
(1967) 12 MAD CK 0036
In the Madras High Court

T.K. Saravana Perumal

APPELLANT

Vs

Shishikana Perumal

RESPONDENT

Date of Decision : 19-12-1967

Acts Referred:

Special Marriage Act, 1954 — Section 27, 35

Citation : (1969) ILR (Mad) 845 : (1968) 81 LW 454 : (1968) 2 MLJ 562

Hon'ble Judges : M.M. Ismail, J

Bench : Single Bench

Judgement

M.M. Ismail, J.—This is an appeal against the order of the learned Additional Judge, City Civil Court, Madras, dismissing the application filed by the appellant herein, u/s 27 of the Special Marriage Act, for a decree of divorce, on the ground that the respondent has treated the appellant with cruelty.

2. The appellant herein was first appointed as a Lower Division Clerk in the year 1943 at Poona and later was transferred to the Local Audit Office at Bombay. At the time of the petition, he was employed in the Military Accounts Department, Government of India, as an auditor in the Local Audit, Defence Accounts Department. While the appellant was working at Bombay, on 2nd April, 1953 the marriage between the appellant who hails from Madras, and the respondent who hails from Bengal, was solemnised under the Special Marriage Act (III of 1872), since repealed by Act XLIII of 1954, and the marriage was registered at the office of the Registrar of Marriages, Bombay, on that date. The appellant and the respondent have two daughters aged 8 and 6 in 1961, now aged about 14 and 13 respectively.

3. According to the allegations contained in the petition filed by the appellant, after the marriage the appellant and the respondent were living in Bombay for sometime; while so, the respondent ignoring the dislike of the appellant took to insurance job as a representative of the Life Insurance Corporation of India; the respondent habitually conducted herself towards the appellant with great harshness and cruelty, very frequently abusing him in the most insulting

language, used to beat him with whatever she could lay hands upon, and was making the life of the appellant very miserable; there were several occasions at Bombay where the appellant and the respondent were living till about 1956, when frequent complaints were made and recorded in the Colaba Police Station; in 1955 the respondent filed a petition u/s 488, Criminal Procedure Code, against the appellant on the file of the XVI Presidency Magistrate's Court, Bombay, while she was living with the appellant, and the said complaint was rejected by the Magistrate on 26th April, 1956 on her own admission that she was living with the appellant; there used to be complaints by neighbours about the respondent to the officers of the appellant about the conduct of the respondent; the appellant's stay at Bombay was made intolerable by the frequent quarrels of the respondent; the appellant's life was made miserable by the frequent quarrels which the respondent had with the neighbours of the appellant also; even when the appellant was transferred to Poona in 1956, she was practically living her own there, without least regard to the appellant's wishes; in or about April, 1960, the appellant was transferred to Madras and at that time the respondent would not accompany him to Madras, but promised to join him later; after coming to Madras, the appellant fixed up a residence for living in a portion of No. 75, Pidariar Koil Street, G. T., Madras, and after much of correspondence the respondent joined him in or about the middle of May, 1960; soon after she joined the appellant, the respondent began her old ways of quarrels with the appellant, fisting him and assaulting him and also always quarrelling With the neighbour, with the result life was intolerable to the appellant; one day after Pongal, the respondent fisted the appellant and caused injuries to his person and the neighbours had to intervene and the appellant finding that his continuing to stay with her being detrimental to his life, had to seek refuge of his father, where he was staying at the time when he presented the petition to the Court, on or about 2nd February, 1961, without the least provocation from the appellant, the respondent picked up a quarrel and inflicted injuries on the appellant and by reason of such continued cruelty practised towards him, the appellant had to withdraw himself from the house No. 75, Pidariar Koil Street, and stay with his father at No. 36, Nattu Pilliar Koil Street. The appellant further stated that he has already taken custody of the first daughter and he wanted the custody of the second daughter also. On these allegations, in February, 1961, the appellant filed the petition referred to above, u/s 27 of the Special Marriage Act, 1954, praying for a decree for the dissolution of the marriage between the appellant and the respondent, for a decree granting divorce and for the custody of the child.

4. The respondent in the counter filed by her denied the allegations of the appellant. She contended that it was the appellant who asked her to take up the insurance job as a benami for him to supplement the family income and that the insurance business was really done by him. She further stated that the various allegations made by the appellant against her were false and were mere inventions to cover up his desertion of the respondent. Her case was that the marriage of the appellant with the respondent was solemnised against the wishes

of the appellant's parents and consequently the parents of the appellant were hostile to her and they were influencing the appellant to desert her. She alleged that when she conceived for the second time, the appellant advised her to have abortion and when she refused to listen to that advise, he began to desert her and treat her with cruelty; he failed to give any money for the respondent for domestic expenses and he never cared to visit the house in time and even absented from the house during nights and did not care for the well-being of the children and the respondent and it is under these circumstances she filed the petition u/s 488, Criminal Procedure Code, before the Magistrate at Bombay and the Magistrate advised the appellant to take care of the respondent properly and also advised him to behave like a worthy husband. The further case of the respondent was that even in 1955 the appellant tried his best to get rid of the respondent by deserting her and without the knowledge of the respondent he tried through some of his relatives to get a transfer from Bombay to Madras, sometime in June, 1955, with the idea of leaving behind the respondent in Bombay. But when she came to know of it she rushed to the Controller of Southern Command., Poona, under whom the appellant was working, and begged of him not to dislocate her life and the lives of the two children by transferring the appellant and the Controller was generous enough to cancel the transfer order. With regard to the allegation of the appellant that when he was transferred to Madras in or about April, 1960, the respondent did not accompany him, her case was that it was the appellant himself who asked the respondent to stay back for sometime, since the appellant had owed some debts and even the rent for the house in which they were living was in arrears and if the respondent also left Poona along with the appellant, the creditors and the landlord would insist upon their debts being discharged immediately and over and above that the appellant did not have sufficient money for the travelling expenses of both and it was under those circumstances he alone came to Madras and asked her to stay in Poona for sometime, promising that he would remit money for her to make her trip. Contrary to that, the appellant did not send any money and consequently the respondent had to come to Madras and find out the appellant with the help of the police. According to the respondent, after she came to Madras, the appellant and the respondent lived along with the parents-in-law of the respondent for sometime; later due to the cruel treatment meted out to the respondent by her mother-in-law and others she had to request her husband to find out some accommodation elsewhere. The mother of the appellant started giving all troubles to the respondent and also went to the extent of beating her and also inciting the neighbours and others to find fault with her and all these were done deliberately with the object of the appellant deserting the respondent. The respondent further proceeded to state that even after they moved to a separate residence at No. 75, Pidariar Koil Street, Madras, the appellant under the influence of his parents began to desert the respondent by not giving any money for domestic expenses and by not visiting the house regularly and the mother of the appellant even went to the extent of having recourse to mantras and other devices thinking thereby that they could threaten the life of the

respondent and the appellant fell a victim to the bad influence and the maneuvers of the mother. The respondent further alleged that the appellant completely stopped paying any money to the respondent from December, 1960 and took away the eldest daughter in her absence on 28th January, 1961 when the respondent was attending on her younger daughter who was lying sick in the hospital. The respondent also alleged that the appellant came late in the night and on being asked he got enraged and beat the respondent. She wound up her counter by stating that she has always been willing to live with the appellant.

5. Before the learned Additional Judge, City Civil Court, Madras, the appellant examined himself as P.W. 1 and one Ananthasayanam, landlord of No. 75, Pidariar Koil Street, where the parties lived, Was examined as P.W. 2, and the respondent herself was examined as R.W. 1. After considering the evidence placed before him, the learned Additional Judge came to the conclusion that the insurance business was done really by the appellant in the name of the respondent, since he himself was a Government employee and consequently could not carry on the business in his own name. He also came to the conclusion that there was no evidence as to the attitude and the conduct of the respondent being cruel to the appellant, when they were "living at Bombay and Poona. He further came to the conclusion that with regard to the several allegations as to the late coming of the respondent to the house, no such thing was established and even the evidence of P.W. 2 indicated that she was not coming late to the house and on the other hand it was the appellant who was coming late to the house. With regard to the allegation of the appellant that the respondent used to beat him with whatever she could lay hands upon and fist him, the learned Judge refused to place any reliance upon the evidence of the appellant and even with regard to the evidence of P.W. 2 who claimed to have seen the parties beating each other on one occasion, he came to the conclusion that at any rate the evidence was not satisfactory enough to prove such beating by the respondent of the appellant was such as to constitute cruelty for granting a divorce. "With regard to the case of the appellant that the respondent did not accompany him on his transfer to Madras from Poona, the learned Judge accepted the version of the respondent and held against the appellant. Referring to the case of the appellant wherein he had alleged that on one occasion when he was studying for an examination, the respondent threw water on him, the learned Judge held that that incident, though admitted by the respondent was explained by her by stating that late at night the appellant "was having the respondent's photo and was chanting some mantras and getting frightened she threw water on him and she also stated that on another occasion the appellant asked her to hold a stick tied with a cloth and that she refused to do so. The learned Judge expressed his view that these silly matters in his opinion did not amount to legal cruelty, with the result he dismissed the appellant's petition with costs. It is against this order of the learned Additional Judge, City Civil Court, Madras, the appellant has filed the present appeal.

6. Mr. N. S. Raghavan, learned Counsel for the appellant, put forward before me

the following contentions : (1) From the admission of the respondent that on one night she came home late and on another night she threw water on the appellant, the learned Judge must have found the case for the appellant. (2) Even if each and every one of the incidents spoken to by the parties cannot be said to constitute cruelty still the totality of the circumstances as disclosed by the evidence established cruelty so as to justify the grant of a decree for divorce. (3) In any event, the respondent herself having put forward the case that she was treated with cruelty by the appellant, u/s 35 of the Special Marriage Act, 1954, the learned Additional Judge ought to have granted a decree for divorce.

7. Before I deal with these contentions, it is necessary to refer to certain general principles which should govern the consideration and the decision of a case of cruelty constituting the ground for the grant of divorce. Mr. N. S. Raghavan, learned Counsel for the appellant, drew my attention to the head-note of the decision *Crawford v. Crawford* (1953) 3 A.E.R. 592. The head-note which is relied on by the learned Counsel is as follows:

In relation to cases of mental cruelty, the authorities lay down the following principles : (i) cruelty may be inferred from the whole facts and atmosphere disclosed by the evidence; (ii) actual intention on the part of the husband to injure the wife is an important but not an essential factor; (iii) it is impossible to create categories of acts or conduct which do or do not amount to cruelty; (iv) sexual offences directly relevant to the husband's conjugal obligations may constitute ill-treatment of the wife; (v) mental ill-treatment may be coupled with physical ill-treatment in order together to found a charge of persistent cruelty.

Since mental and physical ill-treatment can, though they are not *eiusdem generis*, be taken together, it must follow (vi) that different forms of mental ill-treatment may be taken together in order to found a charge of persistent cruelty.

The head-note relied upon by the learned Counsel merely refers to certain general principles and guidance that should be followed in assessing the evidence in a particular case so as to find out whether the evidence disclosed cruelty constituting the matrimonial "offence". As a matter of fact, the entire law in this behalf has been recently surveyed very elaborately by the two decisions of the House of Lords in *Gollins v. Gollins* L.R. (1964) A.C. 644, and *Williams v. Williams* L.R. (1964) A.C. 698 and these decisions merely refer to certain guiding principles to be followed by the Courts for the purpose of determining whether in a particular case the materials placed before the Court established "cruelty" for the purpose of granting a relief in the exercise of the Matrimonial Jurisdiction of the Courts. In *Gollins v. Gollins* L.R. (1964) A.C. 644, Lord Reid stated:

No one has ever attempted to give a comprehensive definition of cruelty and I do not intend to try to do so. Much must depend on the knowledge and intention of the respondent, on the nature of his (or her) conduct, and on the character and physical or mental weaknesses of the spouses, and probably no general statement is equity applicable in all cases except the requirement that the party

seeking relief must show actual or probable injury to life, limb or health.

It is easy to see that the origin of this requirement is the decision in the well-known case of *Russel v. Russel* L.R. (1897) A.C. 395.

8. The law in this behalf has been enunciated in the following terms in paragraph 79 of *Rayden on Divorce*, Ninth Edition:

"Legal cruelty" may be defined as conduct of such a character as to have caused danger to life, limb or health (bodily or mental) or as to give rise to a reasonable apprehension of such danger. Where conduct over a period of years is relied on as constituting cruelty, it is very difficult to prove to the satisfaction of the Court that there was reasonable apprehension of danger to health where actual injury is not proved. The fact that a marriage has broken down is no reason in itself for a finding of cruelty.

Again, it must be remembered that as pointed out by Lord Pearce in *Gollins v. Gollins* L.R. (1964) A.C. 644:

Marriage by its nature causes one party to be affected by most of the reprehensible conduct on the part of the other, and usually it is obvious that it will be so," and

" In many marriages there are many complaints that could be put forward by either party, but that only grave and weighty matters causing injury or apprehended injury to health will suffice to support a charge of cruelty.

His Lordship further observed:

It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from normal standards of conjugal kindness causes injury to health or an apprehension of it, it is, I think, cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would consider that the conduct complained of is such that this spouse should not be called on to endure it....

I agree with the Lord Merriman whose practice in cases of mental cruelty was always to make up his mind first whether there was injury or apprehended injury to health. In the light of that vital fact, 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 weighty to say that from a reasonable person's point of view, after a consideration of any excuse which this respondent might have in the circumstances, the conduct is such that this petitioner ought not to be called on to endure it....

The particular circumstances of the home, the temperaments and emotions of both the parties and their status and their way of life, their past relationship and almost every circumstance that attends the act or conduct complained of may all be relevant.

Lord Normand in *Jamieson v. Jamieson* L.R. (1952) A.C. 525, observed:

My Lords, I think that it does not do justice to the averments to take up each alleged incident one by one and hold that it is trivial or that it is not hurtful or cruel and then to say that cumulatively they do not amount to anything grave, weighty or serious.

In the same case Lord Tucker stated:

Every such act must be judged in relation to its attendant circumstances, and the physical or mental condition or susceptibilities of the innocent spouse, the intention of the offending spouse and the offender's knowledge of the actual or probable effect of his conduct on the other's health (to borrow from the language of Lord Keith) are all matters which may be decisive in determining on which side of the line a particular act or course of conduct lies.

To the similar effect is the observation of Lord Reid in *King v. King* L.R. (1953) A.C. 124, where his Lordship had stated:

I do not intend to try to define cruelty. I doubt whether any definition would apply equally well to cases where there has been physical violence and to cases of nagging, or to cases where there has been a deliberate intention to hurt and to cases where temperament and unfortunate circumstances have caused much of the trouble. But in cases like the present, the wife's conduct must at least be inexcusable after taking every thing into consideration.

I am referring to this observation because that case also was one in which the husband applied for divorce on the ground of cruelty of the wife. In the same case Lord Asquith of Bishopstone stated:

It is accepted that where cruelty is alleged the petitioner must prove two things : (1) That the acts were cruel; (2) that they damaged the petitioner's health.

Therefore, the learned Counsel for the appellant is right in contending that the totality of the circumstances disclosed by the evidence of the parties should be taken into account for the purpose of determining whether cruelty has been established or not. At the same time it should not be forgotten that as pointed out by Lord Morris of Borth-Y-Gest in *Gollins v. Gollins* L.R. (1964) A.G. 644, already referred to,

Cruelty is a matrimonial offence and an allegation of cruelty is a serious one. To be found guilty of cruelty involves not only a slur which would be deeply wounding to any self-respecting person but also involves certain specific consequences. The matters complained of as amounting to cruelty must therefore extend much beyond the trivial or the casual. They must be serious matters. If they were not they surely could not be the foundation for an order affecting the matrimonial relationship.

Along with this fact, another factor that has to be borne in mind is, as pointed out by Lord Simon in *Blunt v. Blunt* L.R. (1943) A.C. 517, the necessity for

maintaining

A true balance between respect for the binding sanctity of marriage and the social considerations which make it contrary to public policy to insist on the maintenance of a union which has utterly broken down.

9. It is against the background of these basic and fundamental principles and considerations, the correctness and the validity of the contentions of Mr. Raghavan,, the learned Counsel for the appellant, have to be determined. It is true, as pointed out by him, the respondent admitted in her evidence that one night she came home at about 10-30 p.m. But she gave her explanation for coming so late, namely, the illness of the second child. The learned Additional Judge, City Civil Court, Madras, had accepted that explanation of the respondent. I do not see any justification to disagree with that view of the learned Judge. Again, she admitted that on one night she threw water on the appellant. The appellant's evidence was vague and general in this behalf, as he stated, " she will throw water on me through the window and pour water on my head. (To Court : This was at night and I was reading in my room within closed doors.)" On the other hand, the evidence of the respondent was specific on this point. She stated, " I threw water on him through the window, as he was keeping my photo and doing mantrams. I saw him doing some pooja. I saw him doing after a bath late at night, after coming to Pidariar Street ". This, the learned Judge has referred to and stated that he did not think that these silly matters can amount to legal cruelty. In my view, from this also no inference can be drawn against the respondent. This incident has to be appreciated against the background of the case of the respondent that it was under the evil influence of the mother of the appellant, the appellant was making every attempt to desert her and the appellant's mother had gone to the extent of having recourse to mantrams for the purpose of getting rid of her. It is the mental attitude of the parties that will have to be taken note of and if that was the idea she was entertaining, her action cannot be characterised as cruelty. The fact of the parents of the appellant having been opposed to the marriage of the appellant with the respondent from the very beginning and this incident happened after the parties came down to Madras, where the parents of the appellant are living lend support to the fear or the view entertained by the respondent. Consequently, in my opinion, the first contention of Mr. Raghavan, the learned Counsel for the appellant, should fail.

10. Even with regard to the second contention, I must point out that it has been the considered view of the highest Courts in England that in cruelty cases, the finding of the trial Judge, who had the opportunity of seeing the parties and observing their demeanour when they were giving evidence before him, ought not to be interfered with, unless they can be said to be clearly wrong. The judgment of the learned Additional Judge in this case indicates that he was prepared to accept the version of the respondent in preference to the version of the appellant, and he was justified in doing so, when it is remembered that with regard to two important incidents, namely, the taking up of the insurance

business and the respondent having stayed behind without accompanying the appellant, when he came over to Madras on his transfer from Poona, the version of the appellant was found to be untrue and the version of the respondent was found to be true. As a matter of fact, very properly, in view of the nature of the evidence available in this behalf, Mr. Raghvan, learned Counsel for the appellant, did not advance any arguments before me challenging the finding of the learned Judge with reference to these two incidents. Under these circumstances, it must be held that the appellant has failed to make out the case of cruelty on the part of the respondent.

11. Even otherwise, taking into account the fact that the appellant and the respondent hail from two different States, speaking different languages, may be accustomed to somewhat different ideas and notions on various aspects of life, that the marriage between the parties was solemnised contrary to the wishes of the parents of the appellant and was an inter-caste marriage, that by education and attainments the parties cannot be said to be very liberal and progressive in their outlook, as disclosed by the evidence with reference to the mother of the appellant having recourse to mantrams for the purpose of getting rid of the respondent and the appellant himself doing some mantrams and pooja with the respondent's photo before him, that the financial and economic position of the appellant has not been very comfortable, as disclosed by the fact that he had to take up the insurance business in his wife's name to supplement his income, that most of the incidents complained of are trivial in nature and that divorce cannot be founded on mere trivialities and incompatibility, I am of the opinion that even the entire evidence in this case taken as a whole does not establish the case of cruelty, on the part of the respondent as alleged by the appellant and the conduct of the respondent disclosed cannot be properly and rationally stigmatized as cruelty. As pointed out by Lord Asquith of Bishopstone in *King v. King* L.R. (1953) A.C. 124:

The "flash and outbreak of a fiery mind " is one thing, conduct which is designed to hurt the husband for the sake of hurting him is another.

In my opinion, the incidents disclosed by the evidence do not " go well beyond the ordinary wear and tear of married life ". Therefore, I reject the second contention of Mr. Raghavan, learned Counsel for the appellant.

12. Regarding the third contention, Section 35 of the Special Marriage Act, 1954 is as follows:

If in any proceeding for divorce, the respondent opposes the relief sought on the ground of the petitioner's adultery, cruelty or desertion, the Court may give to the respondent the same relief to which he or she would have been entitled, if he or she had presented a petition seeking such relief.

This section is identical in language with Section 6 of the English Matrimonial Causes Act, 1950 which itself repealed the corresponding section, namely, Section 180 of the Judicature (Consolidation) Act, 1925. In view of the limited

scope of the submission made before me by Mr. Raghavan, with reference to Section 35, Special Marriage Act, it is unnecessary for me to decide anything with regard to the real scope of the section. Mr. Raghavan's contention is that the respondent herself having alleged cruelty on the part of the appellant, by virtue of Section 35, the Court, in the exercise of its discretion, must grant the relief of divorce. Consequently, I shall have to consider whether the respondent complained of cruelty on the part of the appellant and established such cruelty, and secondly whether the Court should exercise its discretion and grant a decree for divorce. As far as the first question is concerned, for the same reason which I gave with regard to the allegations made by the appellant, I am of the opinion that the respondent has not established cruelty on the part of the appellant, so as to attract the matrimonial jurisdiction. In view of this conclusion of mine on the first question, the second question does not arise. I must also further point out, as indicated by me already, that after stating her version of the case, the respondent stated in her counter that she has always been willing to live with the appellant. That, in any event, should be taken into account by the Court in the exercise of its discretion.

13. Under these circumstances, I agree with the conclusion of the learned Additional Judge, City Civil Court, Madras, and dismiss this appeal with costs. Counsel's fee Rs. 100.