

Jharkhand High Court

Basant Prasad Sahu vs Nandita Sahu on 4 July, 2018

IN THE HIGH COURT OF JHARKHAND AT RANCHI

F. A. No. 145 of 2012

---

Basant Prasad Sahu

..Appellant

vs. -

Nandita Sahu

... Respondent

---

CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH HON'BLE MR. JUSTICE RATNAKER BHENGRA

--

For the Appellant

: Mr. Jai Prakash, Sr. Adv.

For the Respondent

: Mr. A. K. Kashyap, Sr. Adv.

Mr. Anurag Kashyap, Adv.

---

By Court

Heard learned Senior Counsel for the parties.

2. Appellant is the husband whose Divorce Case No. 17 of 2004 was dismissed by the impugned judgment dated 4th July, 2012, decree dated 13th July, 2012 passed by Learned Principal Judge, Family Court, Gumla. Suit was for dissolution of marriage on the grounds of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act.

3. Petitioner-husband/appellant herein pleaded before learned Family Court inter alia as follows:

Parties entered into the marriage as per Hindu Rites and Customs on 31st May, 1995 and both of them went to Madras with the mother of the petitioner where the petitioner was posted. Allegations were made against the respondent of not taking his proper care, not providing food or breakfast to him while going on duty and also on his return from duty he used to find the quarter locked. In spite of that, petitioner tried his best to adjust with her but she used to give evasive reply to the petitioner and used to abuse him in filthy languages. Her behavior remained unchanged. On 11th June, 1997, a male child was born. Thereafter petitioner was transferred to Assam. Her behaviour remained the same there also. When he returned to Gumla from Assam, the respondent insisted upon him to leave her and son at her parents' house at Lohardaga. Petitioner left her with her minor son at her parents' house on 19th June, 1999, as per her will. Thereafter, they had never lived together. She had given Advocate's legal notice containing false, concocted and fabricated allegations against him which was received by the petitioner on 25th October, 2004. Petitioner contended that it was not possible to live together due to her ill-treatment. Based on these averments, petitioner approached the learned Family Court for divorce.

4. Petitioner's case before the learned Family Court, inter alia, states as follows:

She accepts the factum of marriage and birth of child out of wedlock but denied all the allegations leveled against her. She alleged that she has been tortured by the mother of the petitioner, who also used to instigate her for demand of dowry. She denied moving freely in Madras town locking her quarter as a newly married wife. She claims herself to be educated and from a well cultured and respectable family. She endured cruel behaviour with the hope of improvement. However, while in Assam she was badly assaulted due to which, she sustained injuries in her eyes, nose and ears and got medical treatment with the help of Dr. Nuta Kakkard and Dr. Chalkitga. She alleged that the petitioner used to assault her after taking Alcohol. She accepts that she had sent legal notice to him, which according to her, contains correct fact. Accordingly, she prayed for dismissal of the suit with compensatory cost. As per observation of learned court, reconciliation failed during proceeding of matrimonial suit.

5. The following issues were framed on the basis of rival contention of the parties:

"I. Is the case as framed maintainable in its present form? II. Has the petitioner got any valid cause of action for the suit?

III. Has the petitioner been subjected to cruelty by the Respondent?

IV. Is the petitioner entitled to a decree of Divorce? V. What other relief or reliefs the petitioner is entitled to?

6. Documents were exhibited. Petitioner examined four witnesses in support of his case, while opposite party/respondent herein examined six witnesses including herself as O.P.W.-6. Rival arguments have been made by learned Senior Counsel for the parties on the correctness of findings rendered by learned Family Court.

7. Learned Senior Counsel for the appellant has taken us through the sequence of facts starting from marriage. He submits that the marriage took place on 30th May, 1995. From 31st May, 1995 to October, 1995 respondent lived at Gumla in her laws' house. She went to Madras thereafter along with petitioner and his mother and stayed there from November, 1995 to April, 1996. On transfer of the petitioner to Assam, she lived in Assam from July, 1996 to October, 1996. On account of marriage of her brother and her pregnancy also, she was brought to Lohardaga in November, 1996. A son was born out of wedlock at Lohardaga on 11th June, 1997. She stayed at Lohardaga till January, 1998. She again went to Assam in February, 1998 and finally returned back to Lohardaga at her instance on 19th June, 1999. Since then, she had remained with her parents and never came back. Chronology of events and allegations made through legal notice dated 25th October, 2004 are all concocted and not worth any credence. She had no explanation for sending legal notice after five years of her stay at her parental house in Lohardaga when throughout the period since her marriage till June, 1999, respondent did not have any occasion to make any allegations of cruelty or demand of dowry against the petitioner. Petitioner replied to the legal notice as well. As a counter blast she lodged an F.I.R under Section 498-A of the Indian Penal Code on 3rd October, 2005 in which proceedings against the petitioner and his family members are still pending.

8. Learned counsel for the appellant submitted that deposition of O.P.W.-6-respondent clearly goes to show that she had returned to Lohardaga on her own will on 19th June, 1999. The conduct of the respondent has led to removal of the petitioner from service by order dated 9th August, 2006 (Ext. 4). Petitioner was finding it difficult to attend his duty at Assam on account of false criminal case instituted against him in which he had to seek bail as well. Therefore, on his own will, he had submitted his resignation through letter dated 28th June, 2006. However, the litigation between the parties including the present case prevented him from attending the duties from 9th August, 2006 which became the basis for his removal from service. The entire career of the petitioner got ruined on account of such quarrel and cruel behavior of the wife. Therefore, entire married life should be reviewed as a whole to judge whether the grounds of cruelty have been made or not? Learned Family Court fell in error in disbelieving the case of the petitioner despite oral as well as documentary evidence on record. The impugned judgment therefore deserves to be set aside. There are no chances of their reuniting as all emotional bounds are dried. The marriage has reached to a point of irretrievable breakdown.

9. Learned Senior Counsel for the appellant has relied upon a judgment rendered by the Apex Court in the case of Samar Ghosh vs. Jaya Ghosh reported in (2007) 4 SCC 511, more specifically paragraph

101. He submits that cruelty cannot be judged as an isolated instance but sustained unjustifiable conduct and behavior of one spouse affecting physical and mental health of the other spouse when the wronged party finds it extremely difficult to live with the other party any longer. These ingredients are present to establish the grounds of cruelty for dissolution of marriage. Learned Family Court has however failed to consider the entire case of the parties in correct perspective.

10. Learned Senior Counsel for the respondent-wife has supported the findings rendered by the Family Court. He submits that the averments made in the plaint read as a whole, do completely fall short of making a case of cruelty in marriage for the purposes of its dissolution. Normal wear and tear of the married life does not amount to cruelty. The allegations for a period as far back as 1995 during her stay at Madras are unfounded as the conjugal life of the parties were normal. A son was born out of the wedlock in June, 1997 itself. It is the wife who has suffered on account of illegal demand of dowry and torture on the part of the petitioner at the instigation of his family member. She had also in her written statement supported about the assault on her which left her injured. She was treated by two doctors named by her. It was the petitioner, who left her at her parental house on 19th June, 1999 as per the statements made in the plaint itself. The assertions made in the plaint are therefore neither credible nor worth any substance. It cannot be presumed that a newly married wife, that too from a place like Lohardaga, would lock the quarter and move around in the Madras city as alleged against her. The matrimonial suit has been filed as reaction to the legal notice served by the respondent. Respondent had lodged an F.I.R under Section 498A of the Indian Penal Code in 2005 and Maintenance Case in 2007 being Maintenance Case No. 13 of 2005. These are developments post the filing of the divorce case, which cannot be taken advantage of by the petitioner to substantiate the grounds of cruelty. The case of the petitioner had to stand on its own leg. The respondent is still willing to continue with the marriage even after so much of pain and separation but it is because of the attitude of the husband that the parties could not unite. The son,

who has also become major wanted the parents to reunite but the appellant is not willing to bring them back to matrimonial home. The findings of learned trial court are therefore well considered and do not deserve to be disturbed. Learned counsel for the respondent has relied upon the judgment rendered by the Apex Court in the case of Shyam Sunder Kohli vs. Sushma Kohli alias Satya Devi reported in AIR 2004 SC 5111, paragraph 13 in support of his submission. He submits that irretrievable break down of marriage is not a ground recognized under the Hindu Marriage Act to annul the marriage since the parties have been living separately. Appellant cannot be allowed to take advantage of his own wrong.

11. We have considered the submission of the parties and also the material pleadings and evidence on record. From perusal of the averments made in the plaint, we are inclined to observe that the allegations made therein if taken into totality also do not constitute cruelty of such a nature which would compel the wronged party to find extremely difficult to live with the other party any longer. The deposition of the petitioner's witnesses adduced in support thereof are also hardly able to substantiate the allegations of cruelty to such an extent which could result in dissolution of marriage. The instances of not providing food or breakfast to the petitioner, the wife allegedly moving around in the Madras city petitioner finding his quarter locked while on return from duty at night, all these related to the period of 1995 just after their marriage. The relationship between the parties apparently was healthy and happy as would appear from the birth of a male child in June, 1997. There was no exchange of allegations in the nature of any documentary evidence during the entire period till the legal notice was served upon the petitioner on 25th October, 2004 (Ext.-B).

12. The sequence of events described by learned Senior Counsel for the appellant on being taken together therefore are unable to show any exceptional behaviour on the part of the respondent which could constitute cruelty for dissolving the marriage between the parties. Chronology of events, noted above, only suggest that the wife often moved with the husband during his posting at Madras and that at Assam and came back for the marriage of her brother in November, 1996. She also gave birth to a male child in June 1997 and then returned to her matrimonial home in February, 1998. Thereafter she finally came back to her parental house in June, 1999. Wife on her part has always shown inclination to go back to her matrimonial home. In that case, the appellant has not been able to show any steps to take her back till the filing of divorce suit. He has not taken any steps for restitution of the marriage either. The allegation of cruelty in marriage made by the respondent by instituting an F.I.R on 3rd October, 2005 after about 11 months of the institution of Divorce Case could not lend much assistance to the case of the petitioner and at the same time could also be treated as a counterblast on the part of the respondent. However, the criminal proceedings are pending and its fate would be determined by adjudication of the competent criminal court. We do not want to comment further on that score. Instances post institution of the suit i.e. resignation of the petitioner on 20th June, 2006 or his removal on 9th August, 2006 vide Ext.-5 can be the instances of the strained relationship between the parties. But, the case of cruelty as pleaded at the time of institution of the suit does not stand on its own footing. These instances though may suggest strained relationship between the parties, but as whole do not support the plea of the petitioner for annulment of marriage on the grounds of cruelty meted out to him by the respondent since his marriage on 13th May, 1995 till she returned to the matrimonial home on 19th June, 1999 for the reasons discussed hereinabove.

13. It further appears from the evidence of opposite party nos. 2, 3 and 5 that efforts were made by the family members and well-wishers to enable the parties to reunite. It is the consistent case of the witnesses of opposite party/respondent herein that the wife had throughout expressed her intention to go back to matrimonial home but it was the petitioner who was not interested. As a matter of fact, petitioner-P.W.-1 in his disposition had stated at paragraph 51 that efforts for reconciliation had failed as he had refused to settle the matter during the course of conciliation in the criminal proceeding.

14. In this factual canvass, it would be proper to refer to the principles and illustration laid down by the Apex Court on the test of grounds of cruelty urged by the aggrieved spouse. In the case of Samar Ghosh (Supra), the Apex Court at Paras- 99 to 101 has laid down illustrations which though are not exhaustive but provide enough insight to situations which may amount to cruelty.

"99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration".

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of

8.

manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommodore or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behavior of some spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of the wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xix) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty".

In the case of *U. Sree Vrs. U. Srivivas* reported in (2013) 2 SCC 114, the Apex Court has referred to precedents on the subject of cruelty in marriage and held as under:

"22. Recently, this Court in *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, while dealing with the conception of cruelty, has stated that (SCC p. 298, para

22) it has inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperament and emotions that have been conditioned by the social status. The two-Judge Bench referred to the decisions in *Sirajmohmedkhan Janmohamadkhan vs. Hafizunnisa Yasinkhan*, *Shobha Rani, Sheldon v. Sheldon*, *V. Bhagat v. D. Bhagat*, *Parveen Mehta*, *Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate*, *A. Jayachandra v. Aneel Kaur*, *Vinita Saxena v. Pankaj Pandit*, *Samar Ghosh and Suman kapur v. Sudhir Kapur* and opined that when the evidence brought on record clearly establishes a sustained attitude of causing humiliation and calculated torture on the part of the wife to make the life of the husband miserable, it would amount to mental cruelty. The emphasis was laid on the behavioural pattern of the wife whereby a dent is created in the reputation of the husband, regard being had to the fact that reputation is the salt of life."

15. Physical or mental cruelty should be of such a nature and for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with other party any longer. Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty. A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable, life of the spouse also amounts to mental cruelty. Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty. However, the married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty. The Apex Court has also opined in sub para (xiv) of Para 101 that where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction

though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

16. However, in the facts of the present case, we find that the petitioner has failed to establish the grounds of cruelty which could be of such a nature which could render it extremely difficult for him to live with the respondent any longer. In such a situation, moreover when the respondent has throughout expressed her intention to continue with marital ties and go back to her matrimonial home, the prayer for dissolution if allowed, would amount to giving undue advantage to appellant without any fault of the respondent-wife.

17. On consideration of totality of facts, reasons and discussions made hereinabove, we find that the findings of the learned Family Court do not suffer from any such error of law or facts or lack of appreciation of evidence which could render the findings perverse. As such, the appeal stands dismissed. Decree accordingly.

(Aparesh Kumar Singh, J) (Ratnaker Bhengra, J) Jharkhand High Court, Ranchi Dated 4th July, 2018 JK/NAFR