

# RAJASTHAN HIGH COURT

Meera

Vs.

Ramesh Chand

S.B. Civil Misc. Appeal No. 601 of 1999

(A.C. Goyal, J.)

05.02.2004

## JUDGMENT

**A.C. Goyal, J.**

1. This appeal by the appellant-wife is preferred against the judgment and decree dated 15.01.1998, whereby learned Additional *District Judge, Rajgarh (Alwar)*, dismissed the application of the appellant for divorce.

2. Briefly narrated the facts are that the appellant Smt. Meera filed an application for divorce as provided under Section 13(1)(ia) of Hindu Marriage Act, 1955 (in short the 'Act') on 19.10.1955, with the averments that she was married to respondent Ramesh Chand on 09.05.1990 at village Tehla district Alwar according to Hindu rites and rituals. 'Gona' ceremony was performed after a period of three years of the marriage. After 8-10 months her husband and his other family members started cruelty on account of demands of dowry and giving beatings to her. She narrated all these facts to her father. Thereupon on persuasion by her father and other persons of the village, her husband and father-in-law while admitting their mistake and not to repeat such behavior executed a document on 5 rupees stamp paper. But they continued cruelty to her and even inflicted burn injuries and she was expelled from her house by her husband on 16.5.1995. She also got a criminal case registered against her husband for an offence under Section 498A IPC. The respondent husband in his reply filed on 27.4.1996 denied all the allegations of cruel treatment and beating.

3. Following issues were framed.

1- D;k ;kph ds lkFkvukosnddkdzrkiw.kZO;ogkjgS\

2- D;k ;kfpuhfookgfoPNsnudhvkKflrizkIrdjus dh vf/kdkfj.kh gS\

3- vuqrks"kD;kgks\

4. Evidence was recorded and vide impugned judgment dated 15.01.1998, prayer for a decree of divorce was rejected.

5. I have heard learned counsel for the parties. According to Section 13(1)(ia) of the Act any marriage may be dissolved by a decree of divorce on the ground that the other party has, after the solemnization of the marriage, treated the petitioner with cruelty. The term cruelty has not been defined under the Act. The Hon'ble Apex Court in *Dastane v. Dastane*, <sup>1</sup>has observed that it is a whole course of conduct of an offending party causing reasonable apprehension in the mind of spouse for harm or injuries resulting from living with such a person. Thus the cruelty contemplated under Section 13(1)(ia) of the Act is a conduct of such type that the affected party cannot reasonably be expected to live with the other party. The question whether the act/acts complained of was/were a cruel act is to be determined from the whole facts and the matrimonial relations between the parties. Keeping in view these principles the submissions made by learned counsel have to be considered in the light of the evidence adduced by the parties.

6. Learned counsel for the appellant submitted that there was ample oral evidence supported by documents to prove the acts of cruelty. He referred the FIR Ex. 2, injury report of the appellant Smt. Meera Ex. 1 and one document executed by the respondent and his father Ex. 3. He also referred the judgment dated 10.09.1998, delivered by Additional Chief Judicial Magistrate, Bandiqui in Cr. Case No. 348/94, whereby the learned Magistrate while acquitting the respondent and one Smt. Kesar for an offence under Section 498A Indian Penal Code by giving benefit of doubt but conviction was recorded under Section 324 Indian Penal Code and the respondent was sentenced to fine of Rs. 2000/- in the criminal incident pleaded by the appellant wife in this application for divorce. According to learned counsel for the appellant, the year of the incident was 1994 but by way of mistake it was mentioned as 1995 and the same fact was repeated by the appellant Meera in her statement as being illiterate she was unable to understand this distinction and its importance. He placed reliance upon *Laloo v. Smt. Bachi*, <sup>2</sup>*Shobha Rani v. MadhukarReddi*, <sup>3</sup>and *Smt. PrakashKaur v. Harjinderpal Singh*, <sup>4</sup>

7. Learned counsel for the respondent-husband contended that the learned trial Judge having taken into consideration the entire evidence rightly came to this conclusion that no act of cruelty has been proved and there is no reason to interfere with the findings

of the Trial court. He also referred some discrepancies in the oral as well as documentary evidence of the appellant wife. It was also submitted that the respondent husband was/is always ready and willing to keep his wife with him and it is the appellant who does not want to live with her husband and there is a 'Nata system' in the case of the parties and the appellant's father wants to send his daughter i.e. the appellant in 'Nata System'. He placed reliance upon *RenPrakash v. Snehlata*,<sup>5</sup> and *Saritha v. R. Ramchandra*<sup>6</sup>

8. These facts are not in dispute that the appellant was married to the respondent in May 1990, 'Gona ceremony' was performed after three years i.e. in the year 1993 and this divorce petition was filed in October, 1995 and since then both are residing separately. Mainly two acts of cruelty have been pleaded by the appellant wife. The first one is with regard to demands of more dowry. In para 3 of the application for divorce, it is pleaded that she was accused of bringing less dowry worth Rs. 50,000/-. There is no description regarding demands of dowry. Smt. Meera in her statement deposed that her husband and her mother-in-law started harassing her to bring dowry but even in her statement she did not state about the details of the demands of more dowry. Even her father PW3 Ram Pal also could not give any details regarding demands of dowry. Therefore, I find no good ground to interfere with the findings of the learned trial Judge that the acts of cruelty regarding demands of dowry are quite vague and not reliable.

9. The other acts of cruelty as pleaded in the application are that she was beaten by her husband from time to time. As per para 4 of this application she was ousted from her house by her husband and thereafter on persuasion of her father and other villagers, her husband and her father-in-law while admitting their mistake and giving assurance of not repeating such behavior in future executed a document on 5 rupee stamp paper as pleaded in para 5 of the application. In reply there is simple denial with a further plea that father of the appellant declined to send her to her matrimonial home and thus this document was executed as dictated by his father-in-law. Thus execution of such a document has been admitted by the respondent-husband. It was executed as dictated by appellant's father was a fact to be proved by the respondent but he failed to so do. P.W.1 Smt. Meera stated that she was beaten by her husband and her mother-in-law and thereafter she came to her father, her husband and other members of his family came there and they admitted that they would not repeat such mistake and executed a document and thereupon she accompanied her husband but he again started beating her and burn injuries were caused to her. She was medically

examined and Ex. 1 is the copy of the injury report, she also lodged one FIR at Police Station and Ex. 2 is copy of that FIR. P.W.3 Ram Lal has supported the statement of his daughter Meera, P.W.2 Suit. Kesar, P.W.4 Ram Singh, P.W.5 Mangalu Ram and P.W.6 Mam Chand have also supported the statement of Smt. Meera and her father. According to the statement of P.W.4 Ram Singh, Ex. 3 stamp was written in his presence and he also put his signatures A to B. Smt. Kesar, Ram Singh and Mangalu Ram have also stated about having seen burn injuries on Smt. Meera. P.W.7 is Dr. S.S. Khuteta, who was posted as Medical Officer at Govt. Hospital, Bandiqui on 16.05.1994. At the instance of SHO Bandiqui, he examined Smt. Meera at about 6.30 PM and prepared injury report Ex. 1. According to his statement and injury report Ex. 1, she was having two burn injuries on the back of her legs which were simple in nature. The respondent Ramesh Chand in his statement denied all the allegations regarding beating. In cross-examination while admitting his own signatures and thumb impression of his father on Ex. 3 pleaded that he is ignorant about the contents of this document and he signed it only on asking by father of Smt. Meera. He admits presence of 10 to 20 persons at the time of execution of this document Ex. 3. NAW2 is Ram Kishan who is father of the respondent. He supported the statement of his son Ramesh Chand. In cross-examination he also admitted his thumb impression on this document. NAW3 Shiv Dayal is a close relative of the respondent. He stated that he was with the parties at Delhi and Smt. Meera never made any complaint against her husband regarding any beating given to her. NAW4 Bansi stated that his house is about 1 km away from the house of respondent and he never witnessed any quarrel between the parties.

10. Learned trial Judge did not rely upon the evidence of the appellant Meera mainly on the ground that this injury report is dated 16.05.1994 while according to the contents of the application as well as the statement of Smt. Meera, this incident took place on 16.05.1995 and it was also observed by learned trial judge that according to the statement of Dr. Khuteta, injuries were about 8 to 10 days old and thus incident of beating on 16.05.1994 was found to be false. It was also observed that Ex. 3 document does not lend any support to the statement of Meera as there are no details as for what acts the respondent and his father admitted their mistake and even the date of execution of this document has not been specified.

11. Having considered the entire facts and matrimonial relations between the parties, the findings of the learned trial Judge, cannot be justified at all. There was no ground to discard the oral as well as documentary evidence produced by the appellant Smt.

Meera. The allegations contained in paras 4 and 5 of the application were proved not only by the oral testimony of appellant and other witnesses but also by the document Ex. 3. Since the execution of this document Ex. 3 on stamp paper was admitted even in the reply and in the statements of respondent and his father, omission of the date, month and year of its execution was not of much relevance although this stamp paper was purchased on 11th April 1994 as per the entry made on its back. Further the omission of the acts for which the respondent and his father tendered their apology was also not of much importance in the back ground of the strained relations between the parties and the allegations of beating and the cruel behavior, made by the appellant Smt. Meera. Therefore, the allegations of cruel treatment and the execution of the stamp Ex. 3 as pleaded in paras 3 and 4 of the application for divorce were well proved. Another incident of the beating and causing injuries by burns as pleaded in para 6 of the application was also proved. Smt. Meera is an illiterate lady as she has put her thumb impressions and thus the year of the incident as pleaded in para 6 of the application and repeated by Smt. Meera in her statement appears to be a clear mistake in her understanding as she lodged an FIR of this incident on 16.05.1994 with regard to this incident which took place on 13.05.1994 and copy of this FIR is Ex. 2. It is also not in dispute that the respondent was charge-sheeted under Sections 498A and 324 Indian Penal Code and he was put to trial. It is also not in dispute that the respondent was acquitted for the offence under Section 498A Indian Penal Code by giving benefit of doubt but he was found guilty for the offence under Section 324 Indian Penal Code vide judgment dated 10.09.1998 as stated here-in-above. In view of these facts, this difference was not of relevance that injury report was prepared on 16.05.1994 while according to the oral testimony of Smt. Meera, this incident took place on 16.05.1995. Thus it appears to be a case of mere mistake in understanding the year and according to the medical evidence she was having burn injuries. Learned counsel for the respondent referred one more discrepancy with regard to injuries and that is that according to the injury report she had burn injuries on both the legs while as per oral testimony of Smt. Meera she was having burn injuries on her back. In civil cases the fact may be found to be proved on the probabilities of the preponderance and proof of standards as required in criminal cases is not required and thus the cruelty as a ground for dissolution of marriage requires to be proved on the preponderance of probabilities and not beyond reasonable doubt as in criminal cases. This view finds support from the judgment of Hon'ble Apex Court in *Shobha Rani's case* (supra). It was also rightly contended by learned counsel for the appellant that it is not necessary for proving the cruelty that there must be more incidents of beating and this contention finds support

from the judgment of this Court in *Laloo's case* (supra). No doubt a Division Bench of this Court in *RenPrakash's case* (supra) held that a decree of divorce cannot be passed on trivalities which are reasonable wear and tear of married life and a decree for divorce under Section 13(1)(ia) can be passed only on grave and weighty incidents on the ground of cruelty. But in the instant case the evidence regarding incidence of causing burn injuries cannot be termed as reasonable wear and tear of married life. The other judgment of Andhra Pradesh High Court reported in *Saritha's case* (supra), is also not relevant in the instant case as it was observed by Andhra Pradesh High Court that there are incidents of abuse of provisions of Section 498A Indian Penal Code and thus the same may be amended by making it non-cognizable and bailable.

12. Matrimonial matters are matters of delicate humane and emotional relationship. It demands mutual trust, regard, respect, love and affection between wife and husband. In the instant case it is well proved that the respondent husband treated his wife with cruelty. It is also important to keep in mind that both are living separately for a period of more than about nine years and there appears to be no possibility between them to reconcile and to reside together. In this view of the matter the learned Additional District Judge was not justified in discarding the testimony of the wife appellant and dismissing the divorce petition.

13. In the result, this appeal is allowed and the judgment and decree dated 15.01.1998 are set-aside and a decree of divorce is passed in favour the appellant wife against the husband-respondent. The parties are left to bear their own costs of this appeal.

Appeal allowed.

Cases Referred.

1. AIR 1975 SC 1534
2. AIR 1986 Raj 49
3. AIR 1988 SC 121
4. AIR 1999 Raj 46
5. R.L.W. 2000(3) Raj. 1911
6. (2003) DMC 37 (DB)