

RAJASTHAN HIGH COURT

Indu Mishra

Vs.

Kovid Kumar Gaur

D.B. Civil Misc. Appeal No. 1147 of 1996

(Shiv Kumar Sharma & Harbans Lal, JJ.)

20.12.2005

JUDGMENT

Harbans Lal, J.

1. Since, these two civil appeals under Section 19 of the Family Courts Act, 1984 arise out of common judgment & decree dated 23.9.1996 passed by the learned Judge, Family Court, Ajmer in Case No. 22/1993, they have been heard together and are being disposed of by this common judgment.

2. The relevant facts are that Kovid Kumar Gaur, the respondent-husband was married to appellant Smt. Indu Mishra on 25.11.1989 at Ajmer as per the Hindu rites and customs but soon thereafter their marital relations got strained and the respondent-husband filed a petition under Section 13 of the Hindu Marriage Act, 1955 for divorce on the ground that the appellant-wife was living in adultery who had deserted him of co-habitation with her for over years. It was further averred that the appellant-wife along with Bheema Ram Choudhary perpetrated cruelty upon him by extorting money from him time and again by giving threats to kill him and by actually beating him. Both the appellants herein filed separate replies to the petition denying the averments made therein. The appellant-wife further alleged that she had seen her husband in compromising position with his Bhabhi (brother's wife). She also alleged that respondent-husband and his Bhabhi gave her beating on 19.1.1990 so much so, she suffered injury in her Kidney for which she was referred to All India Institute of Medical Sciences, New Delhi for treatment where she was got admitted and received treatment. Despite this maltreatment and physical as well as mental torture she lived with her husband for about 6 months thereafter. It was also alleged that his Bhabhi got Regulation as a result of her illicit relations with respondent-husband who got her abortion done. Both of them denied having illicit or immoral relations between them and averred that they have pious social relations. They also denied that they were living together under one roof.

3. The trial Court framed four issues on the basis of the pleadings of the parties which are mentioned in the impugned judgment of the trial Court.

4. The respondent-husband examined himself as AW-1, Shankar Mishra as AW-2, Leelawati as AW-3 and Ganpati Devi as AW-4. The appellant-wife examined herself as NAW-1, Bheema Ram Choudhary as NAW-2, Pushp Kumar as NAW-3, Dropadi as NAW-4, Mahendra Kumar Pandey as NAW-5, Bhanwani Shankar as NAW-6 and Mohd. Sakir as NAW-7 in their defence.

5. The trial Court after hearing both the sides and after a detailed meticulous analysis and appreciation of the evidence on record came to the conclusion that the respondent-husband succeeded in proving the issue that his wife was residing in adultery with Bheema Ram Choudhary under one roof and was leading an adulterous and immoral life and the respondent-husband was entitled to a decree of divorce on this ground. The trial Court further found that wife had committed cruelty towards her husband by leveling false allegations of illicit and immoral relations with his Bhabhi and also by extorting money from him time and again by giving threats to kill him and other members of the family of his brother.

6. We have heard learned counsel for the appellants. The learned counsel for the appellants have contended that adultery and cruelty cannot be inferred from certain averments. There must be cogent material to constitute legal proof for establishing cruelty and adultery as grounds for divorce. In this regard reference has been made to *Karthikeyan v. Sarojini*¹ (Kerala High Court). They have also submitted that the trial court has passed the impugned judgment and decree of divorce on the basis of conjectures and surmises only and has utterly failed to examine critically and appreciate properly the evidence on record. They have also submitted that the statements of witnesses of respondent-husband have not been considered.

7. We have scanned the impugned judgment as well as the record.

8. The respondent-husband has mentioned in Paras 16 and 17 of the petition that the appellants herein are leading an adulterous life by living together under one roof in a house situated in Kalyanipura. Respondent-husband has in his statement deposed that both the appellants are living together under one roof and the letters addressed to appellant Smt. Indu Mishra were received by her on the address at which appellant Bheema Ram Choudhary had been residing. Exh.A-4/1 and Exh.A-5/1 have been produced by the appellant herself. The fact that both of them have denied on oath having acquaintance with each other which being against the averments in their replies corroborates the fact that they have told lies in this regard. This circumstance goes heavily against them. The statements of Phool Shanker Mishra AW-2, Smt. Lilawati Devi AW-3 and Smt. Ganpati Devi AW-4 support the version of Kovid

Kumar Gaur AW-1 that appellant Smt. Indu Mishra was not residing with him and had deserted him. They have further stated that Bheema Ram Choudhary used to accompany Smt. Indu Mishra to the house of the respondent-husband.

9. As rightly observed by the learned trial court that direct evidence of adultery is seldom possible to lead. An inference of adulterous conduct can be inferred from the circumstantial evidence that has come on record. In the instant case, the fact that Smt. Indu Mishra as residing with Bheema Ram Choudhary under one roof and they used to go about together indicates that they were having very intimate relations. The inference of the learned court below that they were leading an adulterous life does not suffer from any illegality or infirmity in the facts and circumstances of the case and in the face of the circumstantial evidence on record.

10. A fact can be said to be proved when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that prudent man ought, under the circumstances of the particular case to act upon the supposition that it exists. In the case in hand, after considering the materials before this Court and under the peculiar circumstances of this case, the inference drawn by the learned court below that the appellants herein were living in adultery cannot be found fault with.

11. In the case of *Karthikeyan v. Sarojini* (supra) the detailed facts are not indicated. It appears that there was no evidence direct or circumstantial in support of the averments with regard to cruelty and adultery in that case, but in the instant case the averments with regard to cruelty and adultery have not only been specifically pleaded but have also been duly proved by the evidence on record. The evidence of respondent-husband appears to be reliable whereas the testimony of the appellants is against their averments in their replies which not only belies their testimony but also renders them unworthy of trust. It also indicates that they have perjured themselves and have indulged in blatant lies. Besides this their evidence being against their pleadings cannot be looked into. The trial court has given cogent and valid reasons for relying upon the evidence of the respondent-husband and disbelieving the evidence of the appellants. In our well considered view, we do not find any illegality or infirmity in the approach of the learned court below and the findings rendered by it are based on the evidence on record.

12. The trial Court has found as a fact that the allegation of illicit relations of the respondent-husband with his Bhabhi is totally false and baseless and the appellants have failed to prove this allegation against the respondent husband.

13. It has been held by the Hon'ble Apex Court in *V. Bhagat v. Smt. D. Bhagat*, ² that false allegations leveled in the written statement or even during the arguments would come within the definition of cruelty. Reference in this regard may also be made to

*Smt. Lila Devi v. Suresh Kumar*³ *Smt. Shanti Devi v. Raghav Prasad*,⁴ *Smt. Vimla Ladkhani v. Dr. Chandra Prakash Ladkhani*,⁵

14. Thus, in the instant case, the very fact that a totally false and baseless allegation has been levelled against the respondent-husband by the wife about his having illicit relations with his Bhabhi clearly tantamounts to cruelty on her part to the respondent-husband and the respondent-husband is entitled to a decree of divorce on this ground as well.

15. In view of the fore-going discussion, the judgment of the learned Court below does not call for, justify and warrant any interference. The findings recorded by the learned trial Court being based on proper and legal appreciation of evidence on record deserve to be up-held and affirmed and these appeals deserve to be dismissed.

16. Consequently, these appeals being devoid of merit and substance deserve to be and are hereby dismissed. There shall be no order as to costs.

Appeals dismissed.

Cases Referred.

1. (1999(1) DMC 107 (DB))
2. 1994(1) RRR 354: (AIR 1994 SC 710)
3. (AIR 1994 Raj128)
4. (1985 RLR 536)
5. (AIR 1996 MP 86)