

RAJASTHAN HIGH COURT

Vimla

Vs.

Tarun Singh

Civil Misc. Appeal No. 3249 of 2006
(Shiv Kumar Sharma and R.S. Chauhan, JJ.)

23.01.2007

JUDGEMENT

Shiv Kumar Sharma and R.S. Chauhan, JJ.

1. Marriage is said to be made in heaven, but it is destroyed and dissolved on earth. What is considered to be a sacrament is, at times, followed by cruel acts of one spouse towards the other. When one of the spouses finds it unbearable to tolerate the cruelties of the other spouse, he/she has no option but to knock at the doors of a Court and to seek divorce from the erring spouse. This has been the story of the respondent before this Court. But it is the appellant, who is challenging the order dated 21-8-2006 passed by the Family Court, Ajmer whereby the learned Family Court has granted the divorce in favor of the respondent on the ground of cruelty.

2. The brief facts of the case are that the appellant-wife and the respondent-husband (henceforth to be referred to as 'the wife' and 'the husband' respectively, for short) were married on 10-2-2000 at Ajmer in accordance with the Hindu rites and customs. According to the respondent, on the very first night, the wife informed him that she was engaged earlier to another person at Ajmer, but because of "cruel fate", the engagement was called off. But nonetheless she is still devoted to him and would like to marry him. Therefore, she does not wish to maintain any physical relationship with the husband. She also does not wish to stay with the husband and his family. She further told him that she has been pressurized to enter into this marriage by her parents and grandfather. But given a chance, she would run away to the other person to whom she was earlier engaged to. According to the husband, he was shocked to hear such words from his newly wedded wife and that too on the very first night of the marriage. When he informed his parents, they called his in-laws. But the in-laws merely assured

him that his wife is young and she would eventually get accustomed to her new matrimonial home. However, despite their assurance, the wife's behavior did not change for the better. In fact, she repeatedly threatened the husband that she would run away or that she would commit suicide and she would falsely implicate the family. He also discovered to his dismay that his wife would repeatedly tell him that "he is a kid and is not worldly wise". He began to suspect that his wife may be older to him. Therefore, he inquired from the school where she was educated. To his great dismay and shock, he discovered that his wife was, indeed, three years older to him. The fact that a fraud had been played upon him and upon his family, both by his wife and by his in-laws, mentally shocked him. To make the situation worse, the wife would not perform the daily responsibilities of a daughter-in-law. Instead, she would sleep alone in her room during the day time and would not cook for the family. She even left the gas on in the kitchen. When the husband asked her about leaving the gas on, she retorted that "intentionally she has left the gas on and she would burn the entire house". According to the husband, the last straw on his back was the way the wife would behave with his parents and with him in front of his friends. The wife would curse his mother and would refuse to serve his parents the daily bread. Since he could not bear the cruelties upon him, he filed a divorce petition under Section 13 (1) (a) of the Hindu Marriage Act, 1955 (henceforth to be referred to as 'the Act', for short).

3. In order to substantiate his case, the husband examined three witnesses and submitted a number of documents. In order to support her case, the wife examined four witnesses. After hearing both the parties, the learned Family Court, Ajmer granted a divorce vide its judgment dated 21-8-2006 in favour of the husband. Hence, this appeal before this Court.

4. Mr. Neeraj K. Tiwari, the learned counsel for the appellant, has argued that the behavior outlined by the husband does not amount to "cruelty", but amounts "to natural wear and tear of the matrimonial life". Therefore, the learned Judge has erred in granting the divorce on the ground of cruelty.

5. On the other hand, Mr. Ramrakh Sharma, the learned counsel for respondent, has argued that not only during the period of marriage, but even after the filing of the divorce petition, the wife's cruelty continued. The divorce petition was filed on 16-5-2002. Once, the learned Family Court issued the notice and the same was received by the wife on 2-7-2002, she lodged an FIR for offence under Sections 498A and 406 of Indian Penal Code against the husband and his family members. The FIR was lodged with an ulterior motive and in order to wreaking personal vengeance on the husband

and his family members. The case is totally false in nature. It amounts to further cruelty inflicted by the wife upon the husband.

6. We have heard the learned counsel for the parties and perused the impugned order.

7. While dealing with the concept of "cruelty", in case of *A. Jayachandra v. Aneel Kaur*,¹ the Hon'ble Supreme Court has held as under :-

The expression "cruelty" has not been defined in the Hindu Marriage Act, 1955. The said expression has been used in relation to human conduct or human behavior. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. It may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live.

Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case.

The cruelty may be mental or physical, intentional or unintentional. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party. If the cruelty is physical, the Court will have no problem in determining it. It is a question of fact and degree. In physical cruelty, there can be tangible and direct evidence, but in case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on

the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and *per se* unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". Conduct has to be considered in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce.

The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the divorce petition. However insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure it as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hypersensitive approach would be counterproductive to the institution of marriage.

8. No one is born in a matrimonial relationship. It is a relationship that one enters

intentionally and voluntarily. Among the Hindus, it is seen as a sacrament; among others, it is seen as a contract. But whether a contract or a sacrament, the underlined theme of marriage is cordiality. Love, compassion, sensitivity, fidelity, physical, emotional and economic security. No one enters a matrimonial relationship with the hope that he/she would be subjected to tension, anger and frustration, with explosive situation being created at home and outside the family. A home has always been considered a citadel to which both the spouses return for a comfortable physical life far from the maddening crowd of the world. It is a place where one lives with peace and harmony, love and affection and physical and emotional comfort. Hence, both the spouses are morally, socially and legally bound to maintain peace and harmony and emotional comfort for each other. Of course, it is not a utopian world; it is, certainly, subjected to slight friction, a bit of a disagreement. But such friction and disagreement should be at a minimum and should not be permitted to over shadow the basic structure of the marriage. In India and in other traditional societies, when a man chooses a wife he not only chooses a wife, but also chooses a daughter-in-law for the family. In a traditional society like ours, the wife is supposed to fulfill the twin roles of being a wife and a daughter-in-law. Even with the emergence of a post- modern society, even with economic independence of the women and even with the emergence of working women, the traditional role of a woman as a wife and as a daughter-in-law has not undergone a radical change. Undoubtedly, with a working woman as the wife and the daughter-in-law, the family has to adjust and should adjust to the new role of a woman as a working person. But even in post-modern society, a woman has to balance her professional and personal life in such a manner as to achieve both her professional and personal calls.

9. India, being an ancient civilization, has established the role models for all the relationships that exist within and without the family. Thus, the husband and the wife are morally and socially bound to adhere or to follow the role model established by the society at large. Deviation from such role model is bound to produce friction within the family. Since fidelity and devotion between the spouses is a sine-qua-non of the marriage, a wife is bound to rock the boat in case she tells the husband that she does not accept him as the husband. Instead, she accepts another person, to whom she was engaged, earlier, as the husband. She is further bound to add friction by threatening the husband that she would run away or elope with the ex-fiancé. In case she misbehaves and calls her mother-in-law names, in case she refuses to serve the in-laws their daily meals, in case she threatens to burn the house, she is certainly igniting a volatile situation. It would have also shocked and dismayed and husband to discover

that the wife's true age was never revealed to him, and that the wife is three years older to him. The tension, introduced by the wife, the fraud played by her parents and her, the threats given by her are sufficient to constitute "cruelty". To add insult to injury, the filing of an FIR as a salvo to the divorce petition worsens the situation. Therefore, this Court has no hesitation in holding that the sufficient acts of cruelty were committed by the wife against the respondents. Hence, the learned Family Court, Ajmer was legally justified in granting the divorce in favor of the husband.

10. In the result, there is no force in this appeal. It is, hereby, dismissed. There shall be no order as to cost.

Appeal dismissed.

Cases Referred.

1. (2005) 2 SCC 22: (AIR 2005 SC 534)