

Madhya Pradesh High Court

Rajesh Gupta vs Prabha Gupta on 20 May, 2006

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Bench: D Misra, R Jha

ORDER Dipak Misra, J.

1. In this appeal preferred under Section 19 of the Family Courts Act, 1984, the appellant has called in question the presentableness of the judgment and decree dated 15-3-2005 passed by the learned Presiding Judge Family Court, Bhopal in Regular Civil Appeal No. 39-A/2003.

2. The respondent filed an application under Section 13(i-a) and (i-b) of the Hindu Marriage Act, 1955 (for brevity 'the Act') seeking divorce on the ground of cruelty and desertion. The case of the respondent before the Family Court was that the marriage between the plaintiff and the defendants was solemnized according to Hindu rites on 22-11-1991 at Bhopal. At the time of marriage the defendant-husband was working as Assistant Engineer under the Madhya Pradesh Electricity Board at Sehore. After entering into the wedlock the defendant-husband used to up-down between Bhopal and Sehore for a period of one and a half year and thereafter he started staying at Sehore. At the time of marriage, as set forth, the dowry in shape of Articles valued at rupees one and a half lac alongwith some amount of cash and gold were given. With the passage of time the relationship between the plaintiff and the defendant got embittered and with the efflux of time the un-cordial and estranged relationship transformed itself to violence inasmuch as the defendant-husband started assaulting wife. As pleaded, the treatment was non-gently and the abuses were hurled at the wife stating that as an Engineer he deserved the grant of Rs. 10 lacs towards dowry. The mother-in-law at no point of time intervened. On the contrary, she used to aggravate the situation by giving taunting remarks. Apart from the cruel treatment meted out to her she was not allowed to go to her matrimonial home and on a query being made she used to be treated with extremely bad. It was told to her that on payment of dowry of Rs. 10 lacs everything would come in order. After expiration of year and half during her stay with him at Sehore the treatment of the husband became more cruel and on 13-11-1994 the defendant-husband assaulted her and drove her off from the house stating that until payment of dowry was met with she would not be allowed to stay with him. It was pleaded that on the date she was driven off the house she was having a fast because it was 11th day of Lunar Month and was also unwell. The defendant asked her to leave the house failing which she would be done to death. Being disturbed she cried a loud which attracted the attention of the neighbours who informed her parents and eventually on the arrival of her father and brother the plaintiff apprised them about the conduct of the defendant and under those circumstances she was compelled to leave the matrimonial home at Sehore. Because of this reason she has been compelled to stay in her parental home from 19-11-1994 and despite endeavour made by the parents and brother the defendant had shown total disinclination to take her back. On these grounds a decree for divorce was sought before the Family Court.

3. A written statement was filed by the defendant-husband contending, inter alia, that the plea of payment of dowry was a myth inasmuch as the proposal for marriage was initiated by the elder sister-in-law of the plaintiff, Poonam Agrawal, and at that juncture when the father of the plaintiff expressed his impecunious condition his mother in categorical and unequivocal manner had stated

that her family members and she were totally averse to the dowry system. As setforth, there was no demand of dowry. The father of the plaintiff was a Class III employee in BHEL and the plaintiff was working as a Lecturer in Pratibha Higher Secondary School in the consolidated pay of Rs. 500/-. Under these circumstances at the time of solemnization of the marriage some household Articles which are customary in nature were given by her parents.

4. A further stand was putforth that the mother-in-law had treated the wife of the defendant not as daughter-in-law but as her own daughter and the question of ill-treatment does not arise. There was no untoward incident that had any connectivity pertaining to dowry. The defendant never misbehaved with the plaintiff. Though he was posted at Sehore, to facilitate the meeting of the plaintiff with her parents he stayed at Bhopal for a year and a half. The plaintiff used to visit her parent either herself or along with defendant. It is also put forth that the father of the plaintiff availed the financial assistance for the purpose of marriage of his younger daughter. The plaintiff used to quarrel in this regard and, therefore, under these circumstances the defendant used to give money from time to time which she used to give to her father. With the efflux of time the demand increased and the defendant was unable to meet such demand and when the demands were not met with, the wife used to give threat that she would defame him. Because of such situation he shifted from Bhopal to Sehore but the change of place did not bring any change in the behaviour of the plaintiff. She had a grievance that Sehore is a small place and there was no place to go and no market to purchase things. Whenever she came to Bhopal from Sehore she directly used to come directly to her parents' home. On 12-10-1994 at the request of the plaintiff, the defendant husband left her in her parental home. After about three days she informed him on telephone that marriage of her younger sister has been fixed and a sum of Rs. 1 lac was needed for her marriage. When the defendant expressed his inability to satisfy the said demand the plaintiff refused to go with her to Sehore. The plaintiff stayed at Bhopal for almost 12 days but it had no impact. She even had not come to Sehore till 23-10-1994, i.e., the day of 'Karvachouth'. She expressed her willingness to go Sehore and accordingly on 24-10-1994 the defendant brought the plaintiff from Bhopal to Sehore. Again at Sehore the plaintiff reiterated the demand of Rs. 1 lac till 'Dev Vthni Cyaras'. On 13-11-1994, she again made demand for said sum and on inability being expressed she abused and closed the doors of bedroom and threatened to commit suicide. Under such circumstances, the defendants threatened her that if she did not open the door he would call the police. Thereafter she opened the doors but she had removed 'Bindi', rubbed her vermilion and broken all the bangles and threatened the husband-defendant that she would tell the neighbours that she had been assaulted. Eventually she left the house. When the plaintiff-wife did not come for long, a search was made for her and ultimately it was found that she was sitting in the house of the Executive Engineer. After sometime the father and brother of the plaintiff reached there and she alongwith them left for Bhopal. Thereafter, she had not expressed her willingness to live with him and a threat was given for falsely implicating the defendant in a case of cruelty and dowry demand. She used to make false allegations and give threats for making report at the police station. Under such circumstances it was not possible for the defendant to bring the plaintiff to his home. It was further pleaded that he neither ill-treated the plaintiff nor did he ask her to leave the house. The plaintiff herself without any rhyme or reason, refused to live with him. He further pleaded that if the plaintiff-wife accepts that she has made false allegations, he is ready to accept her and keep her with him.

5. Learned Family Judge on the basis of the pleadings of the parties framed four issues and on the basis of the evidence brought on record passed a decree for divorce on the ground desertion.

6. We have heard Mrs. Shobha Menon, learned Senior Counsel for the appellant and Mr. Sanjay Agrawal, learned Counsel for the respondent.

7. It is submitted by Mrs. Shobha Menon that the finding recorded by the learned Family Judge with regard to desertion is not, based on proper appreciation of the evidence brought on record and, therefore, decree for divorce passed against the husband is totally unsustainable and vulnerable. The learned Senior Counsel has further submitted that the question of desertion is to be proved but the same having not been proved in the obtaining factual matrix, the decision arrived at by the Court below deserves to be set aside.

8. Mr. S.K. Agrawal, learned Counsel appearing for the respondent has submitted that the finding recorded by the learned Family Judge is absolutely impeccable and founded on proper appreciation of the evidence and hence, does not warrant any interference. It is urged by him that on studied scrutiny of the materials brought on record would lead to an inevitable conclusion that the husband had really never wanted the wife to remain with him and there was desertion and hence, the conclusion arrived at by the learned Family Judge is totally acceptable. Mr. Agrawal has further canvassed that the husband and the wife have been living separately for almost a decade and the marriage has become irretrievable and on that score the judgment of the Court below is also non-interferable.

9. To appreciate the obtaining factual matrix in proper perspective it is necessary to refer to certain decisions in the field. In the case of *Chelan Das v. Kamla Devi* 2001 (3) Supreme 403, the Apex Court observed that institution of Marriage occupies an important role to play in the society in general and matrimonial matters are matter of delicate human and emotional relationship which demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well.

10. In the case of *Jhonson M. Joseph @ Shajoo v. Smt. Aneeta Jhonson* 2004(5) M.P.H.T. 410 : 2003(2) MPLJ 577, it has been stated thus:

18. in *A.P. Alwar v. A.B. Sri Devi* , the ingredients of desertion have been stated and it has been held that it includes wilful neglect of the petitioner by the other party to the marriage. Therefore, for the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly, two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petition for divorce bears the burden of proving those elements in the two spouses respectively and their continuance throughout the statutory period.

11. In *Saroj Kumari v. Suresh Kumar* 1989 (2) MPWN 120, R.C. Lahoti, J. (as his Lordship then was) had taken note of the fact that the parties had been living separately from each other at least for a period of five years and the marriage between the parties had broken down irretrievably and both the spouses had made serious allegations against each other touching their marital relationship. His Lordship further expressed the view that facts and circumstances of the said case would only lead to, an irresistible conclusion that the marriage between the parties had broken down and the parties could no longer be expected to live together as husband and wife,

12. In *Rajendra Agarwal v. Smt. Sharda Devi Agarwal* 1992 JLJ 289, this Court relying on the decision rendered in the case of *Saraj Rani v. Sudarshan Kumar Chadha* , expressed the view as under:

After such a long lapse of time, now there appears to be hardly any possibility of the husband and wife settling their matter amicably and coming closer to live together. The essence of marriage is sharing of common life, all the pleasures so also the sorrows and sufferings. Living apart for a fairly long period, is the negation of such sharing. This situation may serve as an additional justification for granting a decree of divorce, as the continuance of marriage tie may not subserve any social good.

13. In *Chanderkala Trivedi (Smt.) v. Dr. S.P. Trivedi* , a two Judge Bench of the Apex Court expressed the view as under:

...we are satisfied that the marriage is dead and the findings of fact cannot be set aside by this Court except that the appeal can be sent back to the Division Bench to decide it again which would mean another exercise in futility....

14. In the case of *B. Bhagat v. D. Bhagat (Mrs.)* . Their Lordships expressed the view that the marriage between the parties had broken down irretrievably and there was no chance of their coming together or living together again and under those peculiar features the marriage between the parties should be dissolved under Section 13I(i-a) of the Hindu Marriage Act.

15. In *Adhyatma BhattarAlwar v. Adhyatma Bhattar Sri Devi* , the Apex Court in Paragraph 11 of the judgment referred to case of *Sanat Kumar Agarwal v. Nandini Agarwal* , stating that it is well settled that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case and those facts have to be viewed as to the purpose which is revealed by those facts or by conduct and expression of intention, both anterior and subsequent to the actual act of separation. The Apex Court referred to the case of *Chetan Dass v. Kamla Devi* , wherein it was held that the offer made by the husband was not sincere and did not deserve to be seriously considered,

16. In the case of *Parveen Mehta v. Inderjit Mehta* , in Paragraph 24. Their Lordships expressed the view as under:

24. As noted earlier, the parties were married on 6-12-1985. They stayed together for a short period till 28-4-1986 when they parted company. Despite several attempts by relatives and well wishers no

conciliation between them was possible. The petition for the dissolution of the marriage was filed in the year 1996. In the meantime so many years have elapsed since the spouses parted company. In these circumstances, it can be reasonably inferred that the marriage between the parties has broken down irretrievably without any fault on the part of the respondent. Further, the respondent has remarried in the year 2000. On this ground also the decision of the High Court in favour of the respondent's prayer for dissolution of the marriage should not be disturbed. Accordingly, this appeal fails and is dismissed.

17. Recently, in the case of *A. Jayachandra v. Aneel Kaur*, in Paragraphs 16 and 17, it has been ruled thus:

16. The matter can be looked at from another angle. If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct, In the instant case, after filing of the divorce petition a suit for injunction was filed, and the respondent went to the extent of seeking detention of the appellant. She filed a petition for maintenance which was also dismissed. Several caveat petitions were lodged and as noted above, with wrong address. The respondent in her evidence clearly accepted that she intended to proceed with the execution proceedings, and prayer for arrest till the divorce case was finalised. When the respondent give priority to her profession over her husband's freedom it points unerringly at disharmony, diffusion and disintegration of marital unity, from which the Court can deduce about irretrievable breaking of marriage.

17. Several decisions, as noted above, were cited by learned Counsel for the respondent to contend that even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases, it has been categorically held that in extreme cases the Court can direct dissolution of marriage on the ground that the marriage had broken down irretrievably as is clear from Para 9 of *Shyam Sunder* case. The factual position in each of the other cases is also distinguishable. It was held that long absence of physical company cannot be a ground for divorce if the same was on account of the husband's conduct. In *Shyam Sunder* case, it was noted that the husband was leading adulterous life and he cannot take advantage of his wife shunning his company. Though the High Court held by the impugned judgment that the said case was similar, it unfortunately failed to notice the relevant factual difference in the two cases. It is true that irretrievable breaking of marriage is not one of the statutory grounds on which Court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long-drawn legal battle, directed in those cases dissolution of marriage. But as noted in the said cases themselves, those were exceptional cases.

18. Yet in another decision rendered in the case of *Durga Prasanna Tripathy v. Arundhad Tripathy*, the Apex Court took note of the fact that fourteen years had elapsed since the husband and the wife had been separated. Their Lordships referred to the case of *Anjana Kishore v. Puneel Kishore*, and eventually in Paragraph 28 expressed thus:

28. The facts and circumstances in the above three cases disclose that reunion is impossible. The case on hand is one such. It is not in dispute that the appellant and the respondent are living away for the last 14 years. It is also true that a good part of the lives of both the parties has been consumed in this litigation. As observed by this Court, the end is not in sight. The assertion of the wife through her learned Counsel at the time of hearing appears to be impractical. It is also a matter of record that dislike for each other was burning hot.

19. Submission of Mrs. Menon, learned Senior Counsel for the appellant is that mere efflux of time or separation for a long period cannot be a ground for passing a decree for divorce as such a ground has not been prescribed in the statute. The aforesaid submission need not be dwelt upon in the case at hand since the obtaining factual matrix clearly expositis that the husband had deserted the wife, for no evidence has come on record that he ever made genuine efforts and sanguine endeavour to bring back the wife. The learned Family Judge has ascribed cogent reasons in this regard and we perceive no reason not to concur with the same. The factum of cruelty has not been proved but facet of desertion has been writ large. The post separation conduct of the husband is really not commendable. A decade has elapsed. Efforts for reconciliation have miserably failed. Be it noted that his Court had made an effort to bring the parties together. It failed. The husband-appellant offered to take back the wife. It does not require Solomon's wisdom to decipher that the offer was mechanical, bereft of emotion. The incompatibility was obvious. The time has taken its toll. It has irrefragably contributed to the uncementing factor. Their natural affinity has been scaled. Their feeling for each other has been frozen. A woman may not enjoy 'domestic magistracy' but indubitably she can expect to be treated with dignity. Life without dignity is sans soul.

20. Marriage is an institution which cannot be lightly viewed. It has the fundamental purpose of establishing an orderly society. It has a real role to curb anarchy. It saves the Homo sapiens from the tyranny of sex. All efforts are to be made to unite both the spouses. But, a pregnant one, as mercy cannot have all the balm to heal, a partner to marriage cannot have the potentiality to tolerate beyond a particular level. When cracks occur in a cementing factor and there is real impasse, it is an exercise in futility to usher in a healing touch. If either of the two feels for a decade that marriage solemnised between the two has been atrophied to a marriage of one and one alone, it is dead and not likely to rise a phoenix. We are so convinced in this case.

21. Consequently, the appeal, being devoid of merit, stands dismissed. There shall be no order as to costs.