

Dr. Bhallabha Das

Vs

Smu. Sushila Bai

Civil Appeal No. 2097 of 1985

(M. P. Thakkar, N. D. Ozha JJ)

18.08.1988

JUDGMENT

THAKKAR, J. -

1. A doctor (the appellant) instituted a petition (Under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955) for divorce against his wife on the ground (1) that the wife was guilty of adultery (2) that the wife was guilty of cruelty towards him and (3) that she had deserted him.
2. The petition having been dismissed by the trial court and the judgment having been confirmed by learned Single Judge and later on by a Division Bench of the High Court, the appellant has approached this Court by way of the present appeal. (By Special Leave) The marriage between the parties took place in 1962. They lived together for about 9 years. From 1971 the wife has been living at her parental home. The appellant husband instituted a petition for judicial separation in 1974. It was dismissed for default. In 1976 he instituted the petition giving rise to the present appeal. He has failed in every court so far.
3. The first ground for seeking divorce urged in support of the petition for divorce is that the wife is guilty of adultery. The allegation made by the appellant was that the respondent wife was having intimate relations with Vithal, a servant employed by him. Vithal was examined as PW 6 by the husband. He categorically stated that the respondent was like his mother. On an appreciation of evidence all the courts have disbelieved the allegation. There is no good reason to disturb the said finding which is fully supported by evidence.
4. The next ground urged in support of the prayer for divorce is that the wife was guilty of cruelty towards the husband. Reliance was placed on the allegation that the wife had mixed something in the food prepared by her for the husband and that upon taking this food the husband had felt giddy. The evidence on this point has not been accepted by the courts below. We see no reason to take a contrary view. Another instance relied upon by the husband pertained to the find of a small piece of glass in the food prepared by the wife. According to her it was not done deliberately but that it happened by mischance. This version has been accepted by all the lower courts. The evidence on this point does not create any doubt with regard to the bona fides of the wife. Her version has been accepted throughout. It appears to us to be quite credible and worthy of acceptance. The view taken by the courts below must accordingly be confirmed. Reliance was also placed on letters marked Ex.P. 3 to P. 9 written in the handwriting of the respondent wife. The courts have taken the view that these writings were obtained by the husband from the wife under coercion. These letters were not addressed to any particular person and they were not posted. It is highly improbable that such writings would have been made by the wife in the ordinary course. Or that these letters could have

accidentally fallen in the hands of the husband. On a close examination of the evidence we concur with the view taken by the courts below. The charge of cruelty has not been established. The appellant under the circumstances cannot succeed.

5. The last ground relied upon by the appellant was in the context of the charge of desertion. The letters written by the appellant himself clearly show that it was not the wife who had deserted the husband. In fact it was the husband who had forced her to leave the matrimonial home. This is evident from the contents of Ex.P. 10 which is a notice addressed by the advocate for the husband to his father-in-law. In this notice the father of the wife has been requested to take away his daughter. Similar are the contents of letter Ex.P. 3 addressed by the husband on June 12, 1971. We are satisfied that the findings of facts recorded by the courts below are unexceptionable. There is no substance in the appeal. It fails and is dismissed. No costs.

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