

RAJASTHAN HIGH COURT

Yudhishter Singh

Vs.

Smt. Sarita

D.B. Civil Misc. Appeal Nos. 880 and 858 of 1999
(N.N. Mathur and D.N. Joshi, JJ.)

22.04.2002

JUDGMENT

N.N. Mathur, J.

1. The appellant husband has preferred both the appeals aggrieved of the orders of the Judge, Family Court rejecting his petition for divorce, but granted decree for restitution of conjugal rights in favor of the respondent wife. It appears from the record that by order dated 5.6.95 the statement recorded in a petition filed by the husband being No. 57/92 was permitted to be read in evidence in a petition filed by the wife for restitution of conjugal rights being Case No. 37/92. Thus, there being common evidence, both the appeals are decided by common order.

2. The undisputed facts are that the marriage between the appellant Yudhishter Singh and Sarita was solemnized on 9.12.90 at Jodhpur. After one year of the marriage, i.e. on 13.4.92, Sarita had to file an application for restitution of conjugal rights, in the Family Court at Jodhpur. She averred that her husband, who was posted as Junior Engineer at Village Gotan was depriving her the company. She was kept at the ancestral house at Mandore instead at Gotan. He used to visit on week end. Whenever she made a request to take her to Gotan, it was rejected on the ground that her father did not meet the demand of Scooter and Rs. 11,000/- in cash. Family members used to taunt her for not bringing sufficient dowry causing great mental torture. Her father was also harassed and mentally tortured by the father-in-law and brother-in-law namely Pokar Singh and Naresh Chandra for not meeting the demand of Scooter and Rs. 11,000/- in cash. The efforts made by the relatives to drop the demand of Scooter and payment of cash did not succeed. She was asked to leave the house. The husband did

not make any effort to bring her from her parents, house. On the contrary with a view to contract a second marriage strategies were evolved including securing a decree for divorce. It is also alleged that whenever she visited her matrimonial home, she was not being accepted and sent back. The husband in his written statement denied the allegations. The wife in addition to herself also examined A.W.2 Sohan Lal Gahlot (father) and A.W.3 Bhanwar Lal Parihar. The husband in addition to herself examined his brother N.A.W.2 Naresh Chandra, N.A.W.3 Arun Gahlot, N.A.W.4 Ram Chandra Mali and N.A.W.5 Jabar Singh.

3. The husband sought a decree for dissolution of marriage on the ground of cruelty. The instances of cruelty have been enumerated in the order of the learned Judge, Family Court, as follows:

- (1) The wife used to insist him to live separately in the locality known as Paota. She was not willing to stay with his parents. In order to mount pressure on him, on some pretext or the other, she used to stay at her parental house;
- (2) His wife leveled a false allegation against him and his family members of attempt to administer slow poison to her;
- (3) False allegations were made of demand of Scooter and payment of cash of Rs. 11,000/- and thereby to disrepute his family in the society;
- (4) In spite of the information she did not attend the marriage in the family of his aunt on 23.11.91;
- (5) On 5.4.91 she visited his place of working at Gotan, threatened & mentally tortured him with a view to obtain a decree of divorce;
- (6) She visited his place of working on 11.3.92 and 16.3.92 in his absence and with a view to disrepute him levelled false allegation of dowry demand against him and his family members;
- (7) In his absence (while he used to be at Gotan) she used to stay at her parents house instead of matrimonial home. She used to visit the matrimonial home only on the week end;
- (8) Same allegation has been made with respect to incident dated 17.7.91.

4. At the outset, it may be stated that the husband has not pressed the allegations referred to at item Nos. 2 and 8.

5. The learned Judge, Family Court held that the husband failed to make out the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1953. Accordingly, he dismissed the petition for divorce, however, in a petition for restitution of conjugal rights, having found that the husband wrongfully deprived the wife of her matrimonial home, granted a decree for restitution of conjugal rights.

6. Mr. Dinesh Maheshwari, learned counsel for the appellant submitted that the learned Judge has viewed the entire case from an erroneous angle inasmuch as he has examined the each event of cruelty in isolation instead of taking the overall view of the matter. It is further submitted that taking the overall view of the matter, it becomes apparent that the wife has been non-cooperative, making false and baseless allegations to disrepute the family causing mental injury. With respect to challenge to decree for conjugal rights, it is submitted that the reading of the statements of the witnesses clearly leads to the inference that the wife failed to make out a case for restitution of conjugal rights. On the other hand, the learned counsel appearing for the wife has supported the judgments of the family Court.

7. We have evaluated the evidence on record and considered the rival contentions carefully. We shall deal with each instance of cruelty alleged by the husband in seriatum as enumerated in the judgment of the Judge, Family Court.

8. It is stated by the husband that after marriage in December, 1990 the wife started quarrelling with him in February, 1991. She was not prepared to stay in the joint family. Therefore, she insisted for separate residence in the locality known as Paota. She also refused to stay with him at the place of his posting at Gotan. It is also stated that she used to mostly stay at her parents house. It is further stated that he used to visit Jodhpur on the week end and she also used to visit the matrimonial home only on the week end. He has further stated that on 4.2.91 she left the matrimonial home along with her brother. Thereafter, when his elder brother Naresh and Bhabhi went to take her back, she refused to accompany them saying that she was not in a mood to return. However, he has admitted that she visited the house on 19.2.91 and 16.3.91. He has also given some more dates on which she visited the matrimonial home. The statement of husband does not find corroboration from the statement of his brother Naresh Chandra. He gave evasive reply denying knowledge as to the fact of insistence for separate house. The allegations made by the husband on this count are vague. They are not of conclusive nature. The learned Judge, Family Court has rightly found the

first charge not proved.

9. As regards the third charge i.e. the false allegation of demand of Rs. 11,000/- and a Scooter, the husband has failed to establish this part of the allegation by evidence of independent witnesses. In the application filed for restitution of conjugal rights, a specific charge of dowry demand has been made by the wife. In fact the allegation of the wife is that such a demand was made prior to the marriage. There is evidence on record to show that such a demand was made by the husband and his family members. It has also been admitted that in July, 1991 the Scooter was purchased. Therefore, on the basis of the nature of evidence, which has come on record, it cannot be said that allegations of dowry demand were false and fabricated.

10. As regards the allegations item No. 4, the instance of not attending the marriage in the family of his aunt, cannot be construed as cruelty in absence of evidence as to the exact relation, persuasion and obligation to attend the marriage.

11. The allegation at item No. 5 pertains to giving of threat of divorce on 5.4.91 at the place of his working. The wife has admitted that she visited Gotan on 5th but she denied that she took up quarrel with the husband. No independent evidence has been produced by the husband to establish this part of the allegation.

12. Similarly, as regards the allegation at item No. 6, it is stated by the husband that while he had gone to *Jaipur* in connection with the official work, the wife along with her brother and a friend visited his office and made a false statement of dowry demand in front of the subordinate staff with a view to disrepute them. No staff member has been produced to support the allegation. The husband has produced only his driver Jabar Singh. The trial Court has placed the testimony of the said witness in the category of highly interested witness. In absence of independent and reliable evidence and there being oath against oath, the allegations have rightly been found not proved.

13. The allegation at the item No. 7 is that the wife used to visit the matrimonial home only on week end. At the first instance, the husband has failed to establish the absence of the wife at the house on days other than the week end. Even if it is true, it cannot be construed as cruelty. It is the case of the husband himself that he used to visit his house at Jodhpur only on week end. If he was so keen to keep his wife at her matrimonial home, he could have taken her to Gotan the place of his working. A

husband cannot ask his wife that he does not like her company, but she can or should stay with other members of the family in matrimonial home. Such an attitude is cruelty in itself on the part of the husband.

14. Thus, neither none of instance of cruelty has been proved nor any of them is of conclusive nature. Even taking them collectively, no inference of cruelty on the part of the wife can be drawn.

15. It is contended that there is a complete break down of marriage due to the attitude of the wife, as such it is in fitness of the things that the marriage is dissolved by a decree of divorce. The learned counsel has placed reliance on the decision of the Apex Court in *G.V.N. Kameswara Rao v. G. Jabili*,¹ We have carefully read the said judgment. In the said case after six months of the marriage the wife joined the husband in United States. Right from the beginning she was unwilling to settle in United States. Thus, she used to pick up quarrel and create scene on many occasions. After some time the wife along with her daughter returned to India. In spite of sincere efforts made by the husband, she refused to accompany him back to United States of America. She even threw the Visa and other papers at him. Not only this she shifted to a place unknown to the husband. With great difficulty, he could trace her out at her sister's place in Araku village. When husband visited the village, he was not permitted to enter in the house. The husband who was enjoying high position U.S.A. was insulted and humiliated. In these circumstances, the Apex Court found that the attitude of the wife was not cordial and non-cooperative. The Apex Court strongly disapproved the act of wife whereby she entangled the husband in false criminal case. These were the circumstances, which led to the Court to reach to a conclusion that there was irretrievable breach of relationship between the parties. Such circumstances does not exist in the instant case. It is held by the Apex court in *V. Bhagat v. D. Bhagat (Mrs.)*,² that what is a cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of the case. In the said case, serious allegations were made by the husband and wife against each other of living adulterous life. The Court found that the nature of allegations leveled against each other show the intensity of hatred and animosity each bears towards the other. Thus, this case is also no help to the appellant, the another case relied upon by the learned counsel is *Chandrakala Trivedi (Smt.) v. Dr. S.P. Trivedi*,³ In that case husband agreed to provide to wife a one bed room flat within the range of Rs. 3-4 Lakhs and to deposit Rs. 2 Lakhs for her welfare. On such a statement made by the husband, the decree for divorce was granted. This was a case

of settlement between the parties. There is no such offer in the instant case.

16. The Apex court in *Dr. N.G. Dastane v. Mrs. S. Dastane*,⁴ has described simple trivialities between the husband and wife as wear and tear of married life and on basis of such instances, it cannot be said that there is irretrievable breach of relationship between the parties. The Court has observed in Para 34 as follows:

"We do not propose to spend time on the trifles of their married life. Numerous incidents have been cited by the appellant as constituting cruelty but the simple trivialities which can truly be described as the reasonable wear and tear of married life have to be ignored. It is in the context of such trivialities that one says that spouses take each other for better or worse. In many marriages, each party can, if it so wills, discover many a cause for complaint but such grievances arise mostly from temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage. We will, therefore, have regard only to grave and weighty incidents and consider these to find what place they occupy on the marriage canvas."

17. A marriage among Hindus is sacrament. It 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. Thus, the finding of the Judge, Family Court is based on critical examination of the evidence and his conclusion that the husband has failed to establish the charge of cruelty by a reliable and cogent evidence in accordance with the established principle of law. Thus, we unhasitantly hold that the husband appellant has failed to establish the cruelty, taking the individual instances or taking them collectively. None of the instances has been established by the appellant more so they are not of conclusive nature leading to the inference that there was cruelty on the part of the wife.

18. Taking the appeal challenging the decree for restitution of conjugal rights, there being the same evidence and the same circumstances, we are of the view that the behavior of the husband certainly falls in the category of misconduct on his part. He cannot be permitted to take advantage of his own wrong. Section

23 of the Hindu Marriage Act is attracted in the instant case. While the appellant has failed to establish the charge of cruelty against the wife, she has successfully established that appellant is guilty of not keeping her with him. He must realize that it is his pious duty to make a place for comfortable stay of his wife in her matrimonial

home. It is high time for him to understand his obligation towards his wife, with whom he has taken seven steps (SAAT PHERE) and made promises in presence of family members and the friends. No interference is called for in the decree for restitution of conjugal rights.

19. Consequently, we find no merit in both the appeals No. 880/99 and 858/99 filed by the husband and same are dismissed with cost.

Appeals dismissed.

Cases Referred.

1. 2002(2). RCR (Civil) 1 5 (SC): 2002 W.L.C. (S.C.) 153: RLW 2002(1) SC 167
2. 1994(1) RCR 354 (SC): 1994(1) SCC 337
3. 1993(4) SCC 232
4. AIR 1975 SC 1534