

SUPREME COURT OF INDIA

Ravinder Kaur

Vs.

Manjeet Singh

C.A.No.2021 of 2010

(R.Banumathi and A.S.Bopanna,JJ.,)

21.08.2019

JUDGMENT

A.S.Bopanna,J.,

1. The appellant herein is the wife of the original respondent who died during the pendency of this appeal. Since the order impugned passed by the High Court of Punjab and Haryana dated 23.08.2006 in F.A.O.No.101- M of 1999 had allowed the appeal and dissolved the marriage, the marital status of the appellant is in issue notwithstanding the death of respondent. As such, the cause of action has continued to subsist and the legal representatives namely, the daughter and sons of the deceased respondent were allowed to be brought on record by this Court through the order dated 05.09.2014 passed in IA No.3 of 2012. In that light, the instant appeal was heard in that backdrop. In that situation the reference made during the course of the order to the respondent would in effect refer to the original respondent, namely the deceased husband of the appellant.

2. The respondent herein instituted the proceedings in H.M.A. File No.133 of 16.12.1995 through the petition filed under Section 13 of the Hindu Marriage Act seeking dissolution of the marriage which was solemnized between the appellant and respondent during December, 1970 as per the Sikh rites. As on the date of filing the petition the parties had spent 25 years of married life and had be gotten two sons and a daughter from the wedlock, who were also grown up. At that stage the petition was filed by the respondent-husband seeking dissolution of the marriage alleging mental cruelty inflicted upon him by the appellant herein. The parties herein though had resided in Ludhiana till 1988, had shifted to Bathinda thereafter. When this was the position, since the respondent was serving in the Armed Forces, he was posted at Nagaland in the year 1989 and was thereafter posted at Manipur till 1992. From the pleading as put forth before the District Court in the petition, the trigger for the dispute between the parties arose at the point when the appellant and the children had gone over to stay with the respondent at Manipur. According to the respondent herein he was suffering from gastric and related problems and due to his illness, a Punjabi family of Capt. Inderjit Singh looked after the petitioner. In that circumstance due to the affinity of the family the said Capt. Inderjit Singh is said to have

sent his wife and children along with the respondent to Bathinda and they remained there while the respondent had taken treatment. Subsequent thereto all of them including the appellant and the children had also gone back to Manipur. Though the families were known to each other in that manner, according to the respondent the C.A.No.2021/2010 appellant herein started levelling baseless allegations against the respondent herein and his father. The wife of Capt. Inderjit Singh had conveyed this aspect to Capt. Inderjit Singh who thereafter told the respondent. The said incident is stated to have been raised by the respondent herein in the presence of the appellant to clarify the situation, but the appellant herein started shouting at the respondent and also alleged that the respondent herein had illegitimate relationship with the wife of Capt. Inderjit Singh.

3. The further details which led to the misunderstanding between the appellant and the respondent is adverted to in the petition filed before the court below. The respondent was thereafter posted at Amritsar and according to the respondent even at that point whenever the respondent visited Bathinda where the appellant and two sons were staying, the appellant again raised the said issue and made false allegations and also had sent the sons and a friend to keep a watch over the activities of the respondent. Certain other incidents which had taken place in Amritsar are referred to in the petition, which need not be elaborated herein. Apart from the same, the respondent has contended that the appellant had intentionally lodged a false report against the respondent to the S.P.(Operations) Bathinda due to which a case under Section 107/151 of Cr.PC. was registered and the father of the respondent as also the respondent were arrested and the proceedings were held. In addition, the appellant herein is stated to have filed a suit against the respondent seeking declaration and permanent injunction with regard to the House No.22, Kamla Nehru Colony, Bathinda wherein she had alleged that the respondent had defrauded her. In that view the respondent herein had contended in the petition that the said acts of the appellant had amounted to mental cruelty and therefore had sought for dissolution of the marriage.

4. The appellant herein who was the respondent had filed detailed objections disputing the averments put forth by the respondent herein in his petition. Insofar as the incident relating to House No.22, Kamla Nehru Colony, Bathinda it was contended that the plot was allotted to the appellant in 1987 and the construction was put up after obtaining money from the father of the appellant, after which they were residing along with their two sons. The appellant has further referred to the nature of relationship the respondent herein was maintaining with Mrs. Nirmaljit Kaur wife of Capt. Inderjit Singh, regarding which she had raised objections and despite the same they were living in the same room of the house belonging to the appellant. Certain incidents in that regard are referred to in her objection statement so as to justify her action. Insofar as the action initiated by the appellant by lodging a complaint to the police, it is contended that in July, 1995 the respondent along with the relations came to the house of the appellant, began to attack her, removed the articles from the house and was forcing her to vacate the house. It is in that view she had approached the police authorities pursuant to which the action was taken. In that light it was contended by the appellant that the act C.A.No.2021/2010 Page 6 of 16 of the respondent herein in fact would amount to inflicting cruelty on the appellant herein and not

as alleged by the respondent.

5. The trial court in that light proceeded to consider as to whether the appellant herein had treated the respondent with cruelty and as to whether the appellant had deserted the petitioner for a continuous period of two years. While taking note of the same the trial court has referred to the pleadings of both sides and has taken note of the nature of allegations that were in fact made by the respondent-husband against the appellant-wife by securing the evidence of the witness Sri Daya Singh as PW-1, to state that the appellant herein had illegitimate relations with the driver named Swarna. To that effect the plea taken by the respondent about such relationship when they were residing in Ludhiana has been referred and the incident was sought to be raised through the evidence of the said Sri Daya Singh-PW-1. The trial court has thereafter referred to the evidence of another witness on behalf of the respondent herein namely Col. M.S. Sidhu, a colleague and in that regard having referred to his evidence has indicated that his evidence is not trustworthy going by the very nature in which he has referred to every aspect as if he was privy to all matters of the family. In that background the trial court had thought it fit to rely on the evidence of Pritam Singh who was examined as RW-1, a resident of Gobindgarh as also the evidence of Gurudayal who was examined as RW-2.

6. The incident as stated by the respondent herein as the petitioner before the court below by examining himself as PW-6 was referred and the entire narration relating to relationship with Smt. Nirmaljit Kaur was taken note. In addition the trial court has made a detailed reference to the evidence of the other witness who had been examined before it, the details of which need not be adverted to herein. However, it is seen that the trial court on such basis had taken note that the entire issue revolves around the allegations said to have been made by the appellant against the respondent by calling the relationship as an illegitimate affair. To that extent the evidence of one of the sons of the parties Shri Iqbaal Singh who was examined as RW-6 was taken note, wherein he has stated that the respondent herein and the said Smt.Nirmaljit Kaur were behaving like husband and wife. Insofar as the incident relating to the house which had resulted in filing the complaint with the police under Section 107/151 of Cr.PC it was taken note that the appellant had to take recourse to such proceedings to protect her right. In that light the trial court having assessed the totality of the facts and circumstances and also having taken note about the allegations of illegitimate affair made by the respondent herein against the appellant by introducing the name of a person who did not exist, was of the view that in the existing state of affairs the incidents as stated by the respondent cannot be treated as a ground to dissolve the marriage on the allegations of mental cruelty. Hence, the trial court has dismissed the petition.

7. In the appeal filed by the respondent herein before the High Court, as rightly pointed out by the learned counsel for the appellant herein the High Court in fact, has proceeded in the matter with the preconceived notion that the marriage is irretrievably broken down and that the dispute is between a couple who have grown up married children, which has influenced its decision. In fact, the High Court while finding fault with the judgment of the trial court has taken exception to the observations made by the trial court that the parties were living a happy married life till the third lady intruded in the life of the appellant and spoiled the

whole family atmosphere. In that regard it is commented by the High Court that the trial court has not appreciated the allegations made by the respondent herein regarding the illegitimate relationship of the appellant-wife with the so-called driver. The High Court has further observed that it is noticeable that the appellant had not sought divorce on the ground of appellant-wife having illegitimate relations with the driver, but this fact has been mentioned in the petition, which would indicate that the respondent had condoned. Having taken note of such observations made by the High Court it gives the impression that the Court has proceeded on the footing as if the allegations made by the respondent husband against the appellant wife had been proved before the trial court.

8. In a proceeding of the present nature when the respondent herein was contending that the allegations of illegitimate relationship being made against him had amounted to mental cruelty and in a situation where the existence of Smt. Nirmaljit Kaur was not a fiction but there were two versions to the nature of relationship, the same cannot be weighed in the same scale when the allegations against the appellant-wife was made by the respondent about a non-existent person. If the respondent-husband is to contend that the allegations of illegitimate relations made against him has amounted to mental cruelty, in fact as rightly observed by the trial court, the bald allegations made by the respondent against the appellant-wife would also amount to the same. If that be the position insofar as the allegations to that effect, the trial court had in fact referred to the evidence in detail and has arrived at the conclusion that the ground of mental cruelty in that regard so as to dissolve the marriage cannot be accepted.

9. Insofar as the action taken by the appellant herein to file a police complaint and the proceedings initiated under Section 107/151 of Cr.PC it is the natural legal course adopted by respondent to protect her right and possession of the property. It is not in dispute that at the point when a complaint was filed and a suit was also stated to have been filed by the appellant herein on 05.09.1995 there was misunderstanding brewing in the marital life of the parties and in that circumstance the appellant herein had adopted the legal course to protect her rights. Such action taken in accordance with law cannot, in any event, be considered as inflicting cruelty as the legal proceedings was used only as a shield against the assault. In this regard the decision of this Court in the case of *Ramchander vs. Ananta*¹ relied on by the learned counsel for the appellant would be relevant, wherein while taking note of similar instances this Court has held that the same would not amount to cruelty and such instances would not be convincing enough to lead to a conclusion that the marriage is irretrievably broken down.

10. In the above background, keeping in view the nature of allegations made and the evidence tendered in that regard, we find that the consideration made by the trial court with reference to the reliability of the evidence is more appropriate. As already noticed the High Court, while taking note of the nature of allegations made has proceeded on the basis that there is irretrievable breakdown of the marriage. Needless to mention that irretrievable breakdown of marriage by itself is not a ground provided under the statute for seeking dissolution of marriage. To this effect it would be apposite to refer to the decision rendered by this Court to that effect in the case of *Vishnu Dutt Sharma vs. Manju Sharma*² relied

upon by the learned counsel for the appellant. No doubt on taking note of the entire material and evidence available on record, in appropriate cases the courts may have to bring to an end, the marriage so as not to prolong the agony of the parties. However, in the present facts, at this point in time even that situation does not arise in view of the changed scenario on the death of the respondent herein.

11. As already taken note, the marriage between the parties had taken place in the year 1970 and the undisputed fact is also that the children of the parties are grown up and the very incidents referred to by the appellant regarding the illegitimate relationship were from the point of time when the respondent was posted at Manipur and the appellant herein had shifted there in the year 1991. By such time the marital bond was quite mature and with regard to certain incidents where there were allegations it can only be considered as a misunderstanding between the parties which only required a minor adjustment to reassure each other and iron out the crease. Hence, merely because certain issues have been raised with regard to the same, even if it be on a misunderstanding in the instant facts, it cannot be considered as inflicting mental cruelty in the nature it is required for considering the petition under Section 13 of the Hindu Marriage Act for dissolving the marriage. Though the learned counsel representing the respondents referred to the incidents by which the appellant had hurled false allegations against the respondent, presently when the respondent has died and in a circumstance where one of the legal representatives, namely Shri Iqbbal Singh was examined as RW-6 in support of the case of the appellant herein and the legal representatives No.1 and 3, though were majors had not been examined in the proceedings, any contention raised on their behalf would not be of any assistance to take any other view. Therefore, if all these aspects are kept in perspective, we are of the view that the High Court was not justified in reversing the well-considered judgment passed by the trial court.

12. Accordingly, the judgment dated 23.08.2006 passed in F.A.O. No.101-M/1999 is set aside and the judgment dated 08.04.1999 passed in H.M.A. File No.133 of 16.12.1995 by the Additional District Judge, Bathinda is restored. The instant appeal is allowed with no order as to costs. All pending applications also stand disposed of.

Judgment Referred.

¹(2015) 11 SCC 0539

²(2009) 6 SCC 0379