

MANU/RH/0892/2005



Equivalent Citation: 2005(45)CivilCC(RAJASTHAN)

IN THE HIGH COURT OF RAJASTHAN

D.B. Civil Misc. Appeal No. 137 of 1996

Decided On: 05.12.2005

Appellants: **Smt. Durga Devi**
Vs.
Respondent: **Shri Narsingh Dass**

Judges/Coram:

Rajesh Balia and R.P. Vyas, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Mr. C.S. Kotwani

For Respondents/Defendant: Mr. Shailendra Kala

Subject: Family

Cases Referred:

- V. Bhagat vs. Mrs. D. Bhagat MANU/SC/0155/1994



Disposition:

Appeal Dismissed

Citing Reference:

Vijay Kumar Ramchandra Bhate v. Neela Vijay Kumar Bate	Discussed
A. Jayachandra v. Aneel Kaur	Discussed
V. Bhagat vs. Mrs. D. Bhagat MANU/SC/0155/1994	Discussed

JUDGMENT

1. This appeal is directed against the judgment of Family Court, Jodhpur passed in civil original case No.71 -A/88 allowing the application under Section 13 of the

Hindu Marriage Act filed by respondent-husband for dissolution of marriage.

2. The brief facts of the case are that the marriage between the parties took place

according to Hindu rites on 31.1.1981 and they lived together until end of 1974.

3. The application for dissolution of marriage was filed by respondent Narsingh Das on 27.5.1987 inter alia on the ground that wife has left the matrimonial home since October, 1974. She was away at her father's house for the delivery of child as per custom and she gave birth to a male child in January, 1975. Notwithstanding the applicant went to bring her, she did not come back to her matrimonial home. After 2-3 months, applicant again went to bring her but she declined to come. In this manner, it was stated that at the time of filing application, husband and wife were living separately for last about 12 years.


4. Another ground for dissolution of marriage was alleged cruelty practiced by wife by way of mental cruelty. It was stated that she lodged false complaint against the brother of husband for outraging her modesty, which case resulted in his acquittal. She also lodged a false complaint to the Superintendent of Police, Banner on 1.10.1976 alleging conspiracy and mis-appropriation of her ornaments by the applicant and his two brothers, which case also resulted in acquittal of the accused. Thus, by her conduct, serious injury has been caused to the reputation of the applicant and members of his family on false allegations, which has caused mental agony. These allegations were also taken in maintenance application under Section 125 Cr. P.C. which was filed by the wife.

5. In reply while wife admitted that matrimonial company continued until 1974, she denied to have lodged any complaint of outraging her modesty by her husband's younger brother, but such allegations were found in her application under Section 125 Cr. P.C. which was presented on 18.12.1976. According to her, the dispute between husband and wife started in January, 1975 itself. She admitted in cross-examination that incident of misbehaviour by her brother-in-law Sughan Chand took place while she was residing at Jodhpur. Shri Chhanwar Lal-A.W.3 in his statement denied that while applicant and his brother Sughan Chand were living as tenants in his house, he ever heard of such incident. This gave credence

to the assertion made by the husband that she has made baseless allegations against members of his family which affected him and his family badly. In her complaint lodged against her husband and his brothers for having committed offence under Section 406 IPC qua her property was also found to be groundless by the learned Sessions Judge, Balotra. Such allegations about criminal conduct attributed to the husband were also found to be groundless. Thus, two grounds of cruelty pleaded by the husband stood proved on record.

6. It is well settled by the decisions of Supreme Court that leveling baseless allegations against husband imputing criminal activity on his part affects adversely the reputation of husband and amounts to mental cruelty.

7. In this connection, reference may be made to V. Bhagat v. D. Bhagat reported

in MANU/SC/0155/1994  : 1994 (1) CCC 558 (S.C.): 1994 (1) SCC 337, wherein, husband has sought divorce against the wife alleging adultery. In written statement the wife alleged that husband was suffering from mental hallucination; that his was a morbid mind for which he needs expert psychiatric treatment; and that he was suffering from paranoid disorder. These facts were sought to be proved in evidence. Considering that the mental cruelty in Section 13(1)(I-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other and the parties cannot reasonably also be expected to live together or that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party, the Court held that though the husband has failed to prove the allegations against wife, but the counter allegations made by wife against the husband certainly constituted mental cruelty of such a nature that the husband cannot reasonably be asked to live with the wife thereafter.

8. The principle was reiterated in Vijay Kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate reported in 2003 ACJ 677 (S.C.): 2003 (2) CCC 487 (S.C.): AIR 2003

SCW 2530, where allegations made by husband in written statement branding the petitioner wife as an unchaste woman, keeping extra marital relations were held to be grave assault on the character, honour, reputation, status as well as the health of the wife. The Court found that viewed in the context of an educated Indian wife and judged by Indian conditions and standards, the allegations amounted to worst form of insult and cruelty to be sufficient by itself to substantiate cruelty in law. The claim of wife on the basis of allegation made in the written statement was allowed. The Court went on to explain that even recalling such allegations by filing application for amendment do not wipe out completely all those allegations for all purposes.

9. The same view has been stated by the Supreme Court in a very recent decision in case of *A. Jayachandra v. Aneel Kaur* reported in 2005 ACJ 318 (S.C.) : 2005 (1) CCC 402 (S.C.) : AIR 2005 SCW 163, in which finding that when evidence showed that wife asked her husband to do certain things casting doubt on reputation, character and fidelity of her husband, it amounted to cruelty. To add to these allegations, after filing of divorce petition, the respondent sought detention of her husband for alleged disobedience of injunction orders shows irretrievable breaking of marriage and husband cannot be asked to continue to live with her notwithstanding the grounds taken in the petition may not have been made out.

10. In this connection, it may be noticed that it has also come on record that applicant's brothers remained in police custody for some days due to aforesaid complaint lodged against them. The fact that husband and wife are living separately since 1974 is not seriously disputed. The reconciliation efforts by the learned trial Judge as well as before this Court have not fructified so much so notwithstanding enough time was granted to appellant, she has not chosen to appear in person.

11. As on today, husband and wife are living separately for almost 30 years and wife has shown little interest in reconciliation efforts, which goes to show that relationship between husband and wife has broken up irretrievably and on the

basis of allegation of cruelty and attempt of wife to see that husband and his brothers remain in jail, in which she partly succeeded makes the reconciliations remote possibility.

12. In these circumstances, we are in agreement with the learned Judge, Family Court, Jodhpur that the instance of cruelty alleged by the husband in his application stands proved. On scrutiny of evidence before us, it is clear that desertion by wife of her matrimonial home without just and reasonable cause since 1974 also stands proved.

13. In that view of the matter, we do not find any force in this appeal. The same is hereby dismissed.

No costs.

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