

Calcutta High Court

Dilip Kumar Karmakar vs Biju Rani Karmakar on 12 March, 2004

Equivalent citations: (2004) 2 CALLT 196 HC, II (2004) DMC 522

Author: J Banerjee

Bench: P Ray, J Banerjee

JUDGMENT Joytosh Banerjee, J.

1. The present appeal is directed against the judgment dated 19th May, 1988 passed by the 4th Additional District Judge, Burdwan in the Matrimonial Suit No. 59/85//15/87. By the judgment impugned the learned Judge dismissed the suit in which the husband/petitioner prayed for a decree of divorce against his wife/opposite party, the respondent here on the ground of cruelty.

2. Briefly stated the case of the petitioner/husband is that the parties to the suit was married according to Hindu rites on 11.5.84 at village Prayergram, the father's place of the respondent. After the marriage the respondent came to the house of the petitioner at Moukhira under Police Station Ausgram and began to live as husband and wife. Within a very short period (as per the allegation of the petitioner a week after the marriage), the respondent expressed to the petitioner that she was not willing to reside at. Moukhira and began to press her husband to live at Illambazar. The petitioner did not accept the proposal of his wife because he was brought up by his mother's sister in whose house the couple was residing at Moukhira. At such refusal the respondent/wife became very furious and started to abuse the petitioner in filthy language causing mental agony. It is specific allegation of the petitioner/husband that the respondent tried to cause death of the petitioner by mixing poisonous tablets with his tea. On 12.8.84, the petitioner found two small tablets at the bottom of his cup of tea. It is the further allegation that the doctor opined that if such tablets were taken for several days it could be injurious to the health of the petitioner. It is the further allegation that on 1.9.84 at night, the respondent/wife tried to commit suicide by hanging and it was averted by the prompt action from the side of the petitioner. On 3.9.84 father of the respondent came and took away the respondent. Since then the respondent has been living in her father's place. It is the specific case of the petitioner that if he has to live with the respondent as husband and wife it would be dangerous for him. In these facts and circumstances, the petitioner has prayed for dissolution of marriage by a decree of divorce.

3. The respondent/wife contested the suit by filing a written statement, denying all material allegation and contending, inter alia, that after the petitioner/respondent got his Job as Assistant Deep Tube-well Operator and while posted at Moukhira, he became acquainted with the son of the alleged maternal aunt of the petitioner and used to visit her house. At the time of negotiation of the marriage between the petitioner and respondent, it was given out by the petitioner that he was living in the house of his maternal aunt who brought him up. Relying upon such representation, the marriage was finalised. After the marriage, the respondent came to know that the petitioner had no relationship whatsoever with the said 'aunt', rather there was some sort of undesirable relationship between the petitioner and the aunt. The respondent further alleged that the petitioner was under complete control of the said maternal aunt, and after the marriage the wife/respondent was treated like an ordinary chattel by the petitioner and his maternal aunt (Mashima) and their behaviour and conduct made her life miserable. The petitioner even wanted baby which the respondent conceived

to be aborted. The respondent refusal to concede, for which, the respondent was manhandled by the petitioner and ultimately she was compelled to go back to her father's place and since then she has been residing there.

4. The learned Judge who tried the matrimonial suit raised certain issues including the issue touching the question whether the petitioner was entitled to get a decree of divorce on the ground of cruelty (issue No. 2 and 3 and by the impugned judgment, he came to a firm conclusion that the petitioner failed to establish the allegation of cruelty and ultimately came to a final conclusion that in the facts and circumstances of the case, the petitioner was not entitled to get a decree of divorce or a decree for judicial separation.

5. Being aggrieved by such a decision, the petitioner has come up before this Court and the only question for our consideration here is whether the learned Judge of the Court below erred in coming to the conclusion that the petitioner appellant failed to establish that he was entitled to get a decree of divorce on the ground of cruelty?

6. In this proceeding it is an admitted position that the parties were married according to Hindu rites on 11.5.84 and after such marriage the wife/respondent went to reside in the house of one Kartik Biswas and his wife Rama Biswas at village Moukhira within the P.S. Ausgram in the District of Burdwan. At the time of negotiation of the marriage it was represented by the appellant/petitioner that the said Rama Biswas was his maternal aunt, who reared him up and therefore the petitioner would stay in that house with his wife. The petitioner/husband wanted the dissolution of marriage on the ground of cruelty on the part of the wife and in order to establish the same, he has led evidence to show that shortly after their marriage the wife demanded that they would reside at a place within the P.S. Illambazar where the father's place of the respondent/wife was situated and the wife was very much reluctant to live in the house of Rama Biswas. The husband/petitioner was not agreeable to such a proposal made by his wife. Then the wife mixed poisonous tablets in the tea of the husband. The husband somehow discovered the same and on examination the doctor opined that those tablets were injurious to health. It is the further case of the husband which, the petitioner wanted to establish through evidence that the wife once even tried to take her life by hanging in the night and the husband somehow saved the situation by foiling such attempt. On this point, it is the further case of the husband that the respondent/wife made unfounded allegations regarding illicit relationship between the husband and said woman Rama Biswas in whose house, the husband stayed at the time of their marriage. The learned Court below on consideration of the evidence on record rejected all the above allegations on the point of cruelty. Before this Court, the learned counsel for the appellant/petitioner has challenged the finding of the learned Court below only on the point that in the facts and circumstances of the case such Court ought to have held that the wife/respondent brought an unfounded allegation regarding illicit relationship between her husband and the said Rama Biswas and it is further submitted that it is a settled law now that an unfounded allegation, as made in the matrimonial suit is sufficient to establish cruelty on the part of the wife who had made the same. The learned counsel for the respondent on the other hand has submitted that allegation made in the instant proceeding is not unfounded. It might be that such allegation could not be established properly by cogent evidence. But on the facts and circumstances which are more or less admitted, it would be established that the

relationship between the husband-petitioner/ appellant and the said Rama Biswas was unhealthy one.

7. In order to consider the question which has been raised, we are required to go through the evidence adduced by the parties on this particular point. The petitioner Dilip Kumar Karmakar on being examined as PW 1 has stated that their marriage was solemnised on 11.5.84 according to Hindu rites at Payergram, P.S. Illambazar at the house of his father-in-law. Then they started to live together at the village Moukhira, P.S. Ausgram in the District of Burdwan. It is his further evidence that 7 days after the marriage his wife stated that she would not live at Moukhira but at Illambazar. But the witness did not agree. He further disclosed in the evidence that he was brought up by his Mashima and he looked after his Mashtma as his mother. For that reason, it was not possible on his part, to leave Moukhira and to reside at Illambazar. So he disclosed his inability to accept her proposal. In this way from the clear evidence of PW 1, it has emerged that the dispute between the parties started when the wife refused to live with her husband at Moukhira in the house of Rama Biswas, the alleged 'Mashima' of the husband. The reason furnished by the petitioner/husband for his refusal to accept the proposal made by the wife is that the said Mashima whom he used to consider as his own mother brought him up at Moukhira. In his cross-examination, the witness has clearly disclosed that both his parents are alive and they presently reside at Konnagar. He got his appointment when his parents used to reside at Badhaghat, P.S. Kalna when he was a student of class-IX in Dhatrigram. His evidence has further disclosed that his first place of posting was at Moukhira and he did not know Tusher elder son of Kartik and Rama Biswas when he came to Moukhira in connection with his service. It is his evidence that he started to live in his Mashima's house after his mother introduced him with the lady. The witness has further stated that the said Mashima is not his mother's full sister and he is not in a position to tell the name of the father of said Mashima. From the aforesaid statements, it is clear that the witness did not know his Mashima. Rama Biswas before he got the appointment and was posted at Moukhira in connection with his employment. It follows that the plea taken by the petitioner/husband that he could not accept the proposal made by his wife to live elsewhere because he was brought up by his Mashima whom he considered as his mother and he was required to look after her, has got no basis. That apart, the lady in question, as per the admission of the witness is not his close relation. Now, the question is whether the petitioner has got any relationship with the said lady Rama Biswas and any obligation towards her to look after her as claimed by the petitioner. It is to be noted here that the petitioner has not examined the lady in question Rama Biswas in order to show the true relationship between the petitioner and the said Rama Biswas. But the opposite party/wife has examined Puspa Karmakar, the mother of the petitioner as OPW-1. In her evidence the said witness has stated that the petitioner Dilip is her eldest son. She has further stated that when Dilip got an employment in the Deep Tube-well at that time they used to live at Dhatrigram and she has got no knowledge in which house Dilip presently resides at Moukhira. The witness has clearly disclosed that she does not know Rama, wife of Kartik and there is no sister of her at Moukhira. We further get from her evidence that on receipt of a letter of Dilip when his wife was carrying, she came to Moukhira to see his wife and went to the house where Dilip was staying. She did not find Dilip's wife in that house at the time of her visit. She saw a lady in the house who was not her sister. From the cross-examination of the witness, we find that the petitioner has wanted to challenge that she ever visited village Moukhira. But it has never been suggested that the question involving existence of relationship

between the witness and the said Rama Biswas. It was also never suggested to the witness that it was she who introduced her son to the said Rama Biswas as claimed by the petitioner. From the evidence of PW 2 Sourendranath Sarkar a resident of village Moukhira, we find that the petitioner came to their village Moukhira, in connection with his service 17/18 years back. From the evidence of this witness we further find that Kartik, the husband of Rama Biswas and father of Tushar resides at Durgapur. Tushar lives at Moukhira but he is required to visit daily at Durgapur where he runs a business. PW 3 Tushar Kanti Biswas claims that Dilip's mother is his maternal aunt but we have already seen that the mother of the petitioner has very clearly stated in her evidence she has got no relationship with the other of the witness, namely, Rama Biswas and such statement on oath has not been challenged from the side of the petitioner. In this background, the evidence of Tushar claiming relationship with the petitioner's mother cannot be accepted for a moment. In the cross-examination Tushar as PW 3 has stated that he is a hawker at Durgapur bus stand and is required to stay at Durgapur occasionally on account of his business. He has also disclosed that last year that is in the year 198/ he constructed a house at Durgapur.

8. If we consider the total circumstances which we got from the evidence thus discussed it would be evident that the petitioner has got no relation with the lady in question Rama Biswas, petitioner was never brought up by the said Rama Biswas and therefore he has no obligation to stay with her and to look after her, The husband of the said Rama Biswas even does not reside at village Moukhira in the same house where she stays. The son no doubt has tried to claim that he occasionally visits Durgapur in connection with his business, but it is found that he is a hawker at Durgapur bus stand before coming to witness dock he has also built a permanent house at Durgapur. Coupled with this facts, it is to be noted further that in the last line of cross-examination of the petitioner at page 42 (P.B.), the petitioner has asserted that he would not take his wife Biju to any other place for living except at his Mashima's house. From all these, it is evident that without any plausible reason, the petitioner/ husband wanted to stay in the house of the lady in question, he is even ready to sacrifice his marriage, only to live with Rama Biswas, in the same house, where the husband and son of said Rama Biswas do not live. In that background, it cannot be said that the allegation raised by the wife that the husband had an illicit or unhealthy relationship with the lady cannot be totally unfounded. It may be that the wife/opposite party is not in a position to establish that allegation by adducing cogent evidence. But we should not lose sight of the fact that why should a newly married woman would approach her husband to live elsewhere within 7 days of their marriage and why the husband would be ready to sacrifice such marriage insisting on living in that house and nowhere else? It is well settled now that unfounded allegation raised by a party in a matrimonial suit itself will be a valid ground for a decree of divorce on the ground of cruelty. But the allegation levelled here cannot be said to be totally unfounded. On the other hand, from the relevant facts and circumstances as discussed above, we have no hesitation to hold that there was indeed a foundation of raising such allegation.

9. The Apex Court in the case of V. Bhagat v. Mrs. D. Bhagat observed that, "mental cruelty could broadly be defined is that conduct, which inflicted upon the other party such mental pain and suffering as would make it not possible for that party to live with the other and the parties could not reasonably, also, be expected to live together or that the wronged party could not reasonably be asked to put up with such conduct and to continue to live with the other party." Applying the said

principle in the present case we find that the conduct in question on the part of the wife when she alleged that there was some unhealthy relationship between her husband and the lady in whose house he resides cannot inflict upon husband such mental pain or suffering as it would make it not possible for the husband to live with the wife on the ground that the same is not unfounded. It is not just a sweeping allegation on the part of the wife to avoid conjugal life with her husband. In these facts and circumstances, we have got no hesitation to hold that the husband/petitioner is not entitled to get a decree of divorce on the ground of cruelty on the part of his wife.

10. Before we part with the matter I should also mention that the learned advocate for the appellant has also prayed for the decree of divorce on the ground that the marriage between the parties has broken down irretrievably as admittedly both the parties have been residing separately for long time.

11. In this connection, we must note down that the Hon'ble Supreme Court dealt with the question of irretrievable breakdown of marriage in the case of Mr. Jorden Diengdeh v. S.S. Chopra, . That case was under provision of Indian Divorce Act, 1869, But in dealing with the matter, the Hon'ble Court considered the relevant provisions of Hindu Law, Mahamedan Law, Special Marriage Act, 1954 and came to the following observation at para 7 of the reported judgment which runs as follows:

"It is thus seen that the law relating to judicial separation, divorce and nullity of marriage is far from uniform. Surely the time has now come for a complete reform of the law of marriage and make an uniform law applicable to all people irrespective of religion or caste. It appears to be necessary to introduce irretrievable breakdown of marriage and mutual consent as grounds of divorce in all cases. The case before us is an illustration of a case where the parties are bound to go together by a marital tie which is better united. There is no point or purpose to be served by the continuance of a marriage which has so completely and signally broken-down."

11.1. In spite of the aforesaid observation, by the Apex Court, the relevant law, namely, the Hindu Marriage Act, 1955 has not been amended to introduce the total breakdown of marriage as a ground for seeking divorce. So far this Court is concerned it cannot grant any divorce on any ground other than what has been laid down in Section 13(1) of the Hindu Marriage Act.

11.2. That being the position, whether the marriage between the parties has actually broken down or not, that is not relevant for deciding the question whether the petitioner/appellant in the facts and circumstances of the case is entitled to get a decree of divorce as prayed for.

12. Thus I find that the present appeal must fail. The appeal is dismissed. The judgment and order passed by the learned Additional District Judge are hereby affirmed.

Pradipta Ray, J.

13. I agree with brother Justice Banerjee that the present appeal has no merit but I intend to explain certain legal aspects involved in this appeal.

14. The wife in her written objection has alleged that the husband has an undesirable and unethical relationship with the landlady of the house at Moukhira where the husband resides but such allegation has not been legally proved. It has been urged that absence of legal proof shows that allegation regarding character of the husband was unfounded and such unfounded character assassination amounts to mental cruelty.

15. Allegation regarding moral character of a spouse may amount to mental cruelty where there is absolutely no reason or circumstantial basis for hurling such serious allegation. If there are circumstances giving rise to reasonable apprehension or suspicion about the nature of a relationship an allegation cannot be paid to be unfounded. It may not be proved or established in strict legal sense to invite a finding of the Court but unless the allegation is wholly imaginary, fanciful, reckless or malafide, by itself it cannot amount to mental cruelty. If any spouse raises a plea of illicit relationship as a ground of mental cruelty he/ she must prove or establish the same in Court to get a decree but where such plea is raised by way of defence it is sufficient to present the circumstances producing such apprehension/suspicion. There is a distinction between "unfounded" and "not proved".

16. In the present case the wife has not been able to prove conclusively that the husband has undesirable relationship with the landlady but circumstances emanating from the materials on record indicate a reasonable basis for entertaining such suspicion in mind. Husband's desperate attempt to hide the real relationship by raising an utterly false plea that the lady is his maternal aunt and has brought him up, his insistence on staying in the house of the lady, his willingness to sacrifice conjugal life for the sake of staying with the lady, absence of any evidence that the lady requires his support and help, separate living of the lady's husband and son, unusual indifference to wife's sentiment and emotions, are some of the circumstances which provide a reasonable basis for developing, entertaining and airing a suspicion that the relationship is something unusual, undesirable or unethical. Place of emotion in human relationship particularly in conjugal relationship is a reality and such emotion deserves appropriate mutual respect and appreciation from both the spouses.

17. Thus, though the alleged unethical relationship between the appellant and the landlady has not been so proved to constitute conclusive finding of the Court, the wife has strong and good reason for developing such a suspicion and the allegation made in the written statement cannot be said to be without any foundation.

18. Brother Justice Banerjee has discarded the plea of "irretrievable breakdown of marital relationship" raised by the learned advocate for the appellant/husband on the view that such ground is not available within the scope of Section 13(1) of the Hindu Marriage Act. Justice Banerjee has referred to the decision of the Supreme Court in *Mr. Jorden Diengdeh v. S.S. Chopra*, .

19. It may be mentioned that even after the decision in *Mr. Jorden Diengdeh* (supra) the Supreme Court in several cases invoked the doctrine of "irretrievable breakdown" to grant decree for divorce. Reference may be made to the decisions of the Supreme Court in *Chander Kala Trivedi (Smt.) v. Dr. S.P. Trivedi*, , *V. Vagat v. Mrs. D. Vagat*, , *Ramesh Chander v. Sabitri*, ; *Sabitri Pandey v. Prem Ch.*

Pandey, and Parveen Mehta v. Indrajit Mehta, .

20. Doctrine of "irretrievable breakdown" of marital relationship is not a new or separate ground outside the purview of Section 13 of the Hindu Marriage Act. It is really a facet or an extension of the concept of mental cruelty. When none of the spouses really intends to live together but one of them pretends an apparent willingness with a capricious motive or for revengeful purpose of forcing the other spouse to bear the burden of an unbearable legal relationship and if the Court is satisfied that none of the spouses really wants to live together and that there is no earthly chance of revival of emotional relationship, the Court may regard it oppressive and cruelty to continue such dead relationship and grant a decree for divorce.

21. A careful reading of the decision in V. Vagat v. D. Vagat (supra) shows that the Supreme Court has invoked the aforesaid doctrine of irretrievable breakdown as an extension of mental cruelty and granted a decree for divorce on the ground of Section 13(1)(ia) of the Hindu Marriage Act. The Supreme Court has observed therein:

"Even otherwise the peculiar facts of this case show that the respondent is deliberately feigning a posture which is wholly unnatural and beyond the comprehension of a reasonable person. She has been dubbed as an incorrigible adulteress. She is fully aware that the marriage is long dead and over. It is her case that the petitioner is genetically insane. Despite all that, she says that she wants to live with the petitioner. The obvious conclusion is that she has resolved to live in agony only to make life a miserable hell, for the petitioner as well. This type of callous attitude in the context of the facts of this case leaves no manner of doubt in our mind that the respondent is bent upon treating the petitioner with mental-cruelty. It is abundantly clear that the marriage between the parties has broken down irretrievably and there is no chance of their coming together or living together again. Having regard to the peculiar features of this case, we are of the opinion that the marriage between the parties should be dissolved under Section 13(1)(ia) of Hindu Marriage Act and we do so accordingly."

22. In Sabitri Pandey (supra) and Parveen Mehta (supra) 'irretrievable breakdown' has been accepted as an important contributing factor for granting a decree for divorce on the ground of mental cruelty. Following the decision of the Supreme Court a Division Bench of the Orissa High Court in Sabitanjali Patnaik v. Priyabrata Patnaik, reported in AIR 2001 Orissa 24 applied the aforesaid doctrine in granting a decree for divorce.

23. Mere plea of 'irretrievable breakdown' by itself does not ordinarily constitute a separate and independent ground for grant of divorce, but upon consideration of the combined effects of relevant facts and circumstances including the allegations and the counter-allegations by the parties, if the Court is satisfied that continuation of such irretrievably broken and emotionally dead relationship constitutes an act of oppressive mental cruelty, it may grant a decree for divorce.

24. Similar view has been taken by the Supreme Court in Chetan Doss v. Kamala Devi, . It has been stated therein:

"As observed earlier, the learned counsel for the appellant has merely stressed for grant of relief on the ground that the marriage has completely failed and has irretrievably broken. In connection with this submission, it may be observed that it all depends on the facts and circumstances of the case as to in which case it would be appropriate to grant the relief as prayed.

.....

Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straight jacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case."

25. In *Kakali Das v. Asis Kr. Das*, reported in (2003)3 Cal LT 60 (HC) : (2003)3 CRN 346 I have explained some of the basic ingredients for application of doctrine of irretrievable breakdown. Relevant portion of the said judgment is quoted below;

"(1) Both the parties are equally indulging in cruel behaviour, physical or mental, against each other.

(2) It is not possible for the Court to come to any definite conclusion about the role or responsibility of one particular spouse in creating and sustaining the bitterness.

(3) Marital relationship is emotionally dead and none of the spouse genuinely wants to live with the other spouse.

The aforesaid doctrine cannot be invoked in a case where one of the spouse is still really interested in living with the other spouse forgetting and forgiving the existing bitterness and its causes and he/she cannot be held solely responsible for the existing bitterness.

..... "

26. In the present case none of the aforesaid ingredients is satisfied. The wife has clearly expressed her willingness to live with the appellant-husband at any place other than his present place of residence at Moukhira. It is not possible to hold that the wife is guilty of any kind of cruelty or is not really interested in continuing marital relationship. Thus the appellant is not entitled to invoke the doctrine of irretrievable breakdown of marital relationship for obtaining a decree for divorce.

I agree that the present appeal is to be dismissed.