

Calcutta High Court

Smt Kankana Rani Das vs Samir Kumar Das on 1 February, 1996

Equivalent citations: (1996) 2 CALLT 42 HC

Author: S R Misra

Bench: S R Misra, S Narayan

JUDGMENT Shree Rang Misra, J.

1. Wife petitioner Sm. Kankana Rani Das filed a suit under Section 13(1)(1a) of the Hindu Marriage Act for a decree of divorce and for dissolution of marriage between the parties. The petitioner alleges that the negotiated marriage between the petitioner and the respondent having been finalised was solemnized according to Hindu Marriage Act on 7.6.1986 at the premises No. 5, Dr. A.K. Paul Road, P.S.Behala, Calcutta³⁴. The petitioner from the very childhood was living at Secunderabad with her parents and before her marriage she applied for a service at Secunderabad and she got the service under the Government of India K.V. School at Secunderabad, Andhra Pradesh and was on probation. After her marriage she used to come once in a month to her matrimonial house to meet her husband and stayed with him at New Barrackpore, Dist-24 Paraganas(N).

2. During the probation period respondent went to Secunderabad and after 2 to 3 days when petitioner and other members of her family were introduced to the respondent but to the utter surprise of the petitioner respondent behaved very rudely in presence of so many persons.

3. During the said probation petitioner got herself permanently transferred to Calcutta K. V. School at Garden Reach. During her stay at Calcutta one day she went to husband's house at Salt Lake and when she used to talk with the second brother's wife, husband became angry and beat petitioner mercilessly in front of his family members which caused severe shocked and mental agony. She further stated that one Pratim Chatterjee, a friend of the respondent, invited both of them in the month of May, 1988 in a restaurant for dinner which the petitioner attended along with her husband at Magnolia, Park Street with said Pratim Chatterjee at a dinner. The husband without any rhyme or reason insulted petitioner inside the restaurant in front of Pratim Chatterjee and other unknown public by abusing filthy languages in a loud voice.

4. When the petitioner was at Secunderabad, husband wrote several letters and used filthy languages in his letters which caused mental cruelty to the petitioner. During her continuance at Calcutta when the petitioner returns from the School husband used to suspect without any rhyme and reason and used to abuse filthy language and even beat her in front her mother-in-law and other family members. So much so husband also went near the petitioner's school and insulted in presence of her colleague in a suspicious mood which caused mental agony to the petitioner.

5. On 3rd of September, 1988 when the petitioner went to her aunt's house at Hazra the respondent came there to take her back and on the way particularly at the Hazra Bus Stop husband without any rhyme or reason abused petitioner on open road in a loud voice and slapped her in presence of the petitioner's cousin sister and left her alone on the road and went away and from that day petitioner resided at premises No. 655, D.H. Road, P.S. Behala, Calcutta -700034.

6. Petitioner further states that the husband has no trace of repentance but repeatedly and frequently he came to petitioner's school and threatened her with dire consequences. In paragraph 13 she further stated that on 9th day of December, 1988 husband and his friend Ramen Bose abused in a filthy language. Continuous ill treatment by the husband petitioner really shocked her mind and it was impossible for the petitioner to continue in the matrimonial home.

7. It is further stated that the persistent acts on the part of the husband which will amount to cruelty it is abundantly clear that the husband wants to break the marital tie with the intention to dissolve the marriage with the petitioner. Petitioner tried to adjust with the husband in all matters but it will be clear from the acts on the part of the husband that he is not willing to live with the petitioner as husband-wife nor he cares for the welfare and respect of the petitioner. Thus the husband is guilty of conduct of treating the petitioner with mental and physical cruelty.

8. Petitioner has not condoned the matrimonial offence caused by the respondent nor there is any collusion or connivance between the parties in filing the suit.

9. Husband respondent contested the application of the wife by filing written statement denying insubstantial allegation of the wife. The allegation of the wife of beating her was absolutely false and denied by the husband. As regards the allegations made in paragraph 9 of the plaint it was stated that Pratim Chatterjee came to see his ailing mother and while returning he came to Mangolia Restaurant along with the petitioner and respondent for taking tea and not dinner. There was no occasion for insulting or using filthy language.

10. He has also denied of writing any letter to the petitioner in filthy language and thus a question of causing mental injury was absolutely false. He has denied that he used to suspect the petitioner and abused her in filthy language and even beat her in front of mother-in-law of the petitioner. The allegations of abusing returning at her aunt's house, respondent abused her giving a slap at Hazra Road is absolutely false. In paragraph 13 of the written statement husband made details how and what happened at Hazra Road. Husband has also stated in paragraph in the following words :

"It is denied that the respondent came to the petitioner's school and threatened her with dire consequences. The statement is that the answering respondent (husband) abused her in filthy language when the brother was in the office and his wife's message Mrs. Bithika was also in her office at State Bank of India, Alipore Branch, Calcutta and the petitioner was also in her school, is denied and it smacks of insanity to suggest that when none is in the house the Respondent would come, leaving his legal profession and abused the absent inmates."

11. In paragraph 16 he has stated as under :

"Immediately after the marriage the respondent discovered that the petitioner had physical deformities and unable to satisfy the respondent physically and much less mentally. In spite of this defect the respondent wanted to live with the petitioner in the hope that the physical defect will be cured by Medical treatment."

12. He also alleges that the petitioner had all along been living at Secunderabad and was appointed as a teacher drawing a salary of Rs. 2,000/- P.M. and she has sufficient fund to maintain herself independently. He also stated in the paragraph 18 that he told the petitioner that it was an abnormal life when the wife staying at Secunderabad and the husband New Barrackpore. In order to lead a normal conjugal life she should resign and come over to the respondent's house where they could live together happily. The petitioner replied that it was not possible for her as she had to look after her family consisting of widow grand mother (paternal), widow aunt and her minor son and unmarried dependent sister.

13. In paragraph 21 he further stated that the petitioner coming to know that the respondent was moderately rich, was after his money and tried to squeeze as much as possible. He incurred the expenses at Secunderabad in connection with the parties thrown by the wife at various restaurants. A loan of Rs. 7000/- was taken by the petitioner from the respondent with the promise to return and also an advance of Rs. 5000/- was taken for the purpose of sending to petitioner's brother at America. The family members of the wife were after the money and he saw the game all right and as no other avenue was open to them to squeeze money from him.

14. In paragraph 22 it was further stated as follows :

"The petitioner, being very much conscious about her physical deformities, she in collaboration with her brother Pijush, who exercised undue influence on her and thus dominated her will, has fabricated some stories about cruelty which is baseless, imaginary,, concocted, preplanned preposterous, Ludicrous stories about cruelty and filed this false suit on 22nd December, 1988."

15. Parties adduced evidence in support of the respective cases and Addl. District Judge framed issues. Issue No. 3 to 5 were considered together and the Addl. District Judge held that the petitioner's wife is not able to prove and establish allegations of cruelty, either mentally or physically. As a result of which she is, not entitled to a decree of divorce as prayed. Thus the suit was dismissed on contest.

16. Being aggrieved by the order of the learned Addl. District Judge, wife-appellant has filed this appeal.

17. We have heard the learned Counsel for the petitioner/appellant and the learned Counsel for the respondent-husband. Petitioner has appeared as P.W.I and produced Sonali Das as P.W.2 and the husband-respondent as D.W.I and Soma Das as D.W.2. The learned Counsel appearing for the appellant has challenged the judgment of the learned Addl. District Judge and has made submissions in support of her contention that the learned Addl. District Judge has erred in appreciation the evidence on record and on the correct interpretation of the materials on the record and the documents, a clear case has been made out for the grant of relief on facts as well as in law. It was also submitted that in view of the averments made in the written statement and the statements of the husband-respondent as well as the letters written by him which are on record, apart from the allegations of the plaintiff in her application even a clear case for cruelty is made out on account of the charges levelled against the plaintiff by the husband without any rhyme or reason. A frivolous

plea taken by the husband not supported by any material itself could be said to a ground of cruelty. The learned counsel appearing on behalf of the respondent has tried to support the order of the Trial Court and according to him, wife has failed to prove the charge of cruelty not it is a fact that the allegation made by the husband will amount to cruelty and it is not a single act or stray incident will amount to cruelty. It has also been stated that no particular has been mentioned in the divorce petition as a result of which in the absence of specific allegation as provided under Section 20 of the Hindu Marriage Act, the Trial Court has rightly dismissed the application giving rise to this appeal.

18. It is an unfortunate case where the wife, a teacher in a Central School and the husband, a practising advocate, both coming from respectable family, practically from the very inception of the marriage which was solemnized on 7th of June, 1987 are at loggerhead instead of living peaceful life and are making allegations against each other, some with substance and some without substance. It is admitted that since 1988 both of them are living separately. They have no issues and during the course of the hearing we have tried our best for reconciliation between the parties so that their life may not be spoiled. We also gave opportunity to them to sit together and try their level best to come to a settlement between them so as to continue their matrimonial home with grace, dignity and honour without creating difference on minor matters but our sincere efforts in this regard having failed leaving no alternative but to decide this appeal on merit after considering the material on the record.

19. The Trial Court while considering the evidence of the plaintiff and in paragraph 9 of the plaint where the plaintiff stated that a quarrel between the husband and the wife in presence of Pratim Chatterjee, a friend of the respondent, took place and the said statement of the plaintiff has not been believed by the Trial Court on the ground that said statement has not been corroborated and Pratim Chatterjee has not been submitted by the plaintiff to depose in the case in corroboration of her statement. This observation of the Trial Judge is erroneous as admittedly, the husband, has admitted that Pratim Chatterjee, is not a friend but was known to him. It was for the husband to produce Pratim Chatterjee to prove that the wife was making a mis-statement.

20. Instead of believing the statement of the wife in absence for nonproduction of a material witness the Trial Court fell into error not accepting the statement of the wife for non-production of Pratim Chatterjee, this was an erroneous view in this regard. There were two limbs, one, the allegations made in the application for divorce and the other averments made in the written statement. A portion which has been quoted in the earlier part of the judgment regarding the physical deformities and unable to satisfy respondent physically. Apart from making such a statement and repeating the same things in his statement in the witness box. In one of the letters dated 31st August, 1989 exhibits 1(a) which reads as under :

"The reason not known to me as if you pay the visit to your boy friend's house to see his face only and passed your time through television upto mid-night with others and departed in the morning."

21. In another letter 1(c) dated 7th of May 1989, it exhibits as under :

"I have frankly beg apology from you though late."

22. Plaintiff further stated in his statement in paragraph 8 that when she used to talk with the second brother's wife the respondent was angry and beat petitioner mercilessly in front of his family members which caused severe shocked and mental agony to the petitioner.

23. In paragraph 11 petitioner has stated that when she returned after the whole days hectic work from the Institution without rhyme and reason used to suspect her and used filthy language in front of the mother-in-law and family members of the respondent. She further stated that the respondent also went near the petitioner's school and insulted her in presence of her colleague in a suspicious mood which caused mental cruelty to the plaintiff. At Hazra Road Bus stop the husband abused the petitioner on the open road and gave a slap in presence of her cousin sister who has appeared as witness and supported her case. In paragraph 13 she further stated that on 9th of December, 1988 the respondent and his friend Ramen Bose abused in a filthy languages on phone. Plaintiff in her statement has specifically denied that I have physically deformity to lead a conjugal life. No evidence was adduced on behalf of the husband in support of his contention regarding the deformities alleged by him which has been denied by the wife. Husband in his stated that "I did not get any opportunity to get my wife examined medically. It was my inference that she was physically incapable to lead a marital life."

24. A perusal of the materials on the record in support of the application for divorce it is clear that the wife has made out a case of cruelty on her own evidence and her statement of cruelty is strengthened by the husband. We are inclined to believe the statement of P.W.I and P.W.2 and in view of the contradiction in the statement of D.W.I we are not inclined to place reliance on his statement. Particularly, the averments made in the written statement by the husband and his statement leaves no room for doubt that cumulative effect of the various Instances narrated in support of the application and factors which are relevant for arriving at a conclusion whether cruelty is proved or not are very much present in the case in hand and the statement made in replying adds to the strength of the wife's case in support of her contention that the husband having levelled charge of doubtful character and also physical deformities so as to satisfy physical urge can be said to be an act of cruelty.

25. Litigation is the last resort for a party and it is most unfortunate when the matrimonial matters of dispute between husband and wife if not amicably settled comes before a Court of law when both parties are educated coming from the respectable family and the dispute of a serious nature between them levelling charges of serious nature against each other when they lived together for a very brief period as husband and wife and admittedly living separately for the last 7/8 years and attempt to re-unite and re-approachment have failed.

26. In such a matter what course of action is appropriate question for decision and determination of this appeal before this Court According to the learned Counsel for the respondent averments made in the written statement or in the defence statement legally cannot be taken note of for recording a finding for the purpose of cruelty taking assistance of Section 20 of the Hindu Marriage Act which provides that the specific allegations are to be mentioned and proved in support of the allegations of cruelty and desertion. A statement made in defence will not be a ground for granting a decree for divorce. The word 'cruelty' means mental and physical both. There be no definition of cruelty but

word cruelty has been the subject matter of a number of decisions. Prior to the amendment in the Hindu Marriage Act 1955 cruelty was only the ground for claiming judicial separation under Section 10 of the Act but by means of the amendment in 1976 cruelty if proved was ground for the grant of divorce. Some of the cases in which this question as to what is the meaning of cruelty has been considered which are as follows.

1. . N.G. Dastane v. S. Dastane.
2. V. Bhagat v. D. Bhagat (Mrs.)
3. 1964 AC 644, Gollins v. Gollins.
4. , Chanderkala Trivedi v. Dr. S.P. Trivedi.
5. 1995 WBLR (SC) 35, Romesh Chander v. Smt. Savitri.
6. 93 CWN 213, Amarendra Nath Sanyal v. Krishna Sanyal.
7. Sova Rani v. Madhukar Reddi.
8. AIR 1993 Bombay, 17
9. AIR 1993 Calcutta 32
10. AIR 1978 Jamru & Kashmir 69
- 11.
12. AIR 1988 Calcutta 244
- 13.

27. As regards the question where the averment made in the written statement could constitute cruelty. According to the learned Counsel for the appellant placing reliance on B. Bhagat v. D. Bhagat it has been pointed out that the statement made by the husband in the defence are of such a nature levelling charge of imputation and doubting character of the wife and alleging that the wife cannot physically satisfy him are good enough to prove cruelty and according to respondent the case of Bhagat was a decision by the Apex Court under Article 142 of the Constitution and the same is not applicable in this case.

28. It is true that when allegations have been made by the husband after the institution of the suit, a question arises that the allegations could be taken note of and considered which have arisen after the filing of the suit. There is no bar in taking into consideration such allegations to shorten the litigation and do complete justice between the parties. The reliance is placed on a Division Bench

decision of this Court in Amarendranath Sanyal v. Krishna Sanyal which supports the contention of the appellant that the subsequent events after the filing of the suit could be taken note of and the assertion of the husband that he wants to live with the wife appears to be a mere assertion than reality.

29. After living together for a very brief period as stated earlier and admittedly living separately which prior to the filing of the suit living together appears to be out of question. Rapprochement has failed even without a decree for divorce or judicial separation. There is no possibility that they two will live together as husband and wife unless they are super human being but if they would have been super human being they would not have made allegation of serious nature and would not have lived separately for the last 7/8 years.

30. In the background of their social status, education, family background, their standard and there being making unfounded allegations spoiling their good part of their life leaves no room for doubt that the marriage be dissolved and the decree for divorce be passed. There is no substance in the argument of the learned Counsel for the respondent that. the case of Bhagat v. Bhagat will have no application to this case as that was a case under Article 142 which is only available to the Apex Court and not to the High Court. Apparently, there appears to be a fallacy in such an argument. In the case of Bhagat v. Bhagat the suit was pending and during the pendency of the suit in an interlocutory matter the case was taken to the Apex Court and the Apex Court without there being a decision or appeal. So, only the decision without a trial or without an appeal will be a decision under Article 142 but so far as what will constitute cruelty and whether a statement made in defence could be taken note of in such a matter will be deemed to be a decision of the Apex Court which will be binding on this Court.

31. It is very difficult to give a precise meaning of cruelty under Section 13(1) and 13(ia) of the Act and it can be broadly stated a conduct which affects by the other party a mental pain/suffering as not making possible for that party to live together.

32. In other words cruelty must be of a nature that normal living may not possible. It is not necessary that mental cruelty may cause injury to the health while considering the question of cruelty, so many factors are responsible arriving to a conclusion before a finding of cruelty is recorded. The facts and circumstances in each case may be different. In one class of case in view of the status of the party and various factors may amount to a cruelty where the same set of facts in another class of case may not amount to a cruelty. In the case of Sova Rani v. Madhukar Reddi, Justice K. Jagannath Shetty has held as under :

"Section 13(1)(ia) uses the words 'treated the petitioner with cruelty.' The word 'Cruelty' has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment

on 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. There may however, be cases where the conduct complained of itself is bad enough and *per se* unlawful or illegal. Then the impact or the injurious effect of 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.

It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human clause to which they attach importance. We the judges and lawyers therefore should not import our notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Denning said in *Sheldon v. Sheldon* the categories of cruelty are not closed. Each case may be different. We deal with conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour capability or capability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty."

33. Reliance was placed by the learned Counsel for the respondent in AIR 1993 Bombay 17 that the Court is to pass decree for divorce on the ground mentioned in the Act and the Court is not free to create new ground that is if the marriage has been broken down irreparably and the spouse are living separately by itself is not a ground for divorce. There is no quarrel with the proposition of law laid down in this case but yet the question arises that if the Apex Court has held that a statement made in defence could be taken note of for recording a finding where it amounts to a cruelty or not and there being no bar in taking notice of subsequent happening and the statement after the filing of the proceedings but what material is that if on the basis of the allegations made in the application for the grant of a decree for divorce, cruelty is pleaded while recording the finding on the question of cruelty whether assistance of the statement made by the other party after the institution of the proceedings could be taken into consideration.

34. We are of the opinion that allegations of such a nature which is either made by the wife or the husband against each other which a reasonable man considers looking into the status of the parties and social status. Averments causing serious disorder to the party concerned and the other factors of the long litigation, brief living together and showing suspicion and doubtful character living separately for the last 7/8 years, on chance of rapprochement and reconciliation could be a case where the decree for divorce be passed or the appeal be dismissed.

35. After considering the argument of the parties and materials on the record and examining the cases on the question in dispute, we are of the view that the wife has made out a case for the grant of

a decree of divorce as the materials on the record, a clear case of cruelty is made out. In view of the various acts of the husband, there is no substance in the argument of the Counsel for the respondent that on the materials, no finding of cruelty could be recorded and the averments made in the written statement are not to be looked into is also without substance. The allegations of the wife of beating by the husband and there is no reason to doubt her statement and thereupon looking into the wife with suspicion and also upon failure to produce material witness a clear case of cruelty is made out and in this background the averments of the husband that the wife is physically deforms and cannot physically satisfy him and thereupon looking into the wife with doubtful character makes a clear case of cruelty. It is also to be borne in mind that the husband in his letters which are on the record has admitted indirectly his mistakes. There is no grain of truth in the statement of the husband about physical deformities and doubting the character of the wife. In this background when they are living separately fighting litigation and cruelty having been proved, no other conclusion is possible that the husband has caused cruelty and the wife is entitled for a decree of dissolution of marriage, consequently the decree for divorce so that at least in the future part of their life, they may live separately, otherwise under the shadow of doubt, suspicion and uncertainty in the minds of each other which made their lives still worse than it is today.

36. Accordingly, the appeal succeeds and is allowed and the order of the learned District Judge dismissing the plaintiff suit is hereby set aside and the suit is decreed for divorce.

37. Under the facts and circumstances parties are directed to bear their own costs.

38. After the judgment was pronounced a prayer has been made by the learned Counsel appearing on behalf of the husband respondent that the operation of the order be remain stayed so as to enable him to prefer an appeal before the Supreme Court. The operation of the impugned order is stayed for a period of six weeks from today.

S. Narayan, J.

39. I agree.