

RAJASTHAN HIGH COURT

Bhavna Sharma

Vs.

Devendra Kumar Sharma

D.B. Civil Misc. Appeal No. 3259 of 2005
(Shiv Kumar Sharma and Guman Singh, JJ.)

26.04.2007

JUDGMENT

Shiv Kumar Sharma, J.

1. Challenge in this appeal is to the decree dated October 20, 2005 of the Family Court No. 2, *Jaipur* whereby petition under Section 13 of the Hindu Marriage Act, 1955 submitted on the ground of cruelty by respondent husband was allowed and marital ties between the appellant wife and respondent husband were ordered to be snapped.
2. Contextual facts depict that marriage between the appellant wife and respondent husband took place on February 4, 1990. In fact respondent husband entered into second marriage with the appellant after seeking divorce from his first wife. Although three children were born out of the wedlock, their married life never remained calm and quite. As per the averments made in the petition the wife immediately after marriage started quarreling and abusing on petty matters. On every festival she used to call her parents and brother to quarrel and insult the husband. The wife did not give attention to household works and without seeking permission from the husband she used to visit her parents and remained there for months together. In the petition number of illustrations have been incorporated to show that conduct of wife was cruel towards the husband.
3. In reply to the petition the appellant wife denied the allegations leveled against her. It was stated by her that she never quarreled with family members of the respondent husband. She averred that since the husband was a patient of Asthma and High Blood Pressure he used to get angry on every petty matter. On November 18, 2001 the husband himself showed anger, abused the wife, beaten up children and ousted the

wife from his house.

4. Learned Family Court framed as many as four issues out of the pleadings of the parties thus:-

- (i) Whether the behavior of wife can be termed cruel with her husband as per the facts stated in the petition?
- (ii) Even if cruelty is proved whether the husband had not condoned it?
- (iii) Whether the wife was entitled to special cost?
- (iv) Relief?

5. The respondent husband examined himself as PW.1 and in support of his evidence produced Julie (PW.2) and Bhanwar (PW.3). The appellant wife appeared as DW.1 and examined Laxmi Sharma (DW.2) and Ram Sahai (DW.3).

6. Learned Family Court decided all the issues against appellant wife and granted decree of divorce in favor of respondent husband as indicated above.

7. We have heard learned counsel for the parties and scanned the material on record.

8. The principles to be borne in mind while dealing with the petition for divorce on the ground of cruelty, have been laid down by the Supreme Court in *A. Jayachandra v. Aneel Kaur*,¹ thus :- (Para 12).

"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 petition for divorce... 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. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent."

9. Bearing these principles in mind we proceed to weigh to gravity of alleged cruelty. We have to consider as to whether the conduct of wife was such that no reasonable person would tolerate it. The respondent husband (PW.1) in his deposition stated as under:-

- (i) Immediately after marriage the wife started quarreling and abusing on petty matters. She did not cook food in time. She used to visit her parental house without seeking prior permission of the husband and remained there for months

together.

(ii) The wife concealed this fact from the husband that she had gynaec problem. It was after she got operated by Dr. Sunita Surolia that she could deliver three children viz. Neeraj, Swati and Sakshi.

(iii) The wife used to misbehave and quarrel with the husband's unmarried sister Julie.

(iv) The wife used to insult the old members of family and relatives.

(v) The wife used to persuade husband to purchase new house and when husband expressed his inability, she used to become angry and leave for her parental house.

(vi) At the time of marriage of her elder sister Mamta, the wife insisted the husband to gift her scooter and TV and when the husband could not gift scooter, she insulted him and he had to leave the marriage without eating food.

(vii) Despite the husband took the wife to Ooti, Mumbai, Bangalore, Kodai Canal, Mahableswar, the nature of wife remained unchanged.

(viii) The husband took wife to Ahmedabad in 2000 but there also her conduct was not good. She used to refuse to cook food and insist to go back to Jaipur.

(ix) The wife used to threaten husband to implicate him in false cases.

(x) Even on the death of four relatives of husband, the wife did not offer condolence properly.

(xi) In 2001 two days after Diwali festival the wife went to her parental house and came back on the next day at 3 PM. The husband therefore had to sleep hungry and next day he ate food at the Hotel. When the husband demanded explanation the wife threatened him to implicate in false cases. She made attempt to slap the husband.

(xii) Around 11.30 PM on the said day father and brother of wife came and took her and children with them.

10. The wife (DW.1) refuted the allegations leveled by husband in his statement. She deposed that since the husband was patient of Asthma and blood pressure he used to get angry on every petty matter. She however adjusted herself with the husband and never lodged police case against him. She further stated that as and when any relative of the husband died, it was the husband who did not take her with him to the house of grieved family to express condolence. She never misbehaved with Julie. She gave birth to three children and properly looked after them. She never got operated for gynaec problem and never persuaded her husband to gift scooter and TV to her sister. She deposed that the husband wanted to enter into third marriage therefore he filed

petition seeking divorce.

11. On analyzing the evidence adduced before the Family Court we find that the incidents demonstrated by the husband in his testimony come within the purview of petty quibbles, trifling differences and quarrels that happen in day to day married life of the spouses and these trivial irritations do not amount to cruelty. The incidents illustrated by the husband in his statement cannot be termed "more serious than ordinary wear and tear of married life." It appears to us that approach of learned Family Court in deciding the petition was too technical and hyper sensitive. The Family Court was dealing with particular man and woman and not ideal husband and ideal wife. Ideal couple do not have occasion to go to Matrimonial Courts. It also appears that despite quarrelsome conduct of wife the husband tolerated her and both led a normal sexual life as a result of which the wife gave birth to three children. The husband failed to explain the circumstances in which he came to lead and live a normal sexual life with the wife, even after a series of acts of alleged cruelty. In such a situation even if it is held that behaviour of wife was cruel to the husband, the husband having led a normal sexual life with the wife, had condoned that alleged cruelty. In *Dr. N.G. Dastane v. Mrs. S. Dastane*,² . Their Lordships of the Supreme Court indicated thus :- (Para 56)

"The evidence of condonation consists here in the fact that spouses led a normal sexual life despite the respondent's acts of cruelty. This is not a case where the spouses, after separation, indulged in a stray act of sexual intercourse, in which case the necessary intent to forgive and restore may be said to be lacking. Such stray acts may bear more than one explanation. But if during cohabitation the spouses, uninfluenced by the conduct of the offending spouse, lead a life of intimacy which characterizes normal matrimonial relationship, the intent to forgive and restore the offending spouse to the original status may reasonably be inferred. There is then no scope for imagining that the conception of the child could be the result of a single act of sexual intercourse and that such an act could be a stark animal act unaccompanied by the nobler graces of marital life. One might then as well imagine that the sexual act was undertaken just in order to kill boredom or even in a spirit of revenge. Such speculation is impermissible. Sex plays an important role in marital life and cannot be separated from other factors which lend to matrimony a sense of fruition and fulfilment. Therefore, evidence showing that the spouses led a normal sexual life even after a series of acts of cruelty by one spouse is proof that the other

spouse condoned that cruelty. Intercourse, of course, is not a necessary ingredient of condonation because there may be evidence otherwise to show that the offending spouse has been forgiven and has been received back into the position previously occupied in the home. But intercourse in circumstances as obtain here would raise a strong inference of condonation with its dual requirement, forgiveness and restoration. That inference stands uncontradicted, the appellant not having explained the circumstances in which he came to lead and live a normal sexual life with the respondent, even after a series of acts of cruelty on her part."

12. Learned Family Court in our considered opinion has failed to consider the evidence in right perspective and thus committed illegality in deciding issue Nos. 1 and 2 in favor of respondent husband.

13. As a result of the above discussion we allow the appeal and set aside the impugned decree and judgment dated October 20, 2005 of the learned Family Court No. *Jaipur*. There shall be no order as to costs.

Appeal allowed.

Cases Referred.

1. 2005(1) RCR(Civil) 309 : (2005)1 DMC 111 (SC)
2. (AIR 1975 SC 1534)