

Before M.M.S. Bedi & Anupinder Singh Grewal, JJ.

SATVINDER SINGH CHAUDHARY—Appellant

versus

RITU JAGLAN—Respondent

FAO-M No. 323 of 2009

October 03, 2018

Hindu Marriage Act, 1955—S.13(1)(i.a)—Cruelty—Prolonged Separation—Counter allegations—Allegations made by appellant husband not serious enough—Unreasonable expectations from wife bring unhappiness on account of non fulfillment of the same—Matrimonial cruelty should be such that it is dangerous for either spouse to remain in company of other—Act is based on “Fault theory” and not on “Break down theory” for creating ground of Divorce—Appeal by husband against wife to seek Divorce on grounds of cruelty dismissed.

Held, that allegations are not serious and could have been resolved by mediation at that time but no attempt seems to have been made for any such mediation by the family of the appellant. The over sensitivity expressed from the allegations by the appellant is indicative of the fact that in the male dominated society of India sometimes unreasonable expectations from wife bring unhappiness on account of non-fulfilment of the same. It is settled principle of law that in order to constitute matrimonial cruelty the circumstances should be such that it is difficult and dangerous for a spouse to remain in the company of other.

(Para 12)

Further held, that if it is presumed that on account of prolonged separation by the parties it will not be feasible for them to reunite but the relief of divorce cannot be granted in the present case in view of the fact that legislation in its wisdom has framed Hindu Marriage Act on “fault theory” and “break down theory” has not been accepted for creating ground for divorce.

(Para 16)

Kanwaljit Singh, Sr. Advocate, with Abhinav Aggarwal, Advocate, *for the appellant.*

Vikas Singh, Advocate, *for the respondent.*

M.M.S. BEDI, J.

(1) This is an appeal filed by the husband against the judgment and decree dated 3.9.2009, dismissing his petition under Section 13 of the Hindu Marriage Act, against the respondent for dissolution of marriage by a decree of divorce on the ground of cruelty and desertion.

(2) The case set up by the appellant in his pleading is that the parties were married on 29.3.2004 at Karnal. No issue was born out of the wedlock. The appellant claimed to be highly qualified physician having a degree of M.D. to his credit. It was pleaded that the respondent was also having qualification of M.Sc. (Computer Science) with MCA. She was working as part time Lecturer at Kurukshetra and was preparing for NET exam for lecturership. Proposal of marriage was initiated in the month of November, 2003. The appellant pleaded that he was in search of a suitable girl and being a doctor was looking after the accidental injuries to his mother. The appellant has pleaded that the father of the appellant had desired the marriage to be a dowry-less marriage by taking only 5 persons in Barat on the lines of marriage performed by the elder brother of the appellant namely Sq. Leader Rajbir Singh Choudhary but at the instance of father of the respondent showing his reservations on the pretext that Shagun had to be received back from the friends, relatives and Biradari, insistence was made for bringing the Barat. It is pleaded that the engagement ceremony was held on 25.3.2004. Father of the respondent compelled the appellant and his father to accept Samsung T.V. brought by them. Few articles like gold chain, gold coin etc. were given to the appellant. The Barat consisting of 100 persons on 18.3.2004, reached the venue of marriage in Karnal at 10:00 P.M. when there was hardly left anything in the Pandal for Baratis. The phera ceremony was performed at the house of the respondent and after the said ceremony when the appellant along with his brothers and their respective wives had gone to the house of the respondent her father asked the elder brothers of the appellant to go out of the room in a harsh language and the elder brother of the appellant Sq. Leader Rajbir Singh Choudhary, was humiliated by requiring him to leave the room. The appellant and respondent had returned to the house in new Maruti LXI car which had already been purchased by the appellant and his father in the month of February, 2004 from their own resources. The respondent had come to the house of the appellant in the wee hours on the morning of 29.3.2004. At the time of Bidai, the father of the respondent had given Rs.11000/- as Kanyadan, Rs.101/- as Muklawa as shagun and few clothes and put a

list of dowry articles in the towel of shagun. Certain articles like gold ring, gold chain, panjeb and ear tops etc. were given by the father of the appellant despite the objection of the father of the appellant that nothing was required. It is pleaded that most of the said articles have now been taken back on 30.6.2004. The various instances to establish the cruelty have been mentioned in the petition which can be summarized as follows to avoid a voluminous judgment :-

(3) On 2.4.2004, Angiography test of the mother of the appellant had taken place. The respondent refused to take care of her mother-in-law stating that she was not a nurse. The respondent had insisted to go for honeymoon to Manali in the personal car despite the resistance of the appellant that he was not good at driving but the appellant's brother, his wife and kids had to accompany the couple for honeymoon as the brother of the appellant knows driving in the hills. The behaviour of the respondent was unwarranted. In May 2004, the respondent was adamant to attend a friend's marriage at Ambala and the respondent insisted to go by car. She did not introduce the appellant to anyone and she did not talk nicely to the appellant. The instance of visit to a movie '*Main Hoon Na*' has been referred to in the pleadings when the respondent behaved differently and did not accept the cold drink during interval. The respondent had to appear in the NET exam for which the books had been brought by the appellant. The respondent prepared for the exam but the father of the respondent blamed that the appellant and his family members had compelled the respondent to study intensively but the respondent remained a mute spectator while the appellant had been insulted. The respondent appeared for NET exam at Kurukshetra, in April 2004 and failed. She again appeared for the NET exam on 20.6.2004 and then on 25.6.2004, she again appeared in Agriculture Net Exam at NDRI, Karnal where she was taken in a car but she failed in both the exams. The respondent prepared breakfast for the appellant but father of the respondent demanded explanation from the father of the appellant as to why the respondent was compelled to prepare the breakfast. On 8.5.2004, the respondent refused to prepare tea for the guests claiming that she was not a maid and the appellant had to cut sorry figure before his parents for indifferent and unbecoming attitude of the respondent. Respondent used to tell the appellant that her astrologer had predicted her two marriages. She refused to have sexual relations with the appellant. On 28.6.2004, when the respondent was taken by the appellant to a restaurant for celebration, his mother also accompanied them. Father of the respondent had raised an objection as to why the mother of the

appellant had accompanied them. On 30.6.2004, the respondent had gone to Kurukshetra to collect her experience certificate accompanied by her brother namely Pardeep and thereafter, she left for her parental house for a period of one month after informing her parents-in-law in presence of one Ramdhari. The appellant has pleaded that on 31.7.2004, the appellant was called by the respondent at her house where mother of the respondent asked him to take her back on 1.8.2004. The appellant had gone to the parental house of respondent but the respondent put a condition for separate accommodation. In July 2004, the respondent joined as Lecturer on contract basis at D.A.V. College, Karnal, for which his father had helped her in getting employment. In August 2004, the appellant had gone to meet the respondent in her College but her behaviour in the College was rude for which he felt humiliated. In September 2004, the appellant met the respondent at NDRI, Karnal, where the respondent told that her father would call the appellant. On asking of the respondent's father, the appellant had visited her house where her father had behaved in a rude manner and insulted him. It is further pleaded in the petition for divorce that on 31.10.2004, on the occasion of 'Karva Chauth', the appellant received an SMS message from the respondent-wife. The appellant has urged in the petition that on 10.11.2004, he had been operated upon in PGIMS Rohtak and remained on leave from 9.11.2004 to 25.11.2004, where the respondent never visited nor she enquired about his health telephonically. On 19.12.2004, a Panchayat was convened at the house of the appellant where the father of the respondent demanded all the jewellery articles. On 23.2.2006, a Panchayat was convened at respondent's place where also the father of the respondent behaved rudely. On 24.2.2006, a legal notice was issued to the wife wherein she was asked to collect all her jewellery and dowry articles. A copy of the notice had been sent to S.P. Karnal as well as SHO, Police Station, Civil Lines, Karnal. The wife has sent reply to the said legal notice specifically mentioning therein that she would return back but insisted for separate residence. It was further pleaded that the respondent had deserted the appellant for a period of 2 years entitling him for a decree of divorce on the ground of desertion. It is urged that there has been '*animus deserendi*' and on the basis of above said pleadings, the appellant sought dissolution of marriage with the respondent.

(4) The respondent filed a detailed written statement taking up preliminary objections that there was no cause of action against the respondent and that the appellant wanted to get rid of her and was interested in the second marriage. He has tortured the respondent

mentally and physically. The behaviour of the family members of the appellant especially his parents, brother Rajbir and Suman wife of Rajbir was cruel and they had been taunting the respondent. It is pleaded that a very small incident has been given the colour of tutored facts just to create grounds of divorce. From the very beginning, wish of the appellant was that the respondent should be a Lecturer in a Government College and her appointment should be financed by the father of the respondent. The parents of the appellant had kept the respondent under psychic pressure that she should clear the NET exam and should also qualify Ph.D so that she can be appointed at the earliest. The parents of the appellant used to sit outside the room of the respondent keeping it locked from outside giving her curriculum of the day regarding her study hours. She was pressurised to attain Ph.D qualification or clear the NET exam off and on by the appellant and his parents. She was made to understand that in case she failed in NET or does not devote time to the study, she would be shunted out or divorced. All the allegations in the petition for divorce were denied. It was pleaded in the reply that the appellant needed a nurse and not a wife. Whenever, she wanted to visit her parents, friends or relations, her father-in-law never allowed her to visit them on the pretext that who would take care of her mother-in-law. The respondent used to apply medicines on the wounds of mother-in-law daily. Rs.14 lacs were spent on marriage. The list of articles given in the marriage, at the time of roka ceremony, engagement ceremony were pleaded. It was pleaded that funds were given to the appellant for car with which Zen Car was purchased in his own name. It was pleaded that the father of the respondent never interfered in the day to day life of his daughter and always respected the appellant and his family members. However, the in-laws of the appellant insulted her in presence of her relatives on the ground that sufficient dowry had not been given nor she is getting employment. Mother in law of the respondent accompanied her to Karnal on 30.4.2006. Thereafter, her mother took her to parental house on account of 'Teez' festival. It was denied if any condition was ever imposed by the father of the respondent. The respondent had always been ready and willing to reside with the appellant in her matrimonial house and her parents were always ready for her settlement in the matrimonial house. Respondent got a job in D.A.V. College, Karnal because of her qualifications and her father-in-law never helped her in getting the employment. She had been making frequent calls when the appellant was admitted in the hospital but her in laws had asked her not to call again and again. Panchayats were convened on 19.12.2004 and

11.3.2006, by the respondent side but neither the appellant nor his father attended the Panchayat on 11.3.2006. In fact, Rajbir Choudhary, brother of the appellant came present in said Panchayat. The respondent claimed that she had not filed any complaint against the appellant or his family members as she was always ready and willing to join the company of the appellant for which he was not interested.

(5) The petitioner filed a detailed replication reiterating the averments made in the petition for divorce.

(6) On the pleadings of the parties, the following issues were framed on 25.9.2004:-

1. Whether the respondent has treated the petitioner with cruelty after solemnization of marriage as alleged? OPP
2. Whether respondent has continuously deserted the petitioner w.e.f. 30.6.2004 onwards for a continuous period of more than two years prior to filing of the petition, as alleged? OPP
3. Whether the petition is not maintainable, as alleged? OPR.
4. Relief.

(7) Issue Nos.1 and 2 were decided against the appellant and in favour of the respondent observing that the appellant has filed a lengthy petition of 42 pages exaggerating the ordinary wear and tear of married life. The small incidents have been stretched unreasonably and that the appellant had not made any sincere efforts to bring back the respondent to the matrimonial home and made efforts only to create grounds for divorce. He has not treated the respondent in a proper manner as such, he cannot be granted advantages of his own wrong to claim that the marriage has irretrievably broken down. The lower Court observed that the respondent had not initiated any criminal proceedings against the appellant proving that she had no intention to snap ties with him or leaving the matrimonial home permanently. She has not raised any condition for joining her matrimonial home. On appreciation of evidence, the petition of the appellant was dismissed vide impugned judgment and decree dated 3.9.2009.

(8) Mr. Kanwaljit Singh, learned Senior Counsel appearing on behalf of the appellant - husband has submitted that the conduct of the respondent as an Indian wife has not been up to the mark and is beyond the expectation of a prudent family of a boy. He has drawn the attention

of this Court to the various circumstances from the inception i.e. starting from the period of 'Barat' till the respondent left the matrimonial home which are clearly indicative of the mental cruelty which has been caused by her to the appellant and his family members. He submitted that the marriage had taken place on March 28, 2004. It lasted only for three months when the respondent left the matrimonial home. The efforts of reconciliation were made by the appellant by telephoning her on July 31, 2004 and visiting her house on August 1, 2004 twice as admitted by the respondent in her cross-examination. Appellant had visited her college in August 2004 as pleaded and proved by him. The appellant also visited the house of respondent to bring her back in September 2004 when he was insulted. On December 19, 2004, the father of the respondent had come to the house of the appellant to take the belongings of the respondent i.e. her books, clothes etc. on the pretext that she had to appear in NET exam in the last week of December 2004 but her father had not sent the respondent to the matrimonial home. Attempt was made to convene a panchayat on July 30, 2009 and as per admission of the respondent and her mother RW3, they did not attend the panchayat. The appellant had told his father-in-law in the said panchayat that he had been transferred from PHC, Bamla to CHC Kaul, District Kaithal before 19.12.2004. On February 23, 2006, the panchayat from the village of the appellant had gone to the house of respondent to bring her back but the attempt was not successful. Main emphasis has been laid down by the Senior Advocate on the legal notice Ex.P7 dated February 24, 2007 which was sent by the appellant mentioning therein the convening of panchayats and the efforts made by him and requesting the respondent to come back. The said notice was replied on March 3, 2006 vide Ex.P17 wherein the respondent had expressed her unwillingness to live with the appellant at her matrimonial house. A perusal of Ex.P17 indicates that the respondent had insisted that she would come back in case the appellant would stay separately from his parents. Fed up with the conduct of the respondent, ultimately the appellant had to file divorce petition on August 14, 2006, when despite efforts having been made for 2 years the respondent had refused to return back. Counsel has drawn attention to the evidence produced on the record that from the inception of the marriage the appellant was persistently humiliated and insulted. Great emphasis was laid down by the learned counsel on the incident of mother of the appellant having undergone an angiography on April 2, 2004 at Batra Hospital, New Delhi when the respondent bluntly refused to take care of her by saying that she was not a nurse and did not care if

the mother of the appellant lives or dies. In April 2004, conduct of the respondent at Honeymoon was unkind and harsh and as per the evidence proved by the appellant on June 30, 2004 when the appellant was away to his duty, the respondent without his consent left her matrimonial house along with her belongings and went to her parental house along with her brother in presence of PW7. This fact has not been denied by the respondent. It was urged that her consistent absence from the matrimonial home is glaring evidence of desertion. The appellant claims that on January 21, 2005 when he was admitted for an operation in the hospital, the respondent never came to meet him which had caused mental cruelty to him. He has emphasized with the reply Ex.P-17 to the notice Ex.P7 which clearly reflects the intention of the respondent not to resume cohabitation.

(9) Mr. Kanwaljit Singh, learned Senior Counsel has also emphasized on the factors constituting mental cruelty in the present case and asserted that it is a case of irretrievably broken marriage as the parties have been living separately since June 2004 He referred to Annexures A to A-5 the documents which have come into existence during the pendency of the appeal and sought to produce them as additional evidence. These documents reflect that vide Annexure A-1, the respondent wife had filed a petition under Protection of Women from Domestic Violence Act, 2005, in which interim relief of maintenance and residence has been dismissed. Appeal was dismissed by the Additional Sessions Judge, Karnal vide Annexure A-2 dated July 6, 2016. An FIR was registered by the respondent but in cancellation report she submitted protest petition. Annexure A-3 is the FIR lodged by the father of the appellant in which respondent has been summoned along with her brother and mother in offences under Sections 323, 452, 506 IPC. The appellant has been suspended on August 16, 2016 vide Annexure A-5 on a complaint filed by the respondent. He urged that the lower Court had misread the evidence and wrongly dismissed the petition for divorce.

(10) On the other hand, counsel for the respondent, Mr. Vikas Singh, has urged that the respondent has leveled allegations that the respondent from the very inception had an intention to stay together but no attempt had been made by the appellant to resume cohabitation. Dowry articles were given to the respondent as admitted by the appellant while appearing as PW3 and his father as PW5 but the respondent had not filed any case against them for misappropriation of the dowry articles only because she wanted to save the marriage.

Clarification has been given by counsel for the respondent that the allegations of insufficient food for Barat are incorrect. RW1 has stated that both the brothers of the appellant were drunkard under the influence of liquor which is exhibited in CD Ex.R1 to R-3. The allegations regarding misbehavior at honeymoon at Manali was contradicted by arguing that the appellant has admitted that his brother along with kids and wife had accompanied in the Car which is sufficient enough to arrive at a conclusion that the allegations of misbehavior at Manali are false. Counsel for the respondent submitted that petty allegations of respondent having not accepted the cold drink during interval of a movie; adamant to attend friend's marriage at Ambala; respondent having failed in NET exam; she having not taken care of mother-in-law; she having refused to sex with the appellant; allegation of refusal to serve tea to the guests and having wrongly left the matrimonial home on June 30, 2006, were all based on whimsical attitude of the appellant whereas such allegations are not only false but do not constitute an act of cruelty or desertion. It has been urged that the respondent is still ready to join the company of the appellant but he is adamant. There has never been an intention of the respondent to desert but it is on account of wrong of the appellant that the respondent could not join the company of the appellant.

(11) We have carefully considered the contentions of learned counsel for the parties. Voluminous record has been perused with the assistance of counsel for both the parties. The appellant has tried his best to prove the allegations of cruelty and misbehavior as well as desertion as discussed hereinabove whereas the respondent wife has tried to establish that the allegations are petty instances of behavior of the respondent which would not in any manner constitute cruelty to an extent that it would warrant divorce. The respondent has tried to explain her presence in parents home after June 3, 2004 claiming that she had gone to her house for 'Teej' festival.

(12) We have gone through all the allegations of cruelty which includes the allegation of 'Barat' having been intentionally insulted on the date of marriage as no food was left for the Barat; the respondent having not attended the mother of the appellant on April 2, 2004; her misbehavior at honeymoon, her refusal to attend the marriage of friend of the appellant in May 2004; her having not accepted the cold drink during interval in a movie; she having failed in NET examination on June 20, 2004 despite the fact that the husband purchased books for her; the respondent having not prepared tea on May 8, 2004; the

objection of the father of the respondent having been raised on June 28, 2004 when the appellant had taken his mother to a restaurant to celebrate the birthday of respondent; the condition imposed by the respondent's father for separate accommodation from the parents; the respondent having been rude in August 2004 when the appellant had gone to her College to meet her; the appellant having been scolded by his wife in September 2004 at NDRI, Karnal and the father of the respondent having called the appellant where he had misbehaved with the appellant, the appellant himself being operated in PGI, Rohtak on November 10, 2004 for acute maxillary sinusitis with acute nasal polyps but the respondent having never visited him or inquired about him on telephone and despite legal notice Annexure P-7 having been sent, the respondent having refused to join.

(13) We have considered each and every allegation individually and seen cumulative effect of such allegation and are of the opinion that all the allegations pertain to a short period of few months after the marriage upto the period after June 30, 2004 since when the respondent has allegedly been residing with her parents without any sufficient cause. The allegations are not serious and could have been resolved by mediation at that time but no attempt seems to have been made for any such mediation by the family of the appellant. The over sensitivity expressed from the allegations by the appellant is indicative of the fact that in the male dominated society of India sometimes unreasonable expectations from wife bring unhappiness on account of non-fulfilment of the same. The present case appears to be one of the instances of such situations. The allegations as well as counter-allegations of both the parties are petty and seem to have not been handled at initial stage by any intervener. It is settled principle of law that in order to constitute matrimonial cruelty the circumstances should be such that it is difficult and dangerous for a spouse to remain in the company of other. It is settled principle of law as laid down in *Vishwanath Sitaram Agrawal versus Sau. Sarla Vishwanath Agrawal*¹ that expression 'cruelty' has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status. Since there is no straight jacket formula or fixed parameters for determining mental cruelty in matrimonial matters each case has to be seen in context to the evidence produced on the record.

¹ AIR 2012 SC 2586

(14) After going through the entire record which includes statements of PW1 Chander Bhan Goyal, Cashier Karnal Motors, PW2 Amit, Agency Manager, ICICI Bank, PW3 appellant, PW4 Pala Ram Tanwar, Medical Record Clerk, PGIMS Rohtak, PW5 Er. Bicha Ram Chaudhary, PW6 Wing Commandar Rajbir Singh Chaudhary, PW7 Ram Dhari, PW8 Dharam Pal, RW1 Gopal Sharma, Photographer, RW2 respondent, RW3 Ishwar Singh, RW4 Kamla Jaglan and RW5 Om Parkash, we are of the opinion that the appellant/ husband has failed to prove that the conduct of the respondent and her family members had been cruel warranting dissolution of marriage by a decree of divorce.

(15) Mr. Kanwaljit Singh, has made another attempt to convince this Court for passing a decree of divorce by relying upon the judgments in *Rakesh Kumar* versus *Monika² Naveen Kohli* versus *Neelu Kohli³* and *Kalapatapu Lakshmi Bharati* versus *Kalapatapu Sai Kumar⁴* contending that it is a case of long separation and broken marriage and no useful purpose will be served by keeping the same alive and it will be expedient in the interest of justice to grant decree of divorce which will be beneficial to both the parties who are young at this stage and can re-settle in the life again.

(16) On the other hand, Mr. Vikas Singh has relied upon the judgments in *Shyam Sunder Kohli* versus *Sushma Kohli @ Satya Devi⁵ Surjit Singh* versus *Surinder Kaur⁶* and *Sangeeta Rani* versus *Sanjeev Kumar⁷* to submit that a broken marriage does not deserve to be dissolved by a decree of divorce as it is not a ground provided by the legislature.

(17) We have considered the facts and circumstances of this case. Even if it is presumed that on account of prolonged separation by the parties it will not be feasible for them to reunite but the relief of divorce cannot be granted in the present case in view of the fact that legislation in its wisdom has framed Hindu Marriage Act on “fault theory” and “break down theory” has not been accepted for creating ground for divorce. We express our inability to accept the contention of

² 2017 (1) RCR (Civil) 378

³ 2006 (2) RCR (Civil) 290

⁴ 2016 AIR (Hyderabad) 218

⁵ 2005 (1) RCR (Civil) 16

⁶ 2010 (16) RCR (CrL) 881

⁷ 2017 (1) HLR 500

Senior Advocate Mr. Kanwaljit Singh that marriage having broken down in the present case should be dissolved.

(18) It is not out of place to mention here that we have made best efforts to bring about reconciliation between the parties. Finding the appellant adamant to resume cohabitation or to make attempt for reunion, we had even proposed for payment of reasonable permanent alimony to the respondent. The appellant not only failed to make any reasonable offer but at the same time respondent flatly refused to accept any amount. The said effort was made by us taking into consideration the spirit of Section 23 (2) of the Act.

(19) We have also taken into consideration the ground of desertion as pleaded and sought to be proved by the appellant. The sequence of events as mentioned hereinabove indicates that both the parties leveled allegations and counter-allegations against each other. The appellant has tried to establish on the record that the respondent had failed to join the company of the appellant despite a legal notice Ex.P-7 having been sent whereas the respondent has tried to justify her non-joining by alleging that no sincere efforts had ever been made by the appellant or his family members. Even Ex.P-17, the reply filed by the respondent does not indicate that she had any intention to desert the appellant. It is pertinent to mention here that till the date of filing of divorce petition the respondent had not taken any steps for prosecution for his acts of domestic violence with a sanguine hope that the better sense would prevail with the appellant and they would re-unite. The important ingredient of animus desirendi i.e. the intention to desert on the part of the respondent does not stand established though parties have been living separately for the last many years.

(20) In view of the above circumstances we do not find any ground to allow this appeal which is dismissed. Parties to bear their own cost.

Dr. Payel Mehta