

# RAJASTHAN HIGH COURT

Ren Prakash

Vs.

Mst. Sneh Lata

Civil Misc. Appeal No. 169 of 1997  
(B.J. Shethna and Sunil Kumar Garg, JJ.)

08.08.2000

## JUDGMENT

**Sunil Kumar Garg, J.**

1. This is an appeal preferred by the appellant-petitioner (husband) (hereinafter referred to as 'the petitioner') against the judgment and order dated 5.12.1997 passed by the learned Judge, Family Court, Udaipur in Civil Misc. Case No 261/95, by which he dismissed the petition of the petitioner for seeking divorce on the ground of cruelty as defined under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act of 1955') against the respondent non-petitioner (Wife) (hereinafter referred to as 'the non-petitioner').

2. It arises in the following circumstances :-

The petitioner filed a petition under Section 13 of the Act of 1955 on 15.12.1995 in the Family Court, Udaipur alleging *inter alia* that he was married with the non-petitioner on 10.12.1994 according to Hindu rites and ceremonies. However, since marriage the relations between the family of the petitioner with the non-petitioner have not been cordial as non-petitioner used to make quarrel on every matter. It is further alleged that when the petitioner and non-petitioner after marriage made a honey-moon trip in Bangalore, Ooti, that time also, she used to make quarrel for which petitioner suffered mental agony. It is further alleged that non-petitioner is a Teacher in the Government School in Keshariyaji and after marriage, she used to live more time in her parents house and devoted less time with the company of the petitioner at Udaipur and she used to go Keshariyaji daily and returned back in the evening and many times from Keshariyaji, she

used to go to Dungarpur where her parents live. Therefore, she has intentionally deprived the petitioner of the matrimonial benefits and apart from this, she has taken a room at Keshariyaji and started living there and she has also taken her goods there and she came to the house of the petitioner in the month of October, 1995 and on 17th October, she started quarrelling with the petitioner and parents of the petitioner and also threatened for breaking the marriage and also threatened that she will commit suicide by taking poison etc. and on the same day she left the house of the petitioner finally. Not only this, it is further alleged that she has also made false allegations about the character of father of the petitioner and since the economic condition of the petitioner is not very well, therefore, she cannot live in a separate house at Udaipur. Thus, the behavior of the non-petitioner with the petitioner amounts to cruelty from both point of view mental as well as physical. It is further alleged that petitioner was also threatened by the brothers of the non- petitioner, namely, Davendra and Narendra and, therefore, petitioner had to file a petition under Sections 107, 116(3), Criminal Procedure Code in the Court of City Magistrate, Udaipur. It is further alleged that since 17.10.1995, she has left the house of the petitioner and has gone to the house of her parents. Thus, the petitioner seeks divorce on the ground of cruelty as defined in Section 13(1)(i-a) of the Act of 1955.

The petition of the petitioner was contested by the non-petitioner by filing a reply on 19.2.1996. In that reply, the non-petitioner has denied all the allegations made by the petitioner against her, but on the contrary, it has been alleged by her that so far as working as Teacher in Keshariyaji is concerned, she was doing that job before her marriage and she has further stated that she used to go there daily and come back daily and she was fulfilling all the duties and obligations which a wife has to fulfill, but the petitioner and parents of the petitioner used to torture her on the ground of dowry and they used to torture her on other grounds also and they also demanded money from her bank account and she was regulation nt and her pRegulation ncy was in an advanced stage of eight months, even then she tried her best to fulfill her obligations, but even then she was tortured by them and she is still ready to live with her husband i.e. petitioner. Hence, it was prayed that petition filed by the petitioner be dismissed. On the pleadings of the parties, the learned Judge, Family Court framed the following issues on 18.3.1996 and one more issue was added on 1.7.1996 :

1- D;k fookg vuq"Bku i'pkr foi{kh;@ifRu Jherh Lusgyrk dk O;ogkj vius ifr@izkFkhZ jsu izdk'k ds lkFk dqjrkiv.kZ jgk gS vkSj bl vk/kkj ij

izkFkhZ@ifr fookg&foPNsn vkKflr ikus dk vf/kdkjh gS \

2- vk;k tokc nkos ds pj.k la;k&12 esa vafdr vuqlkj bl U;k;ky; dks bl izkFkZuk i= dk Jo.kkf/kdkj izkIr ugha gS \

3- vuqrks" k \

In support of his case, the petitioner examined as many as six witnesses and in the rebuttal, two witnesses were examined by the non-petitioner. After consideration of the evidence led by both the parties, the learned Judge, Family Court decided issue No. 2 pertaining to jurisdiction against the non-petitioner. However, he decided issue No. 1 against the petitioner holding that the petitioner has not been able to prove that he was treated with cruelty by non-petitioner. Hence, the learned Judge, Family Court, Udaipur through his judgment and order dated 5.12.1996 dismissed the petition of the petitioner filed under Section 13 of the Act of 1955. Aggrieved by the said judgment and order dated 5.12.1996 passed by the learned Judge, Family Court, Udaipur, the petitioner has preferred this appeal.

3. In this appeal, the following contentions have been made by the learned counsel for the appellant-petitioner:-

1. That there is cogent evidence available on record which substantiates the fact that the non-petitioner treated the petitioner with cruelty.
2. That learned Judge, Family Court has not taken into consideration that evidence and thus, the impugned judgment and order should be set aside.
3. That various acts and conduct complained of by the petitioner in this petition as well as in his evidence amounted to cruelty on the part of non-petitioner. Thus, the petitioner is entitled to decree of divorce on the ground of cruelty.

Hence, it was prayed that the appeal be allowed and decree of divorce be granted in favor of the appellant-petitioner.

4. On the other hand, the learned counsel for the respondent-non-petitioner supported the impugned judgment and order passed by the learned Judge, Family Court.

5. We have heard the learned counsel for both the parties and perused the record of the case.

6. Before proceeding further, we would like to first see whether endeavor has been

made in this case to bring about reconciliation between the parties or not.

Reconciliation and duty of Court.

7. Section 23(2) of the Act of 1955 gives direction to the Court that before proceeding to grant any relief under the Act of 1955, it shall be its duty to make endeavor to bring about reconciliation between the parties except in cases mentioned in the proviso to the sub-section. The intention of the Legislature is that an attempt should be made by the Court for reconciliation before proceeding with the hearing of the petition. The provision is mandatory. The words "before proceeding to grant any decree it shall be the duty of the Court in the first instance" confer of power coupled with an express duty. It is in the interest of the stability of the society that marriages are not to be easily broken and disrupted. The effort for reconciliation is to be made by the Court right from the start of the case by directing and giving reasonable opportunity to the parties to appear in person before the Court.

8. Before proceeding to grant any relief under the Act of 1955, it is the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavor to bring about a reconciliation between the parties. In proceedings under the Act of 1955, whether defended or not, it is also the duty of the Court to see that the petitioner is not taking advantage of his or her own wrong and to satisfy itself that evidence does not close any statutory bar as connivance, condonation, collusion, unnecessary delay in instituting proceedings or any other legal grounds why relief should not be granted even though the matrimonial offence on the part of the other spouse may have been proved. It is with zealous care that the Court interferes with the obligations of the marriage vow. It must not lose sight of the fact that dissolution of marriage is a matter of grave import and the last expedient of the law. The Court must not overlook that unlike the English enactments, the Hindu Marriage Act leaves little discretion with it in the matter of granting or withholding relief. It must, therefore, refrain from analogy drawn from cases decided under other enactments, which confer unfettered discretion on the Court by recognizing that certain bars to relief and discretion are not absolute. At the same time it is the duty of the Court to act with sound discernment and where a ground for relief is established it must act on it; and while applying any of the statutory bars laid down in Section 23 it must not act on any pre- conceived classification of circumstances but on the broad principles on which those statutory bars rest and must see that it does not apply them in a manner on which those statutory

bars rest and must see that it does not apply them in a manner as would result in any unreasonable withholding of the relief which it is its duty to grant.

Corresponding provision in the Family Court Act, 1984.

9. There is no real difference between the objects as contained in sub- section (2) of Section 23 of the Hindu Marriage Act, 1955 and Section 9 of the Family Courts Act, 1984.

10. Thus, it is the bounden duty of the Family Court to make an attempt for reconciliation between the parties before proceeding with the trial of the case.

11. Keeping the above principles in mind, it is to be seen whether in the present case endeavor has been made by the Court or not.

12. From the order sheet dated 3.2.1996 of the Family Court, it appears that efforts which were made for reconciliation between the parties remained unsuccessful.

13. From perusing the order sheet of this Court dated 16.5.2000 and 18.7.2000, it further appears that on 16.5.2000, this Court directed the learned counsel for the parties to keep present their respective clients before the Court for reconciliation on 17th July, 2000. From the order sheet dated 18.7.2000, it further appears that non-petitioner was present in Court personally, but the husband i.e. petitioner was not present in the Court. It was brought to our notice that during the trial before the Family Court, the husband i.e. petitioner states that he was not willing to keep his wife i.e. non-petitioner with him. Therefore, we had no option but to hear the appeal on merits and decide the same in accordance with law.

14. Thus, it can be said that this Court as well as Family Court made endeavour in this case to bring about reconciliation between the parties, but without success.

Issue No. 1 pertaining to cruelty :

15. The next point which is to be considered is whether the findings of the learned Judge, Family Court that the non-petitioner has not treated petitioner with cruelty are liable to be confirmed or not.

16. The allegation of cruelty is a very serious allegation. The burden of proving that

allegation is on the spouse making such allegation.

17. Thus, in the present case, the petitioner has leveled allegation of cruelty against the non-petitioner, therefore, burden lies on him to prove the issue No. 1.

18. Before proceeding further, something should be said about the word cruelty.

19. The word 'cruelty' has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(i-a) of the Act in the context of human conduct or behavior in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical it is question of fact and decree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. The absence of intention should not make any difference in the case, if by ordinary sense inhuman affairs, the act complaint of could otherwise be regarded as cruelty (See *Shobha Rani v. Madhukar Reddy*).<sup>1</sup>

20. It may be stated that the word 'cruelty' cannot be put in strait-jacket formula, of judicial definition. Since it is neither desirable nor possible to make any attempt to do so, for the same may prove abortive, since cases coming before the Court have their peculiar individual facet calling for individualistic approach to tackle them. It is principally and essentially question of fact to be decided on the basis of pleading and the evidence brought on the record by the respective parties and then the Court has to assess whether the behavior of the spouse is of such a degree as can no longer be considered to be the routine wear and tear of the married life.

21. A large number of case law had grown around the significance of what is sometimes termed 'legal cruelty'. Some broad general principles, which emerge from the decided cases including the cases of the Hon'ble Supreme Court, may be narrated here for guidance :-

1. Cruelty may be inferred from the whole facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence. The question whether the respondent treated the petitioner with cruelty is a single question only to be answered after all the acts have been taken into account. Without

quoting the specific opinion on which this principle was stated at least two of the Lords who decided the case of *Jamieson v. Jameison*,<sup>2</sup> in the House of Lords this principle may now be said to be well established. It may be taken as equally well established that it is wrong approach to put the various acts or conduct alleged into a series of separate compartments and say of each of them that by themselves they cannot pass the test of cruelty and, therefore, that the totality cannot pass that test.

2. It is understandable, if not impossible to create categories of acts or conduct as having or lacking the nature or quality which render them capable or incapable in all circumstances amounting to mental cruelty. Nor is it necessary to compare acts as being gross and not gross. There may be cases where the acts complained of are in themselves so trivial that the Court would be justified in not attaching any importance to them. On the other hand, acts not serious in themselves may be symptomatic of the pass to which the marriage had come and of the state of mind of the parties. Since cruelty is to be inferred from the whole relations between the husband and wife it would not be a proper approach 'to take up each alleged incident one by one and hold that it 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. The relationship of marriage in the present context is not to be taken as just the sum of a number of incidents'.

3. In general, cruelty is in its character a cumulative charge. It is not necessary that the acts complained of must be of a certain character. The conduct may consist of a number of acts each of which is serious in itself, but it may well be even more effective if it consists of a long continued series of minor acts no one of which would be regarded as serious if taken in isolation. Every such act must be judged in relation to its attendant circumstances, and the physical or mental condition or susceptibilities of the innocent spouse and the offender's knowledge of the actual or probable effect of his conduct on the other hand. The age, environments, standard of culture and status in life of the parties are also matters which may be decisive in determining on which side of the line a particular act or course of conduct lies. The acts and incidents complained of as also the conduct of the parties must be taken together to form a composite picture from which alone it can be ascertained whether the acts of one spouse on another should, judged in relation to all the surrounding circumstances, be found to amount to cruelty.

4. The existence of cruelty depends not merely on the magnitude, but at times

also on the consequence of the offence, actual or apprehended.

5. Mental ill-treatment may be coupled with physical ill-treatment together to found a charge of cruel treatment. Since mental and physical ill-treatment can though they are not *ejusdem generis*, be taken together, it must follow that different forms of ill-treatment may be taken together to found a charge of treatment which amounts to cruelty.

6. The primary question in these cases is not a question of whether the conduct complained of would be cruel to a reasonable person. The Court has to deal not with an ideal husband or ideal wife but with 'this man and this woman'. Nor is the Court concerned with the reasonable person. The Court will not start with any a priori assumptions that the parties are reasonable people.

22. In this respect, it may further be stated here that actual intention on the part of one spouse to injure the other is not an essential factor and that intentional acts may amount to cruelty even though there was no intention of being cruel. Motive, malignity or malevolent intention, it is well recognized, are not essential ingredients but where they exist they would be factors of considerable importance.

23. Thus, it can be said that no hard and fast rule can be laid down as to what acts or conduct will amount to cruelty. What may amount to cruelty in one case may not amount to cruelty in another case. In deciding whether or not a particular state of affairs amounts to legal cruelty, the Court has to consider the social status, the environment, the education, the mental and physical conditions and the susceptibilities of the innocent spouse as also the custom and manners of the parties. Whether acts and conducts complained of constitute cruelty have to be construed in reference to the whole matrimonial relationship. It may be that various acts or conduct complained of by itself and in isolation to each other, do not amount to cruelty, but in their overall effect they may amount to cruelty.

24. Before proceeding further, something should be said about the standard of proof in matrimonial cases.

Standard of proof in matrimonial cases.

25. Section 23 of the Act of 1955 requires that before decreeing any relief in any proceeding under the Act, the Court must be satisfied :

- (a) that the ground for relief exists, meaning thereby that it is established, and
- (b) that to the granting of such relief there is no bar of any kind mentioned in the section.

26. The Hon'ble Supreme Court in *Bipin Chander v. Prabhavati*,<sup>3</sup> referred to the law on the subject in England and observed that though corroboration is not required as an absolute rule of law in proof of matrimonial offence the Court insists upon corroborative evidence unless its absence is accounted for to the satisfaction of the Court.

27. In *White v. While*,<sup>4</sup> also decided in a different enactment, the Hon'ble Supreme Court was in general agreement with the decision of the House of Lords in *Preston Jones v. Preston Jones*,<sup>5</sup> as laying down the correct test that the Court must be satisfied beyond reasonable doubt does not mean proof beyond the shadow of a doubt. It need not amount to certainty.

28. In another case in *Dastane v. Dastane*,<sup>6</sup> the Hon'ble Supreme Court has held that proceedings under the Act being essentially of a civil nature the word 'satisfied' in this Section must mean 'satisfied on a preponderance of probabilities' and not 'satisfied beyond a reasonable doubt'. The satisfaction of the Court must, of course, be based on legal evidence.

29. Thus, it can be said that the Court shall decree the relief if it is satisfied that the other party has treated the petitioner with cruelty. The evidence must preponderate in favor of the petitioner and must be clear and satisfactory. The offence charged must be established on a 'preponderance of probability'. The Court would not be satisfied that it is established if it entertains any real doubt on the matter. What is required is that cruelty must be strictly proved. The word 'strict' is sufficiently apt to describe the measure and standard of proof and it is unnecessary to introduce any question of a standard of proof required of a criminal charge.

30. Hence cruelty under Section 13(1)(i-a) if not admitted requires to be proved on the preponderance of probabilities as in civil cases and not beyond a reasonable doubt as in criminal cases.

31. Keeping the above principles in mind, the facts of the present case are being

examined.

32. The petitioner in his petition has enumerated so many instances from which he wants to draw inference that the non-petitioner had treated him with cruelty and in his statement as PW.1, he has also mentioned those instances and furthermore, he has added some more. He was cross-examined as AW.1 and his cross-examination as AW.1 is of very much importance in the present case as it throws light what type of man AW.1 is. In his cross-examination, the petitioner as AW.1 has admitted the following facts :-

1. That the non-petitioner last time went to her parents' house either on 7th or 8th October, 1995.
2. That it is correct that since then he has not made any talk with her.
3. That his lawyer told him to say so many things and as per his instance, he has stated so many things.
4. That the fact that he was beaten during the tour of honey- moon and incident of changing of the seat of the bus and the fact of taking loan are not mentioned in the petition, but as per instructions of his lawyer, he has stated in his statement.
5. That non-petitioner was the teacher before marriage.
6. That it is correct that since 18th October, 1995 he or his parents never went to the house of the non-petitioner to bring her back.
7. That the threats alleged to have been received, were received by him when the non-petitioner had gone to her parents house.
8. That in case non-petitioner wants to come to his house, he is not ready to accept her and keep her with him. He has further stated that in no circumstances, he is not ready to keep her.
9. That it is also correct that when the child was born to the non-petitioner, he or his father never went to the house of her parents to meet her or her son.
10. That he has never gone to Dunderpur since she has gone to Dunderpur.

33. AW.4 Kushal Prakash is another witness, who is father of the petitioner and father-in-law of the non-petitioner. He has also admitted that he had never seen any beating by the non-petitioner to the petitioner with his own eyes, but he has stated this as per the saying of the petitioner. He has further stated that he was never accused by the non-petitioner either directly or on telephone, but he has stated this as per the saying

of his son i.e. petitioner. He further states that he does not want to bring her back.

34. AW.6 Smt. Sushila is the mother of the petitioner and mother-in-law of the non-petitioner. She has very frankly admitted in her cross-examination that she cannot tell why both petitioner and non-petitioner quarrel with each other. She has also stated that non-petitioner had never made any demand from her. She has admitted that all the incidents which she has uttered in her examination-in-chief, were uttered as per the saying of the petitioner.

35. Thus, from the above, it appears that it is the conduct of the petitioner himself which leads to the conclusion that he is cruel with his wife non-petitioner. The conduct of the petitioner goes to show that his intention is not fair and it appears that his wife non-petitioner has left the house of the petitioner because he has treated her with cruelty. It is further clear that she was in job before marriage and after marriage, she is continuing in job and this cannot be a ground from which it can be inferred that she has treated the petitioner with cruelty. Apart from this, from the fact or statement of the petitioner in the Family Court that he is not in a position in all circumstances to accept the non-petitioner and that he has not helped the Court in reconciliation proceedings, his intention is very much clear that he does not want to keep his wife at all with him and furthermore, he has no soft corner for his wife and that is why he has not cooperated with the Court in reconciliation proceedings. Further, the fact that when the non-petitioner wife left the house of the petitioner, she was in full advanced stage of regulation ncy and, thereafter, she delivered a male child, but the petitioner has not taken any care of them in any manner and left both of them in lurch, this itself goes to show that his conduct and behavior towards his wife and son was nothing, but cruel one and thus, in our considered opinion, he does not deserve any sympathy from the Court. Such type of conduct of the petitioner, on the contrary, establishes that he himself was cruel with his wife.

36. The orthodox concept of the Hindu wife is that she is expected to be Dharampatni, Ardhangini, Bharya or Anugamini. The literal meaning is she has to follow the husband. This orthodox concept of wife and expectations from her to subject herself to husband's wishes has undergone a revolutionary change with education and high literacy in women and with recognition of equal rights to women in the Constitution and abolition of sex distinction in all walks of life. She is a partner in marriage with equal status and equal rights with the husband. Therefore, in such circumstances, if

the non-petitioner insists on continuing with her employment and refuses to leave service, this cannot be said to be act of 'cruelty' justifying decree of divorce.

37. From perusing the petition of the petitioner and from perusing the statement of the petitioner, it appears that from the very beginning of the marriage, the petitioner was fighting with his wife for simple trivialities which can truly be described as reasonable, wear and tear of married life, which have to be ignored. The Court should therefore give regard only to grave and weighty incidents and consider them to find out what place they occupy on the marriage canvas. In short, every little act which is a mere triviality, cannot be made a ground to say that the wife treated the husband with cruelty.

38. In the present case, whatever may be the difference between the husband-petitioner and wife-non-petitioner such as changing of seat in the bus, asking for staying in a good hotel, making pressure on non-petitioner to leave job etc. but all such things can be described as trivialities and cannot be said to be grave and weighty incidents upon which the Court can pass a decree of divorce on the ground of cruelty.

39. It may be stated here that the marriage cannot be so frail and fragile that it should be wrecked because of some quarrels between the couple or on account of some frailty on the part of this or that spouse.

40. Thus, taking into consideration all the facts and circumstances of the present case especially the conduct of the petitioner, we find that the findings recorded by the learned Judge, Family Court in his judgment dated 5.12.1996 are based on critical examination of the evidence and his conclusions that the non-petitioner has not treated the petitioner with cruelty, are perfect, being supported by the well established principles of law which have been discussed above. Hence, the findings recorded by the learned Judge, Family Court on issue No. 1 are based on proper and correct appreciation of evidence and law and they do not suffer from any infirmity and thus, are liable to be confirmed.

41. The learned counsel for the appellant-petitioner has relied on the decision of this Court in *Mrs. Raj Bharti v. Ashok Kumar Begwani*,<sup>7</sup> In our opinion, the facts of that case are totally different from the facts of the present case. In that case the decree of divorce was granted in favor of the husband, but the role which was played by the

wife in that case, has been played by the husband in the present case and, therefore, the status of the present petitioner (husband) is equal to the wife of that case. Since in that case, wife lost the case, similarly, in the present case, the husband must lose his case. Thus, this case is not helpful to the appellant- petitioner. For the reasons stated above, this appeal of the appellant-petitioner Ren Prakash fails and is dismissed with costs, after confirming the judgment and order dated 5.12.1996 passed by the learned Judge, Family Court, Udaipur.

Appeal dismissed.

Cases Referred.

1. AIR 1988 SC 121
2. 1952(1) All England Reporter 875
3. AIR 1957 SC 176
4. AIR 1958 SC 441
5. (1951) AC 391
6. AIR 1975 SC 1534
7. (1988) 2 Raj LW 467