

Patna High Court - Orders

Vivek Shankar Prasad vs Smt.Anupama Prasad on 22 June, 2012

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.440 of 2009

=====

Vivek Shankar Prasad son of Sri Uma Shankar Prasad, resident of C-708, Anand Lok Housing Society, P.S. Mayur Vihar Phase- I, Delhi- 1100091, earlier resident of C-25, Sector K, Aliganj, Lucknow Petitioner/ Appellant/s Versus Smt.Anupama Prasad wife of Sri Vivek Shankar Prasad and daughter of Late R. N. Prasad, Resident of E-20, P.C. Colony, Kankarbagh, P.S. Kankarbagh, District- Patna- 800020. Earlier R/o Q.No.MG-59, Sector C, I.T. Colony, Aliganj, Lucknow
R e s p o n d e n t / R e s p o n d e n t / s

===== Appearance :

For the Appellant/s : Mr Jitendra Singh, Senior Advocate Mr. Aditya Prakash Sahay, Advocate Mr. Prabhat Kumar Singh, Advocate Mr. Manoj Kumar Sinha, Advocate For the Respondent/s : Mr. J a s h w i r S i n g h A r o r a , A d v o c a t e

===== CORAM:

HONOURABLE MR. JUSTICE SHIVA KIRTI SINGH and HONOURABLE MR. JUSTICE VIKASH JAIN CAV ORDER (Per: HONOURABLE MR. JUSTICE SHIVA KIRTI SINGH) 23 22-06-2012 This appeal under Section 19 of the Family Courts Act, 1984 is directed against the judgment and decree dated 19.5.2009 passed in Matrimonial Case No.66 of 2003 by the learned Principal Judge, Family Court, Patna whereby the divorce case filed by the appellant against his wife, the respondent on the ground of cruelty and desertion has been dismissed on contest 2/ 18 with costs.

2. The parties have been heard at length on merits of the appeal for the purpose of its final disposal and also in respect of Limitation Petition i.e. IA No.5303 of 2009 and an application under Sections 24 and 26 of the Hindu Marriage Act, 1955 (IA No.4825 of 2011) for payment of maintenance to the respondent and her minor son, Utkarsh and also expenses of the litigation. The averments in the Interlocutory Applications have not been controverted. As per Limitation Petition, a delay of 52 days occurred in filing of the instant appeal on account of erroneous impression that appeal could be filed under Section 28 of the Hindu Marriage Act for which the period of limitation would be 90 days. Since the appeal was filed within 90 days under the aforesaid impression, in the facts of the case, the delay in filing of the appeal is condoned and the Limitation Petition stands allowed. The other Interlocutory Application (IA No.4825 of 2011) filed by the respondent for maintenance shall be considered after deciding the matter on merits.

3. There is no dispute on the facts that marriage between the appellant and the respondent was solemnized as per Hindu rites at Patna on 14.1.1991. Both the parties are well educated. The appellant has M. Tech. degree in Building Science 3/ 18 and Construction Management from IIT, Delhi and is well employed. The respondent, the wife of appellant is M.A. in Economics and MBA from Patna University. There was no problem in the marriage for a long number of years. A male child was born on 10.12.1994. The respondent lived with her husband at Delhi, Guwahati and Lucknow when he was posted at these places. At Lucknow, they lived together from September 1996 till June 2000 and thereafter on account of some problems arising between the parties allegedly the

respondent continued to occupy the government/ official quarter allotted to the appellant after June 2000 but the appellant was forced to live separately.

4. According to the case of the appellant, the wife was quarrelsome, abusive and negligent in looking after family environment. The crux of the allegation is cruelty on the part of respondent, who allegedly made false allegation through letters to different authorities that she was assaulted initially by the father of the appellant in 1996 and subsequently by the appellant in 1998. As per allegations, her act of writing letters in 1998, 1999 and on 28.1.2000 to the Director General of CPWD under whom the appellant was working and making such allegations in her written statement amount to acts of cruelty. According to the appellant, on account of her letters to his superior officers and to National 4/ 18 Commission for Women the appellant suffered loss of reputation and mental torture and that entitles him to the decree of divorce. Another instance of cruelty pleaded by the appellant is that respondent filed a false compliant case under Sections 332, 354 and 498A of the IPC in the court of ACJM, Lucknow and since that case was dismissed on 8.1.1998 the allegations made in the compliant case have to be treated as false and that also amounts to cruelty.

5. The defence of the respondent is denial of allegations of cruelty and desertion. According to her, petition for divorce is based upon imaginary, conjectural and frivolous allegations. The gist of her defence is that frivolous allegations have been levelled only to cover up assault and torture upon the respondent at the hands of appellant's father at whose instance the appellant also treated her badly. It was explained on her behalf that it was agreed at the time of marriage that she would be completing second and final year of her MBA course at Patna after the marriage and accordingly, she had to stay at Patna for some time but thereafter she joined her husband and led a happy conjugal life. She gave out details of how she by chance detected that her husband was suffering from the disease of Epilepsy for more than 10 years but she took good care of him at Guwahati for 5/ 18 several years and was blessed with a child. According to her, the father of the appellant wanted appellant to be transferred to Delhi but as he was transferred to Lucknow in August 1996, he got annoyed with the respondent and her parents whom he thought responsible for obstructing the posting to Delhi. She joined her husband at Lucknow on 6.9.1996 as he had been allotted an official quarter. Appellant's parents were also staying there for some time and on account of his annoyance the appellant's father even assaulted the respondent and she could save herself from further beating by shouting for help and ran out of room. Since this caused set back in the social prestige of appellant's father, since then he became hostile and on his instigation the appellant ultimately became cruel and was also forced to assault her and shift to another house in Lucknow which was hired by the parents of the appellant although they were residents of Delhi. He started living in the other house since June 2000. The appellant communicated his decision to live in other house at Lucknow to her through telephone on 26.6.2000 and left her in the official quarter to fend for herself and 5 1/2 year old child.

6. The Principal Judge, Family Court framed seven issues out of which Issue No.2, 3 and 4 have been tried together with a view to find out whether the appellant as petitioner is 6/ 18 entitled to get decree of divorce on the ground of cruelty and desertion. According to learned Principal Judge, the oral evidence of the petitioner as PW 1 as well as the documentary evidence filed on his behalf was insufficient and he failed to prove cruelty as alleged by him and also desertion which was alleged in

very faint terms. The records show that the appellant did not examine any other witness on his behalf, not even his father against whom clear allegation of assault was made by the respondent in her written statement and which according to her was the root cause for all the further differences between herself and her husband leading to filing of petition for divorce.

7. Learned counsel for the appellant confined his submissions before us only to the issue of cruelty. For this he relied upon allegations made by the appellant in his deposition and upon documents and letters marked as Y, Y/1, Y/2, Y/3 as well as Exhibits 1 and 2.

8. On behalf of the respondent altogether four witnesses were examined, she herself being RW 4. She has also brought on record large number of communications marked as Exhibits A, B series, C, D series, E series and Exhibit F to support her case that she was liked and loved by her husband and also by his other relations and it was after her protest against assault by 7/ 18 appellant's father that the appellant got influenced so as to desert her and file false case for divorce.

9. From perusal of evidence of the appellant, who is sole witness in support of his case it appears that families of both the parties are well educated and respectable. His father retired as Controller General of Defence Accounts whereas father of the respondent retired as a Judge of the Patna High Court and was subsequently Chairman of National Commission for Backward Castes. From his statement in paragraph 6 it is evident that the respondent did not desert him rather she continued to occupy his official quarter, albeit illegally when he opted to go and live separately at another place in Lucknow. On the issue of cruelty, he has deposed that sometimes she went to her parents' house even for a long period of two months and that she wrote letters dated 15.11.1998, 4.2.1999, 8.3.1999, 19.11.1999 and 28.1.2000 with false allegations so as to obstruct his posting at Delhi where his parents lived. According to his deposition, this caused loss to his prestige and he could not be posted to Delhi and was therefore, deprived of protection of his parents. According to him, his wife made a false allegation that on 13.9.1996 she was assaulted by his parents. She did not want him to meet his parents and sister in a regular manner and was not taking good care of their child. She 8/ 18 also filed a false case under Section 498A and other Sections of the IPC before Judicial Magistrate, Lucknow which was dismissed on 8.1.1998. In paragraph 15, he has claimed that on account of torture he left his house and went to live in another house.

10. The letter dated 4.2.1999 marked as Y shows that the respondent, in continuation of an earlier letter dated 15.11.1998 informed the DG of CPWD at New Delhi that her husband's conduct and behaviour had not improved and she was feeling insecure and unsafe about herself and her son aged about four years. She prayed that her husband may be kept posted at Lucknow itself where she has some feeling of security because her sister was posted there as a Teacher. Letter dated 19.11.1999 marked as Y/1 is a similar letter to the Director General, CPWD giving some more details about her husband's behaviour and her feeling of insecurity with a prayer not to post him to Delhi. The date of letter marked as Y/2 is not legible but the contents of that letter addressed to the Director General, CPWD are in similar vein. Y/3 is a letter dated 15.11.1998 whereby the respondent informed how she was assaulted by her husband when she went to stay with him at Delhi on 14.11.1998. She was not permitted to live with him and had to take shelter in her cousin's house. The purpose of that letter was also that if appellant was to be posted 9/ 18 anywhere else he should be posted away from Delhi

because there his parents would again interfere and make her family life worse. The allegations made by the respondent by way of her defence in the written statement get ample support from the contents of aforesaid letters. The appellant has placed reliance upon these letters only because the respondent in her deposition as RW 4 has chosen not to speak against her husband. On that ground alone it has been argued that allegations made by her against the appellant amounts to cruelty and torture.

11. Exhibit 1 is complaint petition in the Court of ACJM, Lucknow bearing Cr.Misc.No.3/97. The petition is dated 22.12.1997. In that petition the respondent has given vivid details of cruelty to her and even assault against her by her father in law but in the prayer portion she did not pray for any specific relief of proceeding against anyone although she had made her father-in-law and mother-in-law as opposite parties 1 and 2 in that petition. From order dated 8.1.1998 which is part of the same document it is evident that the petition was rejected because nobody appeared to press the same. In that view of the matter, it is not possible to accept the contention advanced on behalf of the appellant that the complaint petition was dismissed on merits after finding the allegation to be false. It is further noticed that in that petition the 10/ 18 respondent did not implicate the appellant as opposite party. Exhibit 2 appears to be an allegation petition given by the respondent to National Commission for Women.

12. So far as witnesses on behalf of respondent are concerned, the learned Family Court had discussed them in detail in paragraphs 11, 12, 13, 14 and 15. It will be unnecessary repetition of lengthy statements made by those witnesses. It would suffice to notice that RW 1 Sri Ram Narayan Lal is a retired Judge of Patna High Court. He knew both the parties well and is also distantly related to the appellant. He was instrumental in negotiation of the marriage. He claims to have learnt from respondent when she came to Patna about assault upon her by her in-laws. He later came to Delhi and inquired from father of the appellant. According to him, father of the appellant initially refused but later he admitted that he had given one slap to the respondent. He was cross-examined at length. Nothing material was elicited from him. RW 2, Ravindra Prasad has claimed to be acquainted with both the families as he was invited in the marriage from both sides. He has praised the respondent as highly educated and good girl. He along with RW 3, Jai Shankar Barnwal, a lawyer were asked by the respondent to bring about amicable settlement of the divorce case but according to him, the father of 11/ 18 the appellant did not agree for the proposal made by them. This witness has also claimed to have heard from RW 1 that father of the appellant had admitted that he had slapped the respondent. RW 3, Jai Shankar Barnwal, an advocate, has also claimed to have known both the parties since long. His evidence is on same lines as that of RW 2 and both have stood the test of cross-examination. The respondent has examined herself as RW 4 and has fully supported her defence except that in Court she did not allege any assault against her husband. This is easily understandable in view of the fact that as per witnesses and her own evidence she always wanted compromise and amicable settlement with her husband and still she is anxious to make the marriage successful in the interest of her family and minor son.

13. Coming to the documents exhibited on behalf of the respondent, it is found that Exhibit A is a letter dated 16.3.1994 written by maternal grandmother (Nani) of the appellant to the respondent. That shows that the old lady still remembered good massage given to her by the respondent which

eased her pain in the leg. That shows that respondent was caring for elderly relations of the appellant. Exhibit B2 to B6 are letters written by the appellant to the respondent from 1994 to 1999 and they show that even till 6.8.1999 (Exhibit B/6) the appellant never had any 12/ 18 grievance against the respondent and rather he showed love and affection for her. Exhibit C is an envelope to show that appellant had written to the respondent from a foreign country. Exhibit D shows that for some time respondent worked with Sahara India and was given certificate of competence and good character in July 1996. Exhibit D/1 and D/2 are letters dated 16.1.2001 and 7.4.2001 written by Honorary Secretary of a voluntary organization Surakasha. These letters support the case of the respondent that she was being maltreated at the hands of the in-laws and, therefore, the NGO also wrote for not transferring the appellant from Lucknow to Delhi. Exhibit E series are in the nature of certificates and testimonials from two doctors to the effect that only the respondent was bringing her new born child to them for treatment and during long period of over five years, the child's father was not at all concerned with the treatment of the child. Both Dr. Dipti Gopal and Dr. P. Dube are from Lucknow. Exhibit F is the same order-sheet dated 8.1.1998 which shows that the complaint petition before the ACJM, Lucknow was rejected because it was not pressed.

14. On careful consideration of cases of both the parties, the oral evidence adduced on their behalf as well as the documentary evidence, we have no hesitation in confirming the 13/ 18 judgment and decree of the learned Principal Judge, Family Court, Patna. We also find that the appellant has failed to make out a case of cruelty against the respondent wife. From the evidence, both oral and documentary, we find that it was the respondent who was treated badly and was even assaulted by father of the appellant at least once. Obviously, it is the desire of the respondent to continue with the matrimonial relationship with the appellant that she did not press the complaint petition filed against appellant's parents and she took no action against the appellant by lodging any compliant case against him. She did not depose against the appellant even to support the facts which were clear from letters and petitions filed much before the filing of the divorce case. Although it has been argued that her failure to support allegations against the appellant amounts to cruelty because her defence in the written statement should be treated to be false, we are not at all impressed by such submissions. The documentary evidence indicates clearly that the respondent received shabby treatment even from her husband, the appellant after she protested against assault by his father. Only because she does not want relation to sour further, she has chosen not to repeat those allegations in her oral deposition. In the facts of the case, such reluctance on the part of the respondent cannot be construed 14/ 18 as an act of cruelty. In our opinion, she has been rather kind to the appellant.

15. On behalf of the appellant reliance has been placed upon judgment of Delhi High Court reported in AIR 1986 Delhi 60 (Autar Singh v. Iris Paintal) and a judgment of Allahabad High Court reported in AIR 1988 All 239 (Aruna v. Ramesh Chand) in support of the law that if wife is responsible for writing false defamatory complaints and for unhappiness of husband by making his father and other relations unwelcome, such action will amount to cruelty. Both the said judgments were rendered in entirely different factual background. In the present case, in view of findings of fact given by the learned Principal Judge, Family Court and affirmed by us, the respondent had taken no action against the appellant and had written about her plight only to continue him at Lucknow, because she thought this could save their marriage. Her allegations as reflected in the contemporaneous

documents bear a ring of truth and are supported by the evidence adduced on her behalf in court. In the facts of this case, the aforesaid two judgments have no application. Reliance was also placed upon a judgment of the Supreme Court in the case of Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511 for a submission that mental cruelty leading to irretrievable breakdown 15/ 18 of marriage may warrant a grant of divorce. In that case, the findings of fact were to the effect that the husband had been subjected to grave mental cruelty. In the present case, the husband has failed to make out any case of cruelty. The fact that his father has also not come forward to deny the allegation of assaulting the respondent and no other witness has come forward to support his case clearly distinguishes this case and we find that the aforesaid judgment is not at all applicable to the case at hand.

16. On behalf of the respondent reliance has been placed upon judgment of the Supreme Court in the case of Vishnu Dutt Sharma v. Manju Sharma, (2009) 6 SCC 379, in support of a proposition that irretrievable breakdown of marriage is not a permissible ground for grant of divorce under the Hindu Marriage Act. There can be no quarrel with this proposition. Further, in our considered view, the marriage in the present case has not broken down irretrievably because the rot in the relationship is not between spouses but between the respondent and her father-in-law on account of an unfortunate incident which was not taken quietly by the respondent. Reliance has been also placed upon a judgment of the Supreme Court in the case of Neelam Kumar v. Dayarani, reported in II (2010) DMC 198 (SC) in support of the proposition that if a party to a marriage, by his own conduct brings 16/ 18 relationship to point of irretrievable breakdown, he/ she cannot be allowed to seek divorce on ground of breakdown of marriage because that would amount to giving someone benefits of his/ her misdeeds. In our considered view, the situation in this case is somewhat similar because in the present case also no case of cruelty is made out against the respondent and she has not contributed in any way to alleged breakdown of marriage.

17. For all the aforesaid reasons, we find no merit in this appeal and it is accordingly dismissed.

18. Before parting with the matter, as indicated earlier IA No.4825 of 2011 filed on behalf of respondent under Sections 24 and 26 of the Hindu Marriage Act has to be considered. The respondent, on account of a concession made on behalf of the appellant was allowed interim maintenance of Rs.7000/- per month for herself and her minor son vide order passed in this appeal on 13.9.2010. At that time the appellant had also agreed to pay a sum of Rs.20000/- to meet the educational needs of the minor son. The present IA could not be taken up earlier because of strong probability of amicable settlement of the dispute. But it was recorded that all the pending petitions shall be considered at the stage of final hearing. The respondent has pleaded that the appellant is a gazetted officer in the Central 17/ 18 Public Works Department in the Union of India and is presently holding the post of Superintending Engineer and is drawing in total Rs.1,08,000/- approx. per month. She has also pleaded that she has been deserted by the appellant since June 2000 and she is in need of finances to maintain herself and her son who is to get higher education as he has passed class X in the year 2011 and is admitted in Class XI in Loyala High School, Patna. She has disclosed that she received interim maintenance of Rs.3300/- per month till May 2009 when the matter was pending before the court below. She has given details that she requires a sum of Rs.35000/- per month for maintaining herself and her son and to take care of heavy burden of the studies of her son. She has also disclosed that for the cost of litigation she should be granted

Rs.50000/- in lump sum.

19. In view of the aforesaid facts not being controverted, the prayer made in the said IA is allowed. From the date of passing of this order, the respondent would be entitled to Rs.25000/- per month towards her maintenance and she would also be entitled to receive an amount of Rs.10000/- per month for her minor son till he is dependent. Thus, in total the appellant shall pay maintenance of Rs.35000/- per month to the respondent for her maintenance as well as maintenance of her minor son. The 18/ 18 maintenance claim as given in the IA No.4825 of 2011 is allowed to the aforesaid extent.

20. The appeal is dismissed with costs quantified as Rs.25000/- payable by the appellant to the respondent within two months.

(Shiva Kirti Singh, J) I agree.

(Vikash Jain, J) sk/ AFR