

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

First Appeal No. 115/2016

Smt. Anita Gaur

... Appellant

Versus

Sri Rajesh Gaur

... Respondent

Sri Kaushal Sah Jagati, Advocate, holding brief of Sri L.K. Tiwari, Advocate for the defendant-appellant.

Sri B.D. Pande, Advocate, for the plaintiff-respondent.

Judgment reserved on : 01.7.2020

Judgment delivered on : 24.8.2020

Hon'ble Ravi Malimath, A.C.J.

Hon'ble Narayan Singh Dhanik, J.

(Per : Narayan Singh Dhanik, J.)

The challenge in this appeal is to the judgment and order dated 7.12.2016, passed by the Principal Judge, Family Court, Dehradun, in Suit No. 446/2014, whereby the suit of the plaintiff-husband (respondent herein) for dissolution of marriage was decreed.

2. Since all efforts of mediation, at the instance of this Court, failed and the parties could not persuade themselves into a relationship of cordiality, we heard learned Counsel for the rival parties on the merits of this appeal.

3. Facts, to the limited extent necessary for deciding the present appeal, are that the marriage of Sri Rajesh Gaur (plaintiff-respondent) was solemnized with Smt. Anita Gaur (defendant-appellant) on 12.5.1999 as per Hindu customs and ceremonies. Immediately after the marriage, the couple shifted to Mumbai where the plaintiff-respondent was running his business. Two children, namely, Km. Rishita and Master Divanshu born

out of the said wedlock. On 3.6.2014, husband (plaintiff-respondent) instituted a suit under Section 13 of the Hindu Marriage Act against the wife (defendant-appellant) seeking decree of divorce on the ground of cruelty. In his plaint, it was alleged by the plaintiff-respondent that about five years ago, there came a sudden change in the behaviour of the defendant-appellant (wife); that the valuable articles, jewelries, cash, etc. started missing from the house; 2-3 years thereafter, plaintiff-respondent started receiving telephone calls of crooked persons asking him either to return the money else the plaintiff-respondent would be abducted; that on being asked, defendant-appellant informed the plaintiff-respondent that she had borrowed money on interest @ 10 per cent per month and she also purchased ornaments and clothes on credit; that the defendant-appellant started quarreling with the plaintiff-respondent and she also threatened that she would get him abducted; that those who had lent money started chasing the plaintiff-respondent and also threatened to capture his flat; apprehending threat to his life and liberty, the plaintiff-respondent along with his wife (defendant-appellant) returned to Dehradun on 11.12.2013; thereafter a Panchayat was held in the village in which the defendant-appellant admitted her mistakes; that the defendant-appellant also admitted her mistakes in writing; that even thereafter the defendant-appellant quarreled with the plaintiff-respondent and created scene on a number of occasions; and that it was not possible for the plaintiff-respondent to continue to live with the defendant-appellant.

4. Defendant-appellant contested the suit by way of filing the written statement, wherein she denied the allegations of the plaintiff-respondent. However, she admitted that she had borrowed money amounting to approximately rupees ten lakhs on interest as the plaintiff-

respondent stopped giving money for household expenses, payment of school fees, etc.; that the Panchayat was held in which it was decided that the plaintiff-respondent shall return the borrowed money; that her husband (plaintiff) is very cruel; that the plaintiff-respondent has illicit relations with another woman; that the plaintiff-respondent remarried with yet another woman; that the plaintiff-respondent obtained her signature on blank papers and subsequently prepared her fake affidavit and declaration dated 21.1.2014; that she was being badly harassed by the plaintiff-respondent; and that she made complaint in the Women Cell and also lodged case under Section 494 IPC against the plaintiff-respondent.

5. After the pleadings were complete, following issues were framed by the Family Court:

- (i) Whether the defendant committed cruelty towards the plaintiff, as alleged in the plaint?
- (ii) Whether the plaintiff is entitled to the relief claimed by him?

6. Both the parties adduced their respective evidence. The Court below, after examining the evidence, decreed the suit for divorce holding that the reasons stated for instituting the suit and the acts alleged by the plaintiff against his wife do come under the category of cruelty.

7. Learned Counsel for the appellant-defendant contended that the trial court erred in disbelieving the testimony of DW2, DW3 and DW4 and decreeing the suit. He also contended that there is no cogent evidence to prove the alleged cruelty and borrowing money from others for running the sundry household expenses cannot be said to be cruelty towards the spouse.

8. Learned Counsel for the plaintiff-respondent argued that the Court below has rightly decreed the suit for divorce and held that the acts of the defendant-appellant amounted to mental cruelty. Learned Counsel appearing for the plaintiff-respondent justified the dissolution of marriage on the ground that the matrimonial ties between the parties had irretrievably broken down. It was, therefore, the contention of the learned Counsel for the respondent herein that the Court below was justified in annulling the marriage between the parties, especially when the parties have been living separately since more than six years.

9. Cruelty has not been defined under the Act. Cruelty can be physical or mental. In the matrimonial life, cruelty may be of unfounded variety. But before the conduct called cruelty, it must touch the certain pitch of severity and conduct should be such that no reasonable person would tolerate it. It should be willful and unjustifiable conduct. The enquiry therefore has to be whether the conduct charged as cruelty is of such a character or not?

10. It is the admitted case of the defendant-appellant that she, without informing her spouse, kept on borrowing money from many persons at heavy interest and the lenders used to come to her house to demand their money. However, she gave the excuse that she did so as the plaintiff-respondent stopped giving money for various household expenses, school fees of children, etc. But she failed to adduce any evidence to substantiate her claim. She did not produce any evidence to show where she spent the money. In her cross-examination before the Court below defendant-appellant has stated that she had also accepted her mistake in the Panchayat. That apart, defendant-appellant also levelled various allegations

against the plaintiff-respondent that he had illicit relations with another woman and thereafter he married yet another woman and presently living with her. Again, she did not produce any evidence to prove the same. This Court also noticed that the witnesses (DW2, DW3 and DW4), who deposed at the behest of the defendant-appellant, were not residing in Mumbai where the couple was residing and, therefore, their deposition regarding illicit relations of plaintiff-respondent and day-to-day affairs of the couple is not reliable. DW5, who is the daughter of the couple, was not produced for cross-examination.

11. The Supreme Court, in a series of judgments has explained what is meant by cruelty as envisaged under the Act. The Hon'ble Apex Court, in *Praveen Mehta v. Inderjit Mehta*, **(2002) 5 SCC 706**, has held that mental cruelty is a state of mind and feeling with one of the spouses due to behaviour or behavioural pattern by the other. Mental cruelty cannot be established by direct evidence and 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. In *Raj Talreja v. Kavita Talreja*, **(2017) 14 SCC 194**, the Hon'ble Apex Court has observed that cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case.

12. In the present case, the plaintiff-respondent, without informing her spouse, borrowed money on interest from many persons, made purchases on credit, used to steal ornaments and valuables from her own house and levelled so many allegations against her spouse which she

failed to substantiate. When the money was not paid, the lenders, who were gangsters, started threatening the plaintiff-respondent, who had to ultimately wind up his business in Mumbai and returned to Dehradun. That apart, defendant-appellant also made allegations against the plaintiff-respondent which she failed to substantiate. Defendant-appellant alleged that the plaintiff-respondent is a characterless person and he has illicit extra-marital relations with another woman and subsequently he married to yet another woman. All these are unfounded allegations against the plaintiff-respondent. Defendant-appellant also lodged case for the offence under Section 494 IPC and also made complaint against the plaintiff-respondent with the Women Cell. All these acts and conduct, in our considered view, constitute cruelty. Further, as is evident, it was not a solitary instance of cruelty on the part of the defendant-appellant. The defendant-appellant indulged in repeated acts of cruelty and misbehaviour with her husband. Moreover, the conduct of the defendant-appellant also caused danger to the life, limb or health of the plaintiff-respondent and there was reasonable apprehension in the mind of the plaintiff-respondent that it would be harmful or injurious for him to live with the defendant-appellant.

13. Marriage, like every other human relationship – perhaps more so than others – is based on mutual trust, confidence and mutual respect. While differences may exist - often times serious ones - as long as respect for each other remains, the marital bond will survive. The above acts on the part of the defendant-appellant (wife) and levelling unfounded allegations about her spouse constituted actionable mental cruelty under the Hindu Marriage Act.

14. Furthermore, there is nothing to indicate that the plaintiff-respondent has contributed in any way to the alleged breakdown of the marriage. It is the defendant-appellant, who by her own conduct, brought the relationship to a point of irretrievable breakdown.

15. In fine, we are of the considered view that the defendant-appellant failed to substantiate the grounds taken by her. Therefore, considering the facts and circumstances of the case and the legal proposition propounded by the Apex Court, we find no difficulty in holding that the learned Trial Judge committed no error in granting the decree for dissolution of marriage. Therefore, we find no merit in this appeal requiring interference with the impugned judgment and order. Consequently, the appeal is dismissed. Judgment and order under appeal is affirmed. Let the LCR be sent back.

(Narayan Singh Dhanik, J.)

(Ravi Malimath, A.C.J.)

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