

@page-SC285

AIR 2015 SUPREME COURT 285
SUPREME COURT
 (From : Madras)

SUDHANSU JYOTI MUKHOPADHAYA , J. and PRAFULLA C. PANT, J.

Civil Appeal No. 9036 of 2014 (arising out of S.L.P. (C) No. 25056 of 2012), **D/-22-9-2014**

Vidhya Viswanathan v. Kartik Balakrishnan

Hindu Marriage Act (25 of 1956), S.13- Divorce - Mental cruelty - Refusal to have sexual intercourse for considerable period by wife - Amounts to mental cruelty - Husband entitled to decree of divorce - In facts and circumstances husband directed to pay one time lump sum amount of alimony.

(2007) 4 SCC 511, Followed.

(Paras 1214)

Cases Referred

(2007) 4 SCC 511 (Foll.)

AIR 2006 SC 1662:2006 AIR SCW 1585

Chronological Paras

12

13

Judgement

1.PRAFULLA C. PANT, J. :-Leave granted.

2.This appeal is directed against the judgment and order dated 13.2.2012 passed in CMA No.2862 of 2011 by the High Court of Judicature at Madras whereby the said Court has allowed the appeal filed by the husband under Section 19 of Family Courts Act, 1986, and dissolved the marriage between the parties.

3.Brief facts of the case are that the appellant, Vidhya Viswanathan got married to the respondent, Karthik Balakrishnan on 6.4.2005 in Chennai following the Hindu rites. After the marriage, the couple went to London where the respondent (husband) was working, and they lived there for some eight months. In December, 2005, the appellant and the respondent came back to India. However, the appellant (respondent) went back to England all alone, and his wife did not go there though her husband had purchased a return ticket for her. On 13.9.2008, the husband filed a petition under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 for dissolution of marriage. It is pleaded by the respondent (husband) that while the appellant was with him in London, she used to insult him. It is alleged by him that at times she used to get violent and hysterical. The husband further pleaded that even after his best efforts, the appellant did not allow him to consummate the marriage. It is further stated that in November, 2005 i.e. about seven months after the marriage the wife (the present appellant) fell sick, and she was taken to a Medical Specialist who diagnosed that she was suffering from tuberculosis. According to the husband, he provided the best possible treatment to his wife. After the couple came back to India in December, 2005, the wife stayed back in Chennai and continued her treatment. It is alleged by the present respondent (husband) that his wife used to send him e-mails which were derogatory and in bad taste. It is also alleged by the respondent that his wife refused to join his company even after his best efforts. With the above pleadings, the present respondent filed a petition for divorce before the Family Court, Chennai on the ground of cruelty.

4.The appellant contested the divorce petition, and filed her written statement. She denied the allegations made against her. She stated that she went with her husband to London with great expectations. She alleged that her husband and his mother did not treat her well. She admitted that she came back with her husband to India in December, 2005. She further pleaded that though the respondent purchased the return ticket for her but he himself instructed not to return to England without his permission. It is also stated by her that marriage could not be consummated for the reason that her husband wanted to have children after one or two years of marriage. She did not deny having sent e-mails but stated that she only responded to the respondent as he wanted divorce decree based on her

@page-SC286

consent. She admitted that she received legal notice from her husband but stated that the allegations therein are false. She prayed for counter-claim directing the respondent to restore the conjugal rights between the parties.

5.On the basis of the pleadings of the parties, the trial court framed the following issues:

"(1) Whether the petitioner/husband is entitled for divorce on the ground of cruelty?"

(2) Whether the respondent/wife is entitled for conjugal rights as prayed for in the counter-claim?"

6. The parties led their oral and documentary evidence before the trial court. The First Additional Family Court at Chennai, after hearing the parties vide its judgment and order dated 11.8.2011, dismissed the petition for divorce, and allowed the counter-claim of the wife. Aggrieved by said judgment and order the husband (Karthik Balakrishnan) filed an appeal (CMA No. 2862 of 2011 with M.P. No. 1 of 2011) before the High Court. The High Court after hearing the parties allowed the appeal, and set aside the judgment and order dated 11.8.2011 passed by the trial court. The High Court allowed the divorce petition, and dissolved the marriage between the parties. Hence, this appeal with special leave petition before this Court.

7. We have heard learned counsel for the parties, and perused the papers on record.

8. Admittedly, the appellant got married to respondent on 6.4.2005. It is also admitted that there is no issue born out of the wedlock. This Court has now to examine whether the High Court has rightly come to the conclusion or not that the husband was treated with cruelty by the wife, if so, is he entitled to decree of divorce.

9. On going through the evidence on record, we find that the husband (petitioner before the trial court), in his evidence has narrated in detail, the incidents of alleged cruelty suffered by him. The relevant paragraphs from the statement of the husband are being reproduced below:

" 7) the marriage was solemnized on April 6th 2005, as stated above. But quite surprisingly, the respondent was very moody did not speak at all throughout the wedding day. The respondent was not even interested to pose for photographs, along with me. What more worried me was that even for wedding lunch, the respondent had to be convinced to sit next to me to have lunch. Initially thought that this was because she was put in a new atmosphere. However, I could not realize that the respondent was not interested either in myself or the marriage itself.

xx xx xx xx

8) in spite of the above odd things, I was able to get a visa to UK for the respondent. I further submit that I had made extensive arrangements for the Honeymoon to Scotland. Even during the Honeymoon, the respondent was very moody, emotionless and abnormally quiet. I was at loss to understand as to what was hovering around in her mind. However, I was very patiently waiting on the fond hope that things would become normal in due course. However, all my dreams to lead a very happy married life with the respondent were shattered by the intolerable behaviour of the respondent. I further submit that after returning from Scotland to London, I took the respondent to various places so as to make her to become a normal woman, but was taken aback by her sarcastic remarks about the London city itself. The respondent was very lethargic, disinterested and showering lack of interest in any of the events. Only thereafter, I started thinking that the respondent was not interested in solemnizing the marriage itself.

xx xx xx xx

9)between April, 2005 to December 2005, I could infer that the respondent was always moody, throwing tantrums, showing faces openly, showing anger and hatred insulting me when myself and the

@page-SC287

respondent were alone and in front of others. The respondent reacted violently by getting aggressive and making sarcasm remarks or locking herself in the room and stopped talking for days together without any reason. When I questioned about the same, the respondent used to get even more aggressive and shout hysterically and thereafter would start crying. This behaviour became more and more frequent over the time and made it impossible to handle the respondent during such violent outbursts of anger and hatred. The respondent was totally unapproachable and this left me with a deep sense of anguish and material agony. The attitude of the respondent was becoming worse day-by-day, resulted in pulling of the days with the respondent became a nightmare.

xx xx xx xx

10).....the respondent did not show any intention at all in consummating the marriage. The respondent evinced no interest in having physical contact with me. A times, I myself had tried to have sexual relationship with the respondent as a normal husband would do. However, since the respondent showed no intention, I convinced myself that she would mend her ways. However, there was no attitudinal changes in her life.

xx xx xx xx

13)..... the respondent deliberately used to wake me up rudely sometimes by even kicking me when I was asleep and used to ask me to talk to her saying that she was getting bored. Without minding the respondent's abominable attitude, I would try to encourage the respondent as possible as I could. Further,

the respondent used to bang her head against the walls of the bedroom for no reason and when I asked the reason the respondent would deliberately remain silent, having me spending sleepless nights. This has caused great mental agony and torture to me when there was no fault on me.

XX XX XX XX

17).....during November 2005, the respondent fell sick with high fever. Despite the adamancy, not to take treatment, I took the respondent to a leading specialist who diagnosed that the respondent suffered from Tuberculosis and got months antibiotic course started in London.....

XX XX XX XX

18)..... In December 2005, I came down to Chennai with the respondent, took her to my family doctor, who referred the respondent to a top TB specialist. The doctor at Chennai also opined the same as that of the doctor in London and advised the respondent to continue with the antibiotic prescribed by the doctor in London.

XX XX XX XX

19).....I came back to London, after buying a return flight ticket to the respondent from Chennai to London for July 2006, presuming that the TB treatment at Chennai for the respondent would be completed by this time.

XX XX XX XX

20).....even though, I was in London, I used to get in touch with the respondent and used to send emails on the fond hope that my unconditional love would make the respondent change her mind and behaviour and make her correct herself. However, the respondent continued to act irritationally and showed anger in all the telephone calls by slamming down the receiver".

P.W.1 Karthik Balakrishnan (husband) who made above statement, was subjected to lengthy cross-examination but nothing has come out which creates doubt in his testimony.

10.The appellant Vidhya Viswanathan had also filed her evidence before the trial court, in the form of affidavit, and she also got herself cross-examined as D.W.1. She denied the allegations made by her husband but in cross-examination she admits that the marriage was not consummated. The relevant portion from her cross-examination is being reproduced below:

@page-SC288

" It is wrong to state that normally I used to hit the petitioner by my legs and wake him up and that I used to throw the objects on the petitioner and that through this I had harassed the petitioner physically and mentally. If it is asked that whether the marriage was consummated, no it is not. The petitioner said that we can beget the child after one or two years. I and the petitioner were close. As the petitioner joined the new job he was under stress and tension. The petitioner had thyroid infection frequently. The petitioner said that the starting of the matrimonial life shall be post-poned. It was not taken as an issue. After 8 months of the marriage, I became ill. Hence, I came to Chennai. It is wrong to state that there is no connection between thyroid infection, and the physical relationship and that I am adducing falsely.

XX XX XX XX

My passport is lying with me. It is correct to state that in the passport, a seal is made for visa. If it is asked when my U.K. visa would expire, it is for 5 years.

XX XX XX XX

Before my husband could file this case, I did not file any case for the restitution of conjugal rights. It is wrong to state that as I had no intention to live together, I did not file such a case".

11.The High Court while rejecting the explanation given by the wife as to why the marriage was not consummated observed as under:

" 44. It has to be further pointed out that while P.W.1 was cross-examined by the respondent, it has not been suggested to P.W.1 that he suggested to the respondent that they should have a child only after two years. Thus it appears that this explanation of the respondent for non-consummation of the marriage is only an afterthought. Even assuming for a moment that the appellant wanted to have a child only after two years that does not mean that the appellant and the respondent cannot and should not have sexual intercourse. Admittedly, both of them are well educated and there are so many contraceptives available and they could have used such contraceptives and avoided pregnancy if they had wanted. Xx xx."

12. Undoubtedly, not allowing a spouse for a long time, to have sexual intercourse by his or her partner, without sufficient reason, itself amounts mental cruelty to such spouse. A Bench of Three Judges of this Court in *Samar Ghosh v. Jaya Ghosh* (2007) 4 SCC 511 has enumerated some of the illustrations of mental cruelty. Paragraph 101 of the said case is being reproduced below:

"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 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, discommode or render miserable life of the spouse.

@page-SC289

(vi) 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.

(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 behaviour 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 sterilisation without medical reasons and without the consent or knowledge of his 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.

xx xx xx xx

The above mentioned illustrations, Nos. (viii) and (xii) given in *Samar Ghosh* case (supra), support the view taken by the High Court in holding that in the present case the wife has treated her husband with mental cruelty.

13. In *Vinita Saxena v. Pankaj Pandit* (2006) 3 SCC 778 : (AIR 2006 SC 1662 : 2006 AIR SCW 1585) regarding legal proposition on aspect of cruelty has made the following observations:

"31. It is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the

section. It is to be determined on whole facts of the case and the **matrimonial** relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

32. The word "cruelty" has not been defined and 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 and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the 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."

14.In view of the above principle of law laid down by this Court, and having considered the submissions of parties, and the

@page-SC290

evidence on record, we do not find any ground to interfere with the decree of divorce passed by the High Court on the ground of cruelty. However, we are conscious of the fact that the appellant, as stated by her, was doing a job before her marriage, and she (Vidhya Vishwanathan) has stated as D.W.1 that at present she is not doing any work. As such we think it just and proper to direct the respondent to pay to the appellant (wife) one time lump sum amount of alimony. We are of the view that in the facts and circumstances of the case keeping in mind the economic status of the parties, a direction to the respondent to pay Rs.40 lakhs (Rupees forty lakhs only) as one time alimony to the appellant, would meet the ends of justice, to which learned counsel for the respondent during the arguments stated that the respondent is ready to pay the same.

15.Accordingly, we dispose of this appeal affirming the decree of divorce granted by the High Court dissolving the marriage between the parties namely Karthik Balakrishnan and Vidhya Vishwanathan, with further direction under Section 25 of the Hindu Marriage Act, 1955 that the respondent shall pay to the appellant Rs. 40 lakhs (Rupees forty lakhs only) as a lump sum amount of permanent alimony, within a period of three months from the date of this judgment. No order as to costs.

Appeal Dismissed.
