

Allahabad High Court

Smt. Rekha Rani Chaturvedi vs Dr. Pramod Kumar Chaturvedi on 5 August, 1998

Equivalent citations: 1998 (4) AWC 29

Bench: B Roy, R Mahajan

JUDGMENT B.K. Roy and R.K. Mahajan, JJ.

1. In this appeal under Section 19 of the Family Courts Act, 1984 (hereinafter referred to as the Act), the wife assails the validity of the order dated 28.3.1997 passed by the learned Chief Judge, Family Court, Kanpur Nagar, in Divorce Petition No. 554 of 1995 allowing the application of the husband filed under Section 13 of the Hindu Marriage Act, 1955, for grant of decree of divorce on the basis of cruelty.

2. The relevant facts are in a narrow compass :

The respondent-husband asserted to the effect that he and the appellant herein are Hindu by caste and are governed by the provisions of Hindu Marriage Act, 1955 : the unfortunate marriage was solemnized on 2.12.1986 at Kanpur Nagar according to Hindu rites and ceremonies which was dowryless ; he brought home his wife at 18/239-A, Kursawan, Kanpur Nagar, but after a week she was taken away by her parents by way of Chauthi ; after three months he brought her by way of Vida; during her stay the parties cohabited and consummated the marriage ; she was given full love and affection by him and his parents ; on her next visit her behaviour was not co-operative and often she used to irritate on petty matters ; after due enquiry from her he learnt that she is patient of Tuberculosis' and 'Abdomen and Genital tract' which was confirmed from the prescriptions of the doctors ; he got examined her by Dr. Rita Mittal at Chandrakanta Nursing Home, Dr. Pratima Rohatagi and Dr. Meera Agnihotri on 9.7.1987 and on their advice he took her at Jaslok Hospital. Bombay on 12.12.1993 under the treatment of Dr. Firoz Parikh who suggested certain operations ; ultimately the operation of damaged and blocked tube was conducted by Dr. Rustam Shonewala at Masina Hospital. Bombay from where she was discharged on 22.1.1994 who also suggested to continue the treatment for six months ; after her operation she began to use abusive language against him saying that he has spoiled her body during the treatment ; he was also told by her that she is from a very rich family whereas his living is not upto the status of her parents ; she had suicidal tendency from the very beginning of her stay with him and many times tried to jump down from the scooter; on several occasions, and particularly on one occasion in presence of her brother she threw away the ornaments which he had given to her out of love and affection saying that they are of very low standard and do not suit her looking to the status of her parents ; she tried to avoid day-to-day household works in the family ; she never discharged her marital obligation towards him as during the intercourse she never co-operated happily and all the times remained in an indifferent mood : he tried to know the reason of her non-co-operation on such occasion and of the indifferent mood but instead of replying or co-operating she started using harsh and abusive language against him : that her behaviour has become overbearing, harsh, abusive and quarrelsome to such an extent that it went beyond the wear and tear of the married life ; whenever he complained about her irritating nature to her brother and parents, her brothers threatened him of dire consequences in case he utters anything against her the behaviour of theirs as well as the other members of her family has caused mental agony to him to such an extent that it has become difficult to join her

company ; he is suffering great mental frustration and loss of health which damaged his professional capacity to serve the mankind and society in a better way : for the last about one year she is residing with her parents after leaving his company without his consent and despite all his efforts did not come back to join her company ; on 24.2.1995 when he attended the marriage of his brother-in-law, he requested her parents for her Vida after the marriage ceremony but she asked him to back and improve his economic status upto the standard of her parents and only then he should try to have her company : he was not invited on the birthday ceremony of her niece on 19.6.1995 which indicates the indifferent attitude of her and the parents towards him ; there is irretrievable break down of her marriage and he can no longer pull on as her husband ; and in these circumstances he seeks divorce and hence the petition.

The appellant in her written statement asserted to this effect ; her husband is a guilty spouse being dowry greedy who has come up with false and baseless allegations ; after the Chauthi he did not care to bring her back to the matrimonial home and it was her brother who had to take her after two months to the matrimonial home ; the word 'consummated' is applicable to the Muslim spouses : neither her husband nor his parents even gave any love and affection rather she was ill-treated by his parents ; she never suffered from the alleged false diseases which have been stated with mala fide intentions ; she has been and is still in sound health ; she had to suffer at the hands of her husband due to unlawful demand of a Maruti car as dowry, the petitioner being a Government doctor who is very shrewd, powerful, clever and resourceful could and can manipulate false prescriptions, false diagnosis and false medical certificates according to his convenience ; she was treated a 'guinea pig' by him and he did play with her health with a spirit of vengeance and vendetta as the demand of the Maruti car in dowry could not be satisfied by her and her father ; even though she was not suffering from any ailment, she was at a loss to understand as to why he took her to various doctors for treatment which was uncalled for though as a dutiful wife least suspecting his ulterior motive went to the doctors but it is now crystallised that his intention had been to destroy her body who suffered mental and physical torture due to uncalled for operation and treatment; it is specifically denied that she ever used any abusive language against him : she is a simple. God-fearing and highly religious minded lady with sweet and sophisticated manner whose parents are also peace loving and God-fearing and highly religious persons with high family back-ground : she has inherited high traditions and envious culture from her parents which she has been continuously maintaining ; her parents though are not rich spent money beyond their means in the marriage and in the process they became highly indebted ; had they the money they would have given the Maruti car for the sake of happy married life ; she is praying Almighty that better sense prevail upon him and his parents and they allow her to reside at her matrimonial home peacefully performing her part of matrimonial obligations : she does not want divorce rather wants to serve him with devotion as a dutiful wife : she does not want her vermilion to be removed from her forehead and thus become a social outcaste ; it is a figment of imagination of the husband in stating that she has suicidal tendency and she ever tried to jump from the scooter ; the alleged story is a sheer fabrication and fantastic ; it is specifically denied that he ever gave any ornaments to her whose love never existed ; it is he who is denying her his company and society to which she is entitled ;, as the demand for Maruti car could not be met the result was that she was always treated as a maid servant at her matrimonial home she had to accept to keep the matrimonial life intact ; she was grossly neglected in the matter of food and clothing besides insulted by him in presence of

his friends and guests ; her brothers and parents are peaceful good natured persons who never threatened and false allegations with mala fide intentions have been made ; she never damaged his professional capacity ; he did not attend the marriage of her brother who had gone to invite him for the birth-day ceremony but was insulted and humiliated apart from bluntly telling that unless and until a Maruti car is given to him he will not go to her parents house or meet her or bring her back to his house ; the marriage has not broken down in any manner whatsoever and she still hopes that better sense prevail upon him and on his parents who will give up the demand for Maruti car and keenly awaiting for that happy day when he will come to her and take her to his house so that she will be able to perform her parts of matrimonial obligations and shall be given peace, love and affection for which she is entitled ; the alleged grounds of divorce are false and baseless ; the cause of action is fictitious, fake and legally not correct and he is not entitled to any reliefs claimed for ; her bona fide can be assessed from the fact that no criminal proceeding was initiated by her against him and the members of his family ; she does not want the marriage to be dissolved whose sentiments be kindly considered ; at about 9.00 p.m. of 15.6.1996 she was kicked out of her matrimonial home by him after threatening her that she will not be allowed to enter his house without a new Maruti car and would suffer dire consequences being a Government doctor he has intimate relations with big officers at Kanpur ; she came to her parent's place in a helpless state and since then she has been residing there during which period he never cared to enquire of her health and welfare nor did he pay her any maintenance allowance ; he is In possession of all the ornaments, dowry-gifts, clothes, valuable articles etc. which she had received from her parents' side during the marriage ceremony which he is retaining illegally and she is entitled to get back all her Stridhan from him ; and the petition in which there is no specific ingredient of Section 13 of the Hindu Marriage Act is liable to be dismissed with costs.

A replica was also filed by the husband against the written statement denying the counter allegations made by the wife.

Attempts were made for reconciliation but failed.

3. Following two issues were framed :--(i) Whether the opposite party has observed cruelty with the petitioner as stated in the petition? (ii) Whether the petitioner is entitled to grant of any relief?

4. No document was produced by the respondent. The respondent produced himself as P.W. 1 and his mother Smt. Sharda Devi as P.W. 2. The appellant produced herself as D.W.1 and her brother Ramakant Shukla as D.W. 2. Thereafter, the parties closed leading of their evidence.

5. The Family Court gave a finding that the appellant wife has committed cruelty and also there is no possibility of rehabilitation of the marriage.

6. The learned counsel for the appellant Shri S. C. Tripathi has submitted that findings of the Family Court are erroneous on facts and law. He has further submitted that the particulars of events regarding cruelty and misbehaviour have not been given and merely that marriage has broken down is no ground for dissolution of marriage.

7. Shri R. N. Singh, learned counsel for the respondent-husband has submitted that the allegations in the petition are supported by the evidence and conduct of the husband. He has dilated on the aspect that he took his wife for treatment to Jaslok Hospital, Bombay before she was shown at Kanpur for treatment for her blocked tube, She was accordingly treated by Dr. Rustam Sonewala at Masina Hospital, Bombay but did not co-operate in taking the medicines as suggested to by the Doctor. He has further submitted that the wife is not co-operative in cohabitation and her allegation of demand of Maruti car is false. It is also submitted by him that the wife has made a false statement that her body has been deformed. He further submitted that since mistrust has been created between the parties and once mistrust is created it has become a dead and emotionless marriage and the Family Court was right in holding the marriage to be dead. Lastly, he submitted that the approach of the Family Court is correct and it has based its finding on oral evidence and we cannot take a view different from the Family Court since it is based on appreciation of evidence.

8. We too made attempts for reconciliation.

9. The question was/is whether in the facts and circumstances of this case, the allegation levelled by the husband amounts to cruelty?

10. Under Section 13 of Hindu Marriage Act, 1955 divorce can be granted if the husband or wife has treated the other party with cruelty.

Learned counsel for both sides have cited case laws but we need not refer them as the principles by now stand well-settled.

11. We are of the view that the onus to prove the grounds taken for divorce squarely laid on the applicant-husband which was required to be discharged by leading of cogent and reliable evidence.

12. Let us fresh consider the evidence added by the parties. In order to support his case, the husband has produced himself as P.W. 1 and his mother P.W. 2 Smt. Sharda Devi.

Finally the evidence of the mother stated that Smt. Radha Rani was her daughter-in-law. Unless a wife is divorced, she will not cease to be a wife and accordingly she cannot cease to be a daughter-in-law of the family as well. She has also stated that four times her daughter-in-law made attempts to commit suicide. However, she disclosed no date of such attempts being made. She also stated that on many occasions; her daughter-in-law had assaulted her. She, however, did not state that on what date she was assaulted by her daughter-in-laws. She also stated that her son remains hungry 2-3 days. This statement of hers cannot be believed. A mother cannot allow her son to remain hungry for 2-3 days as it will be natural for a mother to prepare food for her son. The husband is a Doctor and can take breakfast, lunch and dinner in any restaurant. From her statements, it appears that whenever she was cross-examined in regard to the facts deposed to by her in her examination-in-chief, she stated that she does not remember the date. Having gone through her entire evidence, we are of the view that she was a highly interested witness.

We have gone through the evidence of the husband. He is an intelligent man who tried to prove his case. But having regard to the entire facts and circumstances including the apparent fact that he has not brought on the record the certificate of Doctor earlier and naturally being a party, we refuse to rely on his testimony.

We have also gone through the evidence of wife D.W. 1. Having gone through her evidence, we are of the view that she has made statement in a natural way supporting her defence. Her statement that she wants to discharge her Stridhan despite all odds appears to be a natural one. We have also gone through the evidence of D.W. 2, her own brother who has supported her defence that the dispute has arisen because of the husband demands for Maruti car and that the husband desires to have another marriage.

Apart from producing himself as P.W. 1 and his mother-in-law as P.W. 2. no other evidence has been brought by husband to support his allegation.

13. The real dispute between the parties as it appears to us that no child was born for eight years and she was taken thereafter to Bombay for treatment. There is no evidence on the record that she is not a fit woman to produce a child. It is stated by the husband that she was not co-operating with sexual intercourse freely. She was also complaining some pain in her abdomen and later on blocked of tube in genital track was also found on medical examination. It is the duty of the husband to get his wife treated. Her husband tried to perform his duty but it was not taken to the ultimate end. There is no evidence that the husband took the wife to Bombay to show her after six months as stated by him that she was to be taken after six months. The version as revealed from his oral testimony and pleadings is that the wife-appellant did not take medicine and she and her parents were propagating that her body has been damaged by him. It seems to us unbelievable that she has made allegation that her body has been deformed in the backdrop that she went with her husband for treatment and as stated before us that she is still prepared for treatment. The allegation of deforming of body appears to lack bona fide. The wife has also stated that she was not given due respect in the family of husband but still she is ready and willing to go there and do all work. It is stated by the husband that she made attempts to commit suicide and also tried to jump from the scooter. To us it appears to be a cock and bull story, as there is no reliable evidence on the record to support, it is not expected from a newly wedded wife and in the backdrop of this case. There is nothing tangible on the record to come to a conclusion that the wife jumped from the scooter and that she made attempts to commit suicide. The conduct of the husband was not aboveboard when he stated that she was abusing his parents. Normally, a young wife does not resort to such a course. The particulars of the alleged incident, viz. dates and what led her to abuse has not been given, so again the version seems to us to be cooked up.

14. We are of the further view that if the wife has not lodged a report regarding demand of dowry in a police station and/or before some other authority as it is usually not done to spoil the relationship. We accordingly, do not attach much importance in regard to non-filing of an F.I.R. or complaint by the appellant.

15. Having gone through the entire evidence of P.W. 2, we refuse to place reliance on her testimony with a further observation that she was wrongly relied upon by the learned Family Judge.

16. We have disbelieved the testimony of the P.Ws. As an appellate court, we are competent to do so.

17. Shri R. N. Singh had also contended that mistrust was created with the husband. We are of the view that the plea of mistrust is not borne from the record.

18. Now we take up another aspect of the case. Effort for reconciliation was made in the lower court as well as before the Counsellor Kumari Srilekha Vidyarthi. It was made by us also. We find from the record that the husband was not prepared to take the wife to his marital home for any valid reason.

We are of the view that the wife is willing to co-operate and live with the husband but the latter is not taking her to his home. It may be on account of some difference in upbringing and other factors but it should not weigh as soon as marriage is performed. There has to be give and take. If there is no birth of child". It is all In the hands of God or nature. It is a natural instinct for any woman to become a mother so is the case with a man to become father. For some time luck did not favour to meet such a natural desire that is why Adoption Law has been framed by the Parliament. 'Much advancement has been made in the medical science in recent times and things which appeared impossible earlier have become now possible. One should not loose hope and efforts should be made by the husband, who is a v Doctor, to see that his wife is cured.

19. We are of the view that there were ordinary wear and tear of life. If for some reason child was not born, there may be some feeling of discontentment but we cannot describe It to be a cruelty on the part of the wife. The Legislature has used the word "treated with cruelty'. The behaviour of the wife and other surrounding circumstances do not point to this aspect. The husband, it appears to us, wants to get rid of her. The theory of breaking down of marriage is also not correct. The Family Court has committed an error In this regard. The Legislature has not mentioned breaking of marriage under Section 13 of Hindu Marriage Act as a ground for divorce at all.

20. The Hon'ble Supreme Court of course under Article 142 of the Constitution of India has granted divorce on breaking down of marriage in the peculiar facts and circumstances of that case but we are of the view that since there is no legislative sanction under Section 13 of the Act. we hesitate to apply the principle of breaking down of marriage and uphold the decree of divorce. If this is resorted, then their will be possibility of the flooding of the Courts with divorce cases on such a ground. The Hindu marriage is a sacrament. This will be reduced to a contractual marriage and could even surpass the ordinary norms of life and there will be destabilisation in the society as the family life would be broken form the society.

21. As the approach of Family Court in appreciation of the evidence and relevant facts and circumstances were not in accordance with the principles. We can interfere on facts and law both under Section 19 of Family Court Act.

For the reasons aforementioned we are taking a different view which was taken by the learned Family Judge and decide the issues in question in favour of the wife-appellant and against the husband-respondent.

22. We, accordingly, set aside the impugned judgment and order and allow this appeal and dismiss the application filed by the respondent under Section 13 of the Act.

23. However, in the peculiar facts and circumstances, we make no order as to cost.

24. We hope and trust that better sense will prevail on the husband to resume the marriage.