
(1992) 11 BOM CK 0073
In the Bombay High Court
Case No : F.C.A. No. 10 of 1991

Sou. Sunanda Raghunath Sadavarte

APPELLANT

Vs

Raghunath Keru Sadavarte

RESPONDENT

Date of Decision : 25-11-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 13, 13(1)

Citation : (1993) 2 DMC 519

Hon'ble Judges : V.P. Tipins, J; M.G. Chaudhari, J

Bench : Division Bench

Advocate : Anil V. Anturkar, for the Appellant; D.M. Gupta, for the Respondent

Judgement

M.G. Chaudhari, J.—The appellant-wife, feeling aggrieved by the judgment and decree of divorce passed by the learned Judge of Family Court, Pune, dated 19th November, 1990 dissolving her marriage with the respondent has preferred this appeal.

2. The proceedings arose out of a petition filed by the respondent-husband seeking divorce on the ground of cruelty and desertion u/s 13 of the Hindu Marriage Act, 1955. The parties were married according to Hindu religious rites at Pune on 6.6.1975. At the time of marriage the respondent was residing at village Chas near Khed in a Ram Mandir. After the marriage, the spouses started residing together at the said place. The respondent's parents were also residing with them. His father was about 85 years old and the mother was about 62 years old and was blind. She was also a patient of cancer. The case of the respondent was that their marriage was an arranged marriage. His father had retired and could not earn anything. He had to repay loan that was incurred by the father for the marriages of his sisters. His financial position therefore was not satisfactory. He had therefore to take up a job as a peon at the age of about 19 years. According to him, the appellant was given a complete idea about his financial position before the marriage and she had with full knowledge thereof consented

to the marriage. The appellant's parents were from Pune. According to the respondent, ever since the time of marriage, the appellant-wife was not behaving normally as a newly wedded wife was expected to behave. She was quarrelsome. She neglected to look after the aged and ailing parents of the respondent. She did not attend to household work including cooking. She often went without informing him and behind his back to her parents at Pune and stayed there for days together without bothering for his aged parents and himself. In order to see that the appellant could be impressed to improve her ways and at her insistence to settle down at Pune, the respondent after the death of his father on 21st November, 1976 acquired premises at Karvenagar, Pune. He started living there alongwith the appellant and his mother. His widowed sister also lived with them. However, there was no improvement in the behaviour of the appellant-wife and she continued to be quarrelsome. She even assaulted his mother and sister. She then started demanding that they i.e. the respondent and she should establish a separate household. That however was not possible for him as he could not leave his aged, ailing and blind mother alone. Several efforts were made to impress upon the appellant to improve her ways but the attempts did not succeed. On the contrary, the appellant and her parents desired that he should stay at her parents' house as a Ghar-Jawai. That however was not acceptable to him. In the circumstances, in the month of September 1977, the respondent went to reside with her parents never to return. Several attempts were made to bring her back but they failed. Since then the appellant did not show any interest to return to the matrimonial home, but instead on 14th January, 1980 she filed an application for maintenance in the Court of the Judicial Magistrate at Pune. She was awarded maintenance of Rs. 250/- per month, but on revision the Sessions Court reduced the amount to Rs. 200/-. In the year 1989, on an application made by the appellant-wife, the Family Court enhanced the amount of maintenance to Rs. 350/- per month. The respondent had been paying the amount as ordered. According to the respondent, the behaviour of the appellant had caused him considerable harassment and mental and physical cruelty. She had deserted him without any reasonable cause. He, therefore, sought divorce. The petition was filed on 20th August, 1989.

3. By her written statement, the appellant denied the allegations made by the respondent in his petition. She alleged that the petition was not filed bona fide. She denied that the respondent was required to repay the loan allegedly taken for the marriages of his sisters so as to put him under financial strain. She denied the allegations of her being of quarrelsome nature and neglect of the parents of the respondent as were stated by the respondent in his petition. She also denied the allegation that in the month of September 1977, the respondent was suggested to go and stay with her parents as Ghar-Jawai or that she had abandoned the matrimonial home since then. She denied the right of the respondent to seek divorce by alleging that it was indeed the respondent who had ill-treated her and had to suffer the order for maintenance. She stated in the written statement that after the marriage when she went to stay with the

respondent at Chas which was a village, she was harassed and abused on account of her not being accustomed to fetch water from the well and being a girl grown up in a city like Pune, she was not quite familiar with the household work in a village. Due to the constant abuses and harassment, it was he who has caused cruelty to the appellant and her parents. Her father and other persons tried to advise the respondent to behave properly and stop the harassment but that was of no use. She alleged further that the respondent was addicted to liquor. He used to come home late at night under the influence of liquor and used to beat her. On one occasion due to such assault, she suffered a fracture to her wrists. Not only that but once when she was going with the respondent in a bus, the respondent had tried to push her down the bus. This manner of behaviour of the respondent caused an apprehension to arise in her mind that it was not safe to continue to remain in the house of the respondent and, therefore, out of that apprehension she had gone to stay with her parents. She had not thus abandoned the company of the respondent nor had any intention to desert him. She further alleged that after she went to reside with her parents, the respondent made no enquiries about her well-being nor had bothered about her maintenance which had forced her to approach the Court for an order of maintenance. She further alleged that the respondent had performed a second marriage illegally and he was residing with the second wife at Pimpri. The appellant contended that neither she was guilty of causing and cruelty to the respondent nor desertion and since the respondent was trying to take advantage of his own wrong, the petition was not maintainable and it deserves to be dismissed. She also claimed permanent alimony at the rate of Rs. 700/- per month and a sum of Rs. 500/- towards expenses. In that connection she alleged that the respondent was employed in the State Bank of India and was earning a salary of more than Rs. 2,200/- per month and there were no dependents on him.

4. The learned Judge of the Family Court framed issues in the light of the aforesaid pleadings relating to the grounds of cruelty, desertion and permanent alimony.

5. The respondent examined himself in support of his petition and he also examined his sister Jayshri Kulkarni. The appellant examined herself and examined no other witness.

6. Considering the evidence on record, the learned trial Judge inter alia held that the respondent had proved that the appellant had neglected and ill-treated his parents; that the conduct of the appellant was such that the respondent had suffered physical and mental cruelty; that it was proved that since September 1977, the appellant-wife had deserted the respondent-husband without any just and sufficient cause; and that therefore, the respondent-husband was entitled to a decree of divorce dissolving the marriage between him and the appellant. The learned Judge also recorded the findings that the appellant had not proved that the respondent and members of his family had ill-treated her and also had failed to prove the allegation that the respondent was addicted to drinking liquor and

under the influence of liquor used to beat her and had caused fracture of her wrist joint. He further held that the appellant had failed to prove that the respondent had performed a second marriage in the year 1987 at Akola or was staying with his second wife at Pimpri. As far the question of permanent alimony is concerned, although the learned Judge had framed the issue as to whether the appellant-wife was entitled to claim permanent alimony, answered it in the negative holding that the amount of Rs. 350/- per month which was already awarded was proper. Holding further that there was no legal bar to grant the decree of divorce, he dissolved the marriage between the parties on both the grounds, viz., cruelty and desertion.

7. Mr. Anturkar, learned Counsel appearing for the appellant-wife, assails the decree on the following grounds :--

(i) there was a finding recorded by the Criminal Court u/s 125 of the Cr. P.C. against the respondent-husband to the effect that he had neglected the appellant-wife and that was sufficient to negative the ground of desertion;

(ii) the evidence of Jayshri, sister of the respondent did not corroborate the testimony of the respondent and in the absence of corroboration from any independent witnesses, the Court below was in error in relying upon the solitary testimony of the respondent to hold the alleged ground of cruelty and desertion proved.

(iii) the evidence of the respondent should not have been accepted because it tended to make improvements in material particulars at the stage of evidence and introduced facts which were not stated in the original petition.

The learned Counsel took us through the evidence of the respondent and his sister Jayshri. We will deal with the above submissions now inasmuch as no other point has been urged before us by Mr. Anturkar.

25th November, 1992.

8. As far the first contention urged by Mr. Anturkar is concerned, there is no merit in it. Proceedings for maintenance u/s 125 of the Cr. P.C. by their very nature are summary proceedings and cannot take the form of a substantive proceeding. The conclusions arrived at such a proceeding are of a limited nature for a limited purpose and cannot come in the way of decision of material issues arising u/s 13 of the Hindu Marriage Act in a petition under that Act. Such a petition has to be decided as a substantive proceeding on the basis of evidence adduced in the case by the parties. The requirements of the ground of desertion u/s 13 of the Hindu Marriage Act are different in substance than the requirement of proof of refusal and neglect to maintain a wife to be decided in an application u/s 125 of the Cr. P.C. The learned trial Judge, in our view, was right in taking the view that the order passed in the proceedings u/s 125 of the Cr. P.C. between the parties did not finally determine their rights and obligations under the Hindu Marriage Act. The learned trial Judge has rightly drawn support for that view

from the decision of the Supreme Court in 1971 (3) SCC 923 . We, therefore, reject the first contention of the learned Advocate.

9. The other points canvassed before, us by Mr. Anturkar can be dealt with together. As stated earlier, there is evidence of the respondent and his sister on one hand and of the appellant-wife on the other. The petition for divorce filed by the respondent was brought on two grounds, viz., cruelty and desertion u/s 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955. Even though the test of cruelty has been considerably liberalised and in a given case it might be sufficient that the spouses have reached such a stage of relationship that they can no longer be expected to live together, yet on the evidence of the respondent even when read with the evidence of Jayshri, we are afraid that the finding of the learned trial Judge that the respondent has prove the ground of cruelty cannot be upheld. The respondent deposed that the marriage took place on 6th July, 1975. His father was 85 years old and was an ailing person. His mother was about 64 years old and was blind. Both of them required to be looked after by someone in the house. The father died in September 1976 and the mother of the respondent died in the year 1985 or 1986. All that the respondent however deposed about the alleged acts of cruelty of the appellant was that soon after the marriage, she started giving troubles and caused harassment to his parents. She did not respect him. She used to leave the house and used to go to her parents' place without informing him and leaving behind the aged parents unattended. No particulars or details of any acts of ill-treatment or harassment which could cause mental or physical harm or distress to the respondent were deposed to by him. In the absence of any such particulars having been pleaded and proved, merely because the respondent has stated that the appellant was quarrelsome and did not do household work and was not respectful for his parents, that by itself would not be sufficient to establish either mental or physical cruelty to have been caused by the appellant to him. The only statement made by the respondent in his evidence of which some note could have been taken is that according to him, the appellant beat his mother by giving kick blows. This was a very generalised statement and no particulars about the said incident or incidents have been spoken about. For whatever reason, that aspect was pursued in the cross-examination and the respondent denied that the appellant had not assaulted his mother. That again is merely a vague assertion. No reliance also can be placed on this statement of the respondent because no particulars were pleaded in the petition about the said alleged assaults. Jayshri, the sister of the respondent, also has not stated anything of that nature. We are, therefore, not satisfied that the evidence was sufficient to bring home the charge of cruelty against the appellant. Consequently, the findings of the learned trial Judge on issues No. (i) and (ii) are reversed. We hold that the respondent failed to prove the ground of cruelty.

10. We however find that the evidence is sufficient and satisfactory to uphold the finding of the learned trial Judge that the appellant had deserted the respondent-husband without just and sufficient case for a period upwards of two years i.e.

from September, 1977. Section 13(i)(ib) provides a ground for divorce where an erring spouse has deserted the petitioner seeking divorce for a continuous period of not less than two years immediately preceding the presentation of the petition. In the instant case, the petition was filed on 20-8-1989. In the petition, it was alleged by the respondent that in September 1977 the appellant left the matrimonial home and went to reside with her parents. Thereafter, although he desired to bring her back, suggestions were being made to him that he should go and stay with the appellants as Ghar-Jawai which was not agreeable to him. The appellant however did not come back to the matrimonial home nor showed any interest in the respondent, but instead on 14-1-1980 filed an application for maintenance in the Criminal Court. He further averred that ever since September 1977, there was no cohabitation between him and the appellant inasmuch as the appellant had refused to return to the matrimonial home to stay with him. He has also alleged that the refusal of the appellant to return to the matrimonial home ever since Sep. 1977 for nearly 12 years by the time of filing of the petition was the result of her abandonment of the matrimonial relationship between the two and with the desire never to return to the matrimonial home and cohabit with him and that afforded him the ground of desertion for obtaining divorce. In his evidence he deposed to these facts and asserted that all endeavours to bring back the appellant and reconciliation had failed. He stated that there was no just or reasonable cause for the appellant to desert him. He also denied the suggestion that it was he who had deserted her. He stated that he had intention to continue marital relations with her till she left the house. In his cross-examination, nothing was elicited from him to show that it was he who had compelled the appellant to live away from him or that it was he who had deserted the appellant without any just cause. It was not suggested to the respondent during his cross-examination that the appellant was still ready and willing to resume cohabitation with him and live with him in the matrimonial home. With this significant omission on a vital aspect to put the respondent on test, there is no substance in the contention of the appellant that it was the respondent who had deserted her. The statement of the respondent in his evidence that it was suggested that he should become Ghar-Jawai and stay with the appellants' parents at Pune further leads to the inference that it was the appellant who was not interested in resuming cohabitation with the respondent or to put an end to the separation.

11. Jayshri, the sister of the respondent, lends corroboration to the testimony of the respondent on this point. She deposed that the appellant was not ready to reside with the respondent. She always used to stay with her parents at Pune as many days as she liked. She did not come to stay with the respondent at Pimpri. She only casually visited for a day or two. After the respondent went to reside at Karvenagar, the appellant did not show any desire to come back, despite several attempts for reconciliation. She was not ready to stay with the respondent, although the respondent wanted that she should stay with him in his house. There is nothing in her cross-examination which would require any inference to

the contrary to be drawn to what she stated in her examination-in-chief.

12. The evidence of the respondent read with the evidence of Jayshri is quite sufficient to come to the conclusion that the appellant had deserted the respondent for a continuous period of not less than two years immediately preceding the presentation of the petition as rightly held by the learned trial Judge.

13. Mr. Anturkar submitted that the testimony of the respondent cannot be relied upon because he has not examined any other independent witness to corroborate his testimony. He submitted that on the point of cruelty, the testimony of Jayshri does not lend any corroboration to the testimony of the respondent. We find that this submission of the learned Counsel is fallacious. He was unable to point out and we are certain that there cannot be any rule of law which would require that in every matrimonial petition, the testimony of the husband or the wife should be corroborated by other independent witnesses. In fact, that would be too much to expect in a matrimonial case where most of the matters in controversy would be within the exclusive knowledge of the spouses and neighbouring persons could hardly be in a position to throw any light on those controversies. It is settled principle of law that if the testimony of a solitary witness is found worthy of credence and sufficient to arrive at a positive conclusion on a given point, that can be safely accepted and relied upon. We find that the testimony of the respondent is of such quality as can be safely accepted. The learned trial Judge has believed that evidence and we see no reason to take any different view.

14. The learned Advocate for the appellant did not desire to read the testimony of the appellant-wife nor took us through that evidence. He has not also advanced any argument to suggest that any particular part of her testimony renders any material part of the testimony of the respondent unworthy of acceptance. The learned trial Judge has dealt with the testimony of the appellant and we find no reason to take any different view from what is taken by the learned trial Judge. Consequently, we affirm the finding of the learned trial Judge on issue No. (iii) and hold that the respondent was entitled to be given the relief of divorce on the ground of desertion.

15. The learned Advocate for the appellant not having addressed us on the question of permanent alimony in regard to which the learned trial Judge has recorded a finding on issue No. (vii) in the negative, really speaking, we are not called upon to go into that question. However, it appears to us that the learned trial Judge has committed an error in recording the said finding in the negative without realising that the manner in which he has proceeded to decide that issue would result in stoppage of maintenance to the appellant with the dissolution of the marriage with the decree of divorce, although the intention of the learned Judge appears to have been that she should continue to get maintenance at the rate of Rs. 350/- per month. What the learned trial Judge perhaps wanted to hold was that the amount of Rs. 350/- per month should continue to be paid to

the appellant by way of maintenance by way of permanent alimony which amount was ordered to be paid by the Family Court in proceedings u/s 125 of the Cr.P.C. In our view, the appellant having made a claim for permanent alimony, the learned trial Judge ought to have passed an order u/s 25 of the Hindu Marriage Act in the sum of Rs. 350/- per month. Really speaking, we are not called upon to grant that relief to the appellant since no such relief was sought before us nor any argument was advanced making any grievance against the finding of the learned trial Judge. However, on our own, since this appeal arose out of a matrimonial petition and the question relates to alimony of the wife, we would amend the decree of the Trial Court to that extent.

16. None appeared for the respondent at the hearing of this appeal and, therefore, we are inclined to leave the parties to bear their own costs in this appeal.

17. In the result, the following order is passed :--

The appeal is partly allowed. The finding of the learned trial Judge on the issue of cruelty as the ground for divorce is set aside. However, the decree passed by the learned trial Judge dissolving the marriage between the respondent and the appellant by a decree of divorce on the ground of desertion u/s 13(1)(ib) of the Hindu Marriage Act as from the date of the decree is confirmed.

The finding of the learned trial Judge on issue No. (vii) is reversed. Instead, it is ordered that the respondent shall pay a sum of Rs. 350/- per month to the appellant by way of permanent alimony u/s 25 of the Hindu Marriage Act. Consequently, the order of the Family Court in petition E-271 of 1989 dated 17th April, 1989 for maintenance as also any order if be in operation passed by the Criminal Court u/s 125 of the Cr. P.C. relating to maintenance shall stand substituted by this order as from today. No order as to costs.