court has held as under:

In *Samar Ghosh Vs. Jaya Ghosh*, , a three-Judge Bench of this Court while considering section 13(1)(i-a) of the Act laid down certain guidelines. The analysis and ultimate conclusion are relevant which reads as under:

98. On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of "mental cruelty" within which all kinds of cases of mental cruelty can be covered. No Court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommodore or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

7. I have discussed the law as settled by the Hon"ble Apex Court above in order to insure that the evidence has rightly been discussed and interpreted by the learned Trial Court in this perspective. The attitude of the appellant shows that the marriage has really broken down and the parties can no longer live together as husband and wife. If such is the situation, it is better to close the chapter than to keep both the parties in permanent agony. Social harmony must be achieved under all circumstances. In Chanderkala Trivedi (Smt) Vs. Dr. S.P. Trivedi, , the Hon"ble Apex Court has observed that if the marriage was dead and there was no chance of it being retrieved, it was better to bring it to an end. Similar view has been taken by the Hon"ble Apex Court in Romesh Chander Vs. Smt. Savitri, , A Division Bench of this Court in the case of Smt. Renu Vs. Sanjai Singh, , has relied upon the law laid down by the Hon"ble Apex Court in Chandralekha Trivedi's case (supra) and Smt. Renu's case (supra).

8. In delicate human relationship like matrimony the Court has to watch all the probabilities with a microscopic eye. From the conduct of the spouse the legitimate inference can be drawn that treatment of one of the spouse is such that mental welfare of the couple is not possible, it shall be congenial for both of them to live separately and live their independent life. It is what has been termed by the Hon"ble Apex Court in a catena of judgments to be "irretrievable breakdown of marriage". In Naveen Kohli Vs. Neelu Kohli, , the Hon"ble Supreme Court has observed as hereunder: Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The Court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

A law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce Courts are presented concrete instances of human behaviour as bring the institution of marriage into disrepute.

We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases do not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in

the recognition of that fact.

Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist.

Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.

The other majority view, which is shared by most jurists, according to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom.

When we carefully evaluate the judgment of the High Court and scrutinize its findings in the background of the facts and circumstances of this case, then it becomes obvious that the approach adopted by the High Court in deciding this matter is far from satisfactory.

The High Court ought to have considered the repercussions, consequences, impact and ramifications of all the criminal and other proceedings initiated by the parties against each other in proper perspective. For illustration, the High Court has mentioned that so far as the publication of the news item is concerned, the status of husband in a registered company was only that of an employee and if any news item is published, in such a situation, it could not, by any stretch of imagination be taken to have lowered the prestige of the husband. In the next para 69 of the judgment that in one of the news item what has been indicated was that in the company, Nikhil Rubber (P) Ltd., the appellant was only a Director alongwith Mrs. Neelu Kohli whom held 94.5% share of Rs. 100/- each in the company. The news item further indicated that Naveen Kohli was acting against the spirit of. the Article of the Association of Nikhil Rubber (P) Ltd., had caused immense loss of business and goodwill. He has stealthily removed produce of the company, besides diverted orders of foreign buyers to his proprietorship firm M/s. Navneet Elastomers. He had opened bank account with forged signatures of Mrs. Neelu Kohli and fabricated resolution of the Board of Directors of the company. Statutory authority-Companies Act had refused to register documents filed by Mr. Naveen Kolhi and had issued show-cause notice. All business associates were cautioned to avoid dealing with him alone. Neither the company nor Mrs. Neelu Kohli shall be liable for the acts of Mr. Naveen Kohli. Despite the aforementioned finding that the news item was intended to caution business associates to avoid dealing with the appellant then to come to this finding in the next para that it will by no stretch of imagination result in mental cruelty is wholly untenable.

On the basis of evidence on record and on the basis of the law as discussed above, I do not find any interference in the judgment and decree of the learned Trial Court. The judgment and decree dated 28.7.2010, passed by learned Additional District Judge, Court No. 1, Sultanpur, in Regular Suit No. 6 of 2008, is hereby confirmed. In result, the first appeal is dismissed.