

# RAJASTHAN HIGH COURT

Narendra Kumar Gupta

Vs.

Smt. Indu

D.B. Civil Misc. Appeal No. 186 of 1990  
(Shiv Kumar Sharma and Khem Chand Sharma, JJ.)

17.07.2001

## ORDER

**Shiv Kumar Sharma, J.**

1. Appellant - Narendra Kumar Gupta is present in person alongwith Mr. Alok Garg, learned Counsel.
2. Case has been called in second round, none appeared on behalf of respondent-wife.
3. We have heard Mr. Alok Garg, learned Counsel appearing for the appellant and carefully scanned the impugned judgment and material on record.
4. Instant appeal has been preferred against judgment and decree dated 17th March, 1990 of Family Court, Jaipur, whereby the petition filed under Section 13 of the Hindu Marriage Act, 1955 (for short "1955 Act") was dismissed.
5. Contextual facts depict that the petition under Section 13 of the 1955 Act came to be filed by the husband-appellant on the ground of cruelty against the respondent-wife. It was pleaded that the marriage had taken place according to Hindu rites on 18.11.1981 and from the very beginning the respondent-wife started misbehaving with the appellant. She used to say that "she was married in a family which did not have any standard of living'. After she gave birth to a daughter on January 1, 1983, she became adamant to reside with her parents at Delhi and virtually proceeded to Delhi. Attempts were made to bring her back and she came back in 1985.
6. On August 4, 1986, a report came to be lodged by the respondent against the

appellant with the Police Station, Gandhi Nagar, Jaipur stating therein that the appellant subjected her to cruelty. A case under Section 498-A Indian Penal Code was registered against the appellant and he was granted bail in that case. Ultimately respondent received all the house-hold goods and the Police Station, Gandhi Nagar after investigation submitted Final Report No. 61 on August 31, 1986 with the observation that no case under Section 498-A was made out against the appellant. Thereafter on the basis of the allegations of cruelty, a petition under Section 13 of 1955 Act was filed by the appellant in the Family Court.

7. The respondent submitted written statement denying allegations leveled in the petition against her. On the basis of the pleadings of the parties, as many as 2 issues were framed by the learned Family Court. The appellant examined himself and witnesses Renu Vijayvargia, Smt. Sheela, Smt. Savitri, Ravi Shanker, Satya Narayan and Jagdish Prasad, whereas the respondent got examined herself and produced Indu, Vimla, Brij Mohan, B.L. Gupta and Ramjilal in support of the case. The appellant exhibited as many as 12 documents including the FIR registered under Section 498-A Indian Penal Code and the Final Report submitted by Police Station, Gandhi Nagar, Jaipur.

8. Learned Family Court vide impugned judgment and decree decided both the issues against the appellant and dismissed the petition filed by the appellant under Section 13 of 1955 Act. Against this judgment and decree of the learned Family Court that the appellant has preferred instant misc. appeal.

9. A look at the order sheet dated January 7, 1997 of the Court file demonstrates that the parties were directed to appear in this Court in person on February 4, 1997. Respondent did not appear on the said date and thereafter in the Court. Today also only appellant is present in person but the respondent and her counsel are not present.

10. We have given our anxious consideration to the submissions advanced before us. Before proceeding further, we deem it appropriate to consider as to how the cruelty is defined ? This Court in *Parihar v. Parihar*,<sup>1</sup> indicated that "cruelty is willful and unjustifiable conduct of such a character as to cause danger to life, limb or health, bodily or mental, or as to give rise to reasonable apprehension of such a danger. It includes action or omission which injures the susceptibilities of the affected spouse and cause him or her mental agony which the sufferer alone can state. A husband or a

wife may not *prima facie* do anything directly against the other and apparently there may be good relations. Nonetheless, the behavior may be such as to cause as extreme mental distress and consequent detriment to health. What acts will constitute mental agony will obviously depend upon the circumstances of each case."

11. Placing reliance on *Dastane v. Dastane*,<sup>2</sup> Delhi High Court in *Suresh Bala v. Major Gurnohimder S. Bala*,<sup>3</sup> in a case where the wife filed a false complaint against her husband under Sections 323, 506 and 452 Indian Penal Code and later on withdrew the complaint, it was held that the said act of wife was the act of "cruelty'.

12. In the instant case, as already stated, the wife-respondent instituted a report with Police Station Gandhi Nagar, Jaipur against the husband-appellant under Section 498-A IPC, the appellant was humiliated, harassed and released on bail. After investigation the Police Station Gandhi Nagar submitted Final Report with the observation that no criminal, case under Section 498-A was made out. Wife-respondent received all the household goods in the grab of instituting criminal case and submitted receipts, which have been placed on record by the appellant. Learned Family Court having ignored those documents, in our considered opinion committed illegality. We do not deem it necessary to discuss in detail the statements of the witnesses adduced by the parties but looking to the fact that the FIR was instituted by the wife-respondent against the husband-appellant under Section 498-A Indian Penal Code and after investigation it was found false, we are of the view that the husband-appellant has established the ground of cruelty enumerated in Section 13(1)(a) of the 1955 Act.

13. We accordingly decide issue No. 1 in favor of the appellant-husband. In view of this, issue No. 2 is also decided in favor of the appellant.

14. In the result, the appeal succeeds and stands allowed. The impugned judgment and decree dated March 17, 1990 of the learned Family Court Jaipur shall stand set aside and the marriage of the parties stands dissolved. No costs. Record be sent bag.

Appeal allowed.

Cases Referred.

1. AIR 1978 (Raj.) 140

2. 1975(2) 326

3. 1983 D&MC (1) 45