

JOYDEEP MAJUMDAR

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v.

BHARTI JAISWAL MAJUMDAR

(Civil Appeal Nos. 3786-3787 of 2020)

FEBRUARY 26, 2021

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**[SANJAY KISHAN KAUL, DINESH MAHESHWARI
AND HRISHIKESH ROY, JJ.]**

Hindu Marriage Act, 1955 – Divorce on the ground of mental cruelty – When reputation of spouse is sullied amongst his colleagues, his superiors and society at large, he cannot be expected to condone such conduct and continue with the matrimonial relationship – In the instant case, army officer's career and reputation suffered due to wife's defamatory complaints to his superior in the Army and to the State Women Commission and also defamatory materials posted on other platforms – Explanation of wife that she made those complaints in order to protect the matrimonial ties did not justify the persistent effort made by her to undermine the dignity and reputation of husband – High Court refused to grant relief to husband on the ground that there was no definite finding that the wife's allegations were false – This was not the correct way to deal with the issue – Husband entitled to divorce.

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Hindu Marriage Act, 1955 – Divorce – Allegation of mental cruelty – The degree of tolerance varies from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party.

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Disposing of the appeals, the Court

HELD: 1. For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The materials in the present case

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- A reveal that the respondent had made several defamatory complaints to the appellant's superiors in the Army for which, a Court of inquiry was held by the Army authorities against the appellant. Primarily for those, the appellant's career progress got affected. The Respondent was also making complaints to other authorities, such as, the State Commission for Women and has posted defamatory materials on other platforms. The net outcome of above is that the appellant's career and reputation had suffered. [Paras 10, 11][121-G-H; 122-A-B, C-D]
 - 2. When the appellant has suffered adverse consequences in his life and career on account of the allegations made by the respondent, the legal consequences must follow and those cannot be prevented only because, no Court has determined that the allegations were false. The High Court however felt that without any definite finding on the credibility of the wife's allegation, the wronged spouse would be disentitled to relief. This is not found to be the correct way to deal with the issue. Proceeding with the above understanding, the question which requires to be answered here is whether the conduct of the respondent would fall within the realm of mental cruelty. Here the allegations are levelled by a highly educated spouse and they do have the propensity to irreparably damage the character and reputation of the appellant.
 - E When the reputation of the spouse is sullied amongst his colleagues, his superiors and the society at large, it would be difficult to expect condonation of such conduct by the affected party. [Paras 12, 13][122-E-G]
 - 3. The explanation of the wife that she made those complaints in order to protect the matrimonial ties would not justify the persistent effort made by her to undermine the dignity and reputation of the appellant. In circumstances like this, the wronged party cannot be expected to continue with the matrimonial relationship and there is enough justification for him to seek separation. Therefore, the High Court was in error in describing the broken relationship as normal wear and tear of middle class married life. It is a definite case of cruelty inflicted by the respondent against the appellant and as such enough justification is found to set aside the impugned judgment of the
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**High Court and to restore the order passed by the Family Court. A
The appellant is accordingly held entitled to dissolution of his
marriage and consequently the respondent's application for
restitution of conjugal rights stands dismissed. [Paras 14 and
15][122-G-H; 123-A-C]**

*Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511 : [2007] B
4 SCR 428 – referred to*

Case Law Reference

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| [2007] 4 SCR 428 | referred to | Para 10 |
| CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3786- 3787 Of 2020 C | | |

From the Judgment and Order dated 25.06.2019 of the High Court of Uttarakhand at Nainital in First Appeal No. 81 of 2017 and in First Appeal No. 82 of 2017

Gopal Sankaranarayanan, Sr. Adv., Gaurav Gupta, Rook Ray, Aakash Khattar, Rajesh Kumar, Gaurav Goel, Ahmad Ibrahim, S. K. D Verma, Advs. for the appearing parties.

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

1. Heard Mr. Gopal Sankaranarayanan, the learned Senior Counsel appearing for the appellant (Husband). Also heard Mr. Ahmad Ibrahim, learned counsel appearing for the respondent (Wife). E

2. The challenge in these appeals is to the analogous judgment and order dated 25.6.2019 in the First Appeal No. 81 of 2017 and First Appeal No. 82 of 2017 whereby the High Court of Uttarakhand had allowed both appeals by reversing the common order dated 4.7.2017 of the Family Court, Dehradun. Before the Family Court, the appellant succeeded with his case for dissolution of marriage but the respondent failed to secure a favourable verdict in her petition for restitution of conjugal rights. F

3. The appellant is an Army Officer with M.Tech qualification. The respondent is holding a faculty position in the Government P G College, Tehri with Ph.d degree. They got married on 27.9.2006 and lived together for few months at Vishakhapatnam and at Ludhiana. But from the initial days of married life, differences cropped up and since 15.9.2007, the couple have lived apart. G H

- A 4. Following the estrangement, the appellant earlier applied for divorce from the Family Court at Vishakhapatnam. The respondent then filed a petition against the respondent in the Dehradun Court for restitution of conjugal rights. Later, when she learnt of the case filed by the appellant at Vishakhapatnam, the respondent filed Transfer Petition (C) No. 1366/2011 before this Court. The appellant appeared before the Supreme Court and stated that the case at Vishakhapatnam would be withdrawn. This Court then recorded the following order:
- “Counsel for the respondent states that the respondent would withdraw his petition pending before the Family Court at Visakhapatnam, Andhra Pradesh and in case he has to file any petition seeking any relief against the petitioner (his estranged wife), he will file the petition only before the proper Court at Dehradun, Uttarakhand.
- C In view of the statement made at the Bar, the petitioner is left with no grievance.
- D The transfer petition is disposed of.
- We may, however, observe that in case the respondent files a petition at Dehradun, the Dehradun Court shall take it up and dispose it of expeditiously and without any undue loss of time.”
- E 5. In the divorce proceeding, the appellant pleaded that he was subjected to numerous malicious complaints by the respondent which have affected his career and loss of reputation, resulting in mental cruelty. On the other hand, the respondent in her case for restitution of conjugal rights contended that the husband without any reasonable cause had deserted her and accordingly she pleaded for direction to the appellant, for resumption of matrimonial life.
- F 6. The Family Court at Dehradun analogously considered both cases. The learned judge applied his mind to the evidence led by the parties, the documents on record and the arguments advanced by the respective counsel and gave a finding that the respondent had failed to establish her allegation of adultery against the husband. It was further found that the respondent had subjected the appellant to mental cruelty with her complaints to the Army and other authorities. Consequently, the Court allowed the appellant’s suit for dissolution of marriage and simultaneously dismissed the respondent’s petition for restitution of conjugal rights.

7. The aggrieved parties then filed respective First Appeals before the Uttarakhand High Court. On consideration of the pleadings and the issues framed by the trial Court, the High Court noted that cruelty is the core issue in the dispute. The Court then proceeded to examine whether the wife with her complaints to various authorities including the Army's top brass, had treated the appellant with cruelty to justify his plea for dissolution of marriage. While it was found that the wife did write to various authorities commenting on the appellant's character and conduct, the Division Bench opined that those cannot be construed as cruelty since no court has concluded that those allegations were false or fabricated. According to the Court, the conduct of the parties against each other would best be squabbles of ordinary middle class married life. Accordingly, the High Court set aside the decree for dissolution of marriage and allowed the respondent's suit for restitution of conjugal rights, under the impugned judgment.

8. Challenging the High Court's decision, Mr. Gopal Sankaranarayanan, the learned Senior Counsel highlights that the respondent had filed a series of complaints against the appellant before the superior officers in the Army upto the level of the Chief of Army Staff and to other authorities and these complaints have irreparably damaged the reputation and mental peace of the appellant. The appellant cannot therefore be compelled to resume matrimonial life with the respondent, in the face of such unfounded allegations and cruel treatment. Moreover, matrimonial life lasted only for few months and the couple have been separated since 15.9.2007 and after all these years, restitution would not be justified or feasible.

9. Per contra, Mr. Ahmad Ibrahim, the learned counsel submits that the respondent is keen to resume her matrimonial life with the appellant. According to the counsel, the respondent wrote letters and filed complaints only to assert her legal right as the married wife of the appellant and those communications should therefore be understood as efforts made by the wife to preserve the marital relationship. It is further contended that only because the appellant had filed the divorce case before the Vishakhapatnam Court and had obtained an ex-parte order, the respondent was constrained to write to various authorities to assert her right as the legally wedded wife of the appellant.

10. For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must

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- A be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party. In *Samar Ghosh Vs. Jaya Ghosh*¹, this Court gave illustrative cases where inference of mental cruelty could be drawn even while emphasizing that no uniform standard can be laid down and each case will have to be decided on its own facts.
- C 11. The materials in the present case reveal that the respondent had made several defamatory complaints to the appellant's superiors in the Army for which, a Court of inquiry was held by the Army authorities against the appellant. Primarily for those, the appellant's career progress got affected. The Respondent was also making complaints to other authorities, such as, the State Commission for Women and has posted defamatory materials on other platforms. The net outcome of above is that the appellant's career and reputation had suffered.
- E 12. When the appellant has suffered adverse consequences in his life and career on account of the allegations made by the respondent, the legal consequences must follow and those cannot be prevented only because, no Court has determined that the allegations were false. The High Court however felt that without any definite finding on the credibility of the wife's allegation, the wronged spouse would be disentitled to relief. This is not found to be the correct way to deal with the issue.
- F 13. Proceeding with the above understanding, the question which requires to be answered here is whether the conduct of the respondent would fall within the realm of mental cruelty. Here the allegations are levelled by a highly educated spouse and they do have the propensity to irreparably damage the character and reputation of the appellant. When the reputation of the spouse is sullied amongst his colleagues, his superiors and the society at large, it would be difficult to expect condonation of such conduct by the affected party.
- G 14. The explanation of the wife that she made those complaints in order to protect the matrimonial ties would not in our view, justify the

H ¹(2007) 4 SCC 511

persistent effort made by her to undermine the dignity and reputation of the appellant. In circumstances like this, the wronged party cannot be expected to continue with the matrimonial relationship and there is enough justification for him to seek separation. A

15. Therefore, we are of the considered opinion that the High Court was in error in describing the broken relationship as normal wear and tear of middle class married life. It is a definite case of cruelty inflicted by the respondent against the appellant and as such enough justification is found to set aside the impugned judgment of the High Court and to restore the order passed by the Family Court. The appellant is accordingly held entitled to dissolution of his marriage and consequently the respondent's application for restitution of conjugal rights stands dismissed. It is ordered accordingly. B C

16. With the above order, the appeals stand disposed of leaving the parties to bear their own cost.

Devika Gujral

Appeals disposed of