

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE SIDE
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

FAT 265 of 2018

Preeti Singh
Vs.
Santosh Singh

Appearance:

For the Appellant : Mr. Soumik Ganguli, Adv.
Ms. Chandana Chakraborty, Adv.

For the Respondent : Mrs. Shohini Chakraborty, Adv.
Mr. Syed Julfikar Ali, Adv.

Judgment On : **18.10.2023**

Harish Tandon, J.:

The wife has filed the instant appeal assailing the judgment and decree dated 8th February, 2018 passed by the Court below dismissing an application for dissolution of marriage filed under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955.

The application for dissolution of marriage on the ground of cruelty was initiated by the wife alleging that the conduct and the behaviour of the

respondent/husband is such which amounts to cruelty. It is further alleged that the husband is a perverted man and made certain proposals which were not acceptable to the petitioner and having forced to undergo with such trauma, it is becoming impossible to live under one shelter. She further stated in the petition that though she gave birth to four children, three daughters and one son but unfortunately, the son died which makes respondent furious and started constant quarrelling and abusing which is unbearable. She further narrated the incident when the younger brother of the respondent sexually assaulted her but despite having reported to the mother-in-law and the respondent, the response was very casual that it is quite normal in the said society. She further stated that she is at the risk of danger being in the association of the respondent and the aforesaid act and the conduct tantamount to cruelty.

The respondent denied all such allegations in the written statement, it is categorically averred therein that the younger brother lives in Uttar Pradesh and never used to visit the place of abode of the present parties and, therefore, the allegation made in the plaint on the alleged incident is concocted and manufactured for the purpose of securing a divorce. It is further stated that the appellant grew a relationship outside the marriage institution with another person being the resident of the said locality and she was kidnapped by the said person and on the basis of an FIR lodged by the respondent she was recovered from the custody of the said person. Though the complaint was lodged as an FIR but ultimately on the basis of the statement made by the appellant, the investigating officer did not find

that the appellant was kidnapped by him as she voluntarily left matrimonial home along with him. It is categorically stated in the written statement that his family was all along happy with the three daughters who are still living with the respondent and the appellant never care to meet them as well since the day she left matrimonial home and started living with her parents. It is a specific stand of the respondent that he tried to bring the appellant on several occasions; even took the elder daughter along with him but there was a complete reluctance on the part of the appellant in restoring the matrimonial relationship. Lastly it is stated in the written statement that the respondent still bore love and affection towards the appellant and all along intended and still intending to live the happy conjugal life.

On the basis of the aforesaid facts discerned from the pleading the parties deposed in the matter. Interestingly, the elder daughter of the parties also deposed as the second witness of the respondent. We will be dealing with her deposition later on touching upon the veracity and the genuinity of the allegations made by the appellant not only in the pleading but also at the time of deposition.

The case is based upon the element of cruelty and, therefore, it would be the ardent duty of the Court to ascertain the concept of cruelty engrained in Section 10 and 13 of the Hindu Marriage Act, 1955.

Cruelty has not been defined in the said Act but from the various judicial pronouncements it imbibed within itself both mental and physical cruelty. The obvious reason for not defining the cruelty in the Act can be reasonably ascertained that the act of cruelty is of varied form and at times

what may constitute a cruelty in a particular case may not be so in the other more particularly, when the cruelty is founded upon a mental state of the parties. The well accepted connotation of cruelty in England is that an Act which would percolate a danger in the mind of the other and imbibing the sense of insecurity either from the conduct or otherwise that living under the one shelter would cause danger to life, limb and the health. It is thus a primary ingredient to constitute a cruelty under the matrimonial dispute that the conduct and the manner in which one of the spouses is being treated by the other is such to cause an apprehension in the mind of the other that living together shall be harmful and injurious. The other complex method of ascertaining the mental cruelty is because of different cultures, ethical and moral and the environment based upon a social and economic condition of the family. The act of cruelty which can be reasonably perceived in one case may not be a cruelty in the another case because of the disparity in the environment in which the parties have grown up.

The Apex Court in ***Parveen Mehta vs. Inderjit Mehta*** reported in **(2002) 5 SCC 706** has broadly summarised the basic principles on arriving at a conclusive decision that the act or the behaviour of one party constitutes a cruelty in the following:

“21. Cruelty for the purpose of Section 13 (1) (i-a) is to taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is

difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

In ***A. Jayachandra vs. Aneel Kaur*** reported in ***(2005) 2 SCC 22*** the Apex Court held that the cruelty may either be mental or physical and may sometimes be also intentional or unintentional. So far as the physical cruelty is concerned it can be reasonably ascertained from a tangible state of thing through a direct evidence but in case of a mental cruelty there is hardly any evidence coming directly and, therefore, it is an ardent duty of the Court before it arrived at the conclusion that the act of the other party amounts to cruelty on the basis of a mental process and the mental effect of the incidents in the following:

“11. The expression “cruelty” 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. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem

in determining it. It is a question of fact and degree. If it is mental, the problem present difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or 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. (See Shobha Rani v. Madhukar Reddi.).

12. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the

Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.”

In ***Naveen Kohli vs. Neelu Kohli***, reported in ***(2006) 4 SCC 558*** the Apex Court held:

“51. The word “cruelty” has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case. There may be instances of cruelty by unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. The allegation that members of the petitioner’s family are lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.”

It is axiomatic to discern the law enunciated by the Apex Court on the concept of cruelty in relation to a matrimonial dispute. The cruelty more particularly mental cruelty largely depends upon the custom, the environment and the mode of life which the parties are accustomed to on the basis of socio-economic conditions including the cultural and ethical value; above all the human values attached to their life. It would not be safe for a Judge to decide the act of cruelty on the basis of their own notion nor import his values which he acquired in his life both personal and

professional. The Court will attach importance to the cultural and human values of the parties depending upon the environment in the house where they are grown up and the culture and custom which they are accustomed to. Treating all human beings at par in relation to their behaviour may not be safe course as it varies from a man to man depending upon several factors which played importance in their life. Above all the most important ingredient to constitute a cruelty whether the act or the behaviour is such which is harmful, injurious to the mental health of the other spouse and percolating a sense of apprehension of danger in life while living together under one roof. We cannot overlook the radical changes in the society which is growing fast and capability and incapability to accept the behaviour of one, may be a factor depending upon a fact of a given case. It is more individual though have a remote nexus with the community, society and the environment of a home.

On the broad aspect of the law enunciated, we find it difficult to accept the act of the respondent constituting a cruelty in the instant case. We are also oblivion of the law that in the matrimonial case the decision is not restricted to the act of cruelty pleaded at the time of institution of the suit but can further be perceived from the unsubstantiated allegation made by the other party in defence amounting to stigmatising the character of a person. The wife has narrated the incident relatable to the brother of the husband but could not prove with a conclusive evidence in her deposition. It is a categorical stand of the respondent that the said brother never used to visit the place of abode of the parties which is further corroborated by the

elder daughter of the parties in her evidence as second witness of the respondent. In Indian culture, the child is more emotionally attached to the mother and will not come up to say something which is not true. The credibility and the reliance upon the deposition of the daughter is more in comparison to the deposition of the litigating parties in a matrimonial proceeding.

It leads to another issue when the respondent disclosed the fact that the appellant was kidnapped by a neighbour and the police recovered her from his custody. Importantly the evidence of the daughter is to be seen in this regard where she disclosed the fact that the appellant grew a relationship with another man. She further disclosed that the appellant restrained the said daughter not to disclose the said fact as and when the said person comes in the house of residence of the parties in absence of the respondent. The aforesaid statement in deposition goes uncontroverted in the cross-examination at the behest of the appellant. Furthermore, the respondent never stigmatised the appellant for the aforesaid relationship as the FIR was lodged for kidnapping of the appellant by the said person which resulted into a closure on the basis of the statement of the appellant. Such steps taken by the respondent cannot be construed to have impacted the character or the person of the appellant and, therefore, cannot constitute cruelty.

Section 13 (1) (i-a) of the Hindu Marriage Act postulates that the decree for dissolution of marriage can only be granted on the ground of cruelty perpetrated by the other side. The moment the act of cruelty has not

been proved against the respondent therein, there is no infirmity and illegality in the judgment of the Trial Court in dismissing the said application. Apart from the same, the respondent despite the revelation of the said fact by the daughter still bore love and affection towards the appellant and categorically stated in the written statement as well as deposition that he is still ready and willing to live a happy conjugal life. Such being the facts discerned from the respective stand of the parties, we do not find any ground warranting interference with the impugned judgment and decree.

The appeal is thus dismissed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)