

GAHC010072542019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Mat.App. 20/2019

1:SRI BHASKAR DAS
S/O- LATE HARIPADA DAS,
R/O- NO. 1 GOLAI GAON, P.S. DIGBOI, DIST.- TINSUKIA, ASSAM.

VERSUS

1:SMTI. RENU DAS
W/O- BHASKAR DAS,
D/O- LATE RAKESH CHANDRA DAS, C/O- SMT. LILY DAS, R/O- BORBARI
RAILWAY COLONY (NEAR PANI TANKI), P.O., P.S. AND DIST.- DIBRUGARH,
ASSAM, PIN- 786001.

BEFORE

HON'BLE THE CHIEF JUSTICE MR. AJAI LAMBA
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for appellant	-	Mr. N. Hasan.
Advocates for respondent	-	Mr. S. R. Gogoi
Date of hearing	:	27.02.2020
Date of judgment	:	19.06.2020

JUDGMENT & ORDER (CAV)

(Soumitra Saikia, J.)

Heard Mr. N. Hasan, learned counsel for the appellant husband and Mr. S. R. Gogoi, learned counsel for the respondent wife.

2. This matrimonial appeal has been filed by the appellant husband being aggrieved by the

judgment dated 15.12.2018 passed in Title Suit (M) No.9/2014 by the Court of District Judge, Dibrugarh, dismissing the suit for divorce preferred by the appellant husband.

3. The case of the appellant husband as projected before the Family Court is that he is a contractual labourer in Brahmaputra Cracker and Polymer Limited (BCPL) at Madhuban under Bordubi Police Station at about 30 kms from Digboi. He lives with his mother, sisters and brother in Digboi. His marriage with the respondent wife was solemnized on 17.02.2012. After marriage, the appellant and the respondent started their conjugal life in the matrimonial house of the appellant. After about a month into their marriage, the respondent wife demanded to reside separately with the appellant husband away from the husband's relatives in a separate house. However, the appellant being a contractual labourer was not able to sustain separate accommodation for him and his wife as he was required to render service at a place away from his matrimonial house which is in Digboi. Being unable to accede to the demands made by the respondent wife for separate accommodation, quarrels became frequent between the respondent wife and the appellant husband leading to unpleasantness in their matrimonial life. The appellant husband in the face of persistent demands by the respondent wife for separate accommodation also attempted to take the respondent wife to his place of work at Madhuban by arranging separate accommodation away from the matrimonial home at Digboi. However, the respondent wife continued to resort to frequent quarrels with the appellant and started blaming him for the couple not being able to have a child after marriage. The respondent wife alleged that the appellant husband was medically unfit as a consequence of which she was unable to bear a child. As the appellant's period of contract in connection with his work was about to expire, he brought back the respondent wife to the matrimonial house. However, the respondent wife continued to be indifferent and negligent towards the appellant husband as well as the other family members. Around the month of June, 2013, the respondent wife declared that she was not willing to continue her matrimonial life with the appellant. As a consequence, the respondent wife insisted on going back to her parental home. The appellant, his family members and friends tried to placate the respondent wife and whereupon the respondent wife assured the appellant and his family members that she will visit her parental house only for a few days but return back to the matrimonial home thereafter. However, contrary to her assurance, instead of returning back to the matrimonial house, she filed a case under Section 498(A) IPC before Digboi Police Station being Digboi P.S. Case No.154/2013 against the appellant and his family members. The appellant husband and his family members were compelled to apply for pre-arrest bail in view of the said criminal case filed by the respondent wife. The appellant husband further contended that the respondent wife compelled the appellant to execute a written agreement to the effect that the couple will stay in a separate rental house together away

from the joint family of the husband and further that the appellant/husband's family members will not visit them or maintain any relation with them. Under such circumstances, unable to bear the agony and the stress inflicted by the respondent wife, the appellant husband filed divorce case being TS(M) 9/2014 before the Court of District Judge, Dibrugarh.

4. The respondent wife contested the case by filing her written statement. In her written statement she stated that she was subjected to cruelty to meet illegal demands of dowry in the form of cash and kind by the appellant husband, his step-mother, sister-in-law, brother and sisters from the very threshold of their marriage. The respondent wife further stated that she further contended that she was not provided with food and other medical treatment and that it was her brother who used to take care of the bare necessities of her life. Although she tried to tolerate the cruelty meted out to her but she was assaulted and thrown out of the appellant's house on 30.06.2012 by the appellant and his family members by retaining her belongings and sent to her brother's house at Dibrugarh. She admitted that she had filed Digboi P.S. Case No.154/2013, under Section 498(A) IPC against the petitioner and his family members. The respondent stated that the appellant and his family members, in order to procure the anticipatory bail, induced her to compromise and settle the dispute and agreed to accept her back. However, after being enlarged on bail, the appellant and his family members went back on the agreement and refused to take the respondent back. The respondent wife stated that she has no income and is dependent on her brother whereas the appellant is serving at OIL, Digboi with a monthly income of Rs.50,000.00 and also earns additional income and other benefits from landed assets.

5. The court below, upon the pleadings filed by the parties, framed the following issues:

1. *Whether respondent (the wife) subjected the petitioner (the respondent) to cruelty and deserted him?*
2. *Whether the petitioner is entitled to a decree of divorce?*

6. The court below dealt both the issues together and dismissed the suit and rejected the prayer of the husband for decree of divorce. On the facts narrated above, the evidence available in the lower court record is duly perused.

7. It is seen that the appellant husband adduced his evidence as PW1 and in his evidence-in-chief stated that since after a month of the marriage between the appellant and the respondent, the behaviour of the respondent wife was acrimonious towards the appellant and the members of his family. The respondent wife started to blame the appellant/husband that because of him, not being

medically fit, she was unable to conceive and consequently she asked the appellant husband to divorce her repeatedly. The appellant husband admitted that there was a medical check-up but no defect was detected in the appellant but from the medical record it is evident that the respondent had some defect because of which she was unable to conceive. The appellant stated that there was constant quarrel initiated by the respondent and she refused to take part in the household chores. The appellant further stated that in the middle of June, the respondent insisted that she does not want to live with the appellant and will abstain from wearing '*sakha and sindoor*'. The appellant further stated that pursuant to family discussions held with the members of the family of the appellant husband and the respondent wife as well as their friends and mediators of the marriage it was agreed that the respondent will go back home and will return to the matrimonial house after a fortnight. However, instead of coming back, she lodged Digboi P.S. Case No.159/2013, under Section 498(A) IPC.

8. The evidence projected by the appellant was duly confronted to him during the cross-examination. But his evidence remained unshaken.

9. The appellant also examined his step-mother as PW2 who was about 65 years of age at the relevant point of time. PW2 duly supported the statements made by PW1/appellant in his evidence. Her examination in cross also did not yield any contradiction.

10. The respondent wife in her evidence as DW1 stated that she was subjected to extreme cruelty by the appellant's step-mother, sister-in-law, brother and his two sisters. According to the respondent, the family members of the appellant tortured her physically and mentally by demanding various cash and kinds from her as dowry and also declined to provide her the bare necessities of life. She further stated that the respondent declined to provide her medical treatment, wearing apparels, adequate food and medicine etc. which are provided to her by her brother. She further stated that she was assaulted and sent back to her brother's house by the appellant and his family members demanding her to bring money from her house. On 30.06.2013, the brother of the appellant on being aware of the treatment meted to her, came to the matrimonial house and saved her by taking her and her belongings including '*stridhan*' back to her parental house. As a consequence thereof, she had lodged a case under Section 498(A) IPC against the appellant and his family members which was registered as Digboi P.S. Case No.159/2013.

11. The respondent in her evidence-in-chief admitted to a settlement entered into with the appellant in which inter-alia the appellant agreed to stay with her in a separate accommodation.

However, she stated that pursuant to the petitioner being enlarged on pre-arrest bail he declined to adhere to the terms of the agreement and thereby committed fraud with her. The respondent admitted in her evidence that she has also filed a criminal case before Digboi Police Station being Digboi P.S. Case No.230/2013, under Sections 471/420 IPC against the appellant and his family members which is pending trial before the Court of Sub-Divisional Judicial Magistrate, Margherita, District Tinsukia.

12. During her cross, she maintained the evidence adduced by her in her evidence-in-chief. She stated that she had filed three cases against the appellant. She further stated that she does not want to stay with the appellant or compromise with the appellant. She also admitted to the existence of the agreement entered by and between the appellant and the respondent pursuant to filing of the FIR although she denied that the agreement stipulated that the appellant will live separately with her in a rented house and that no one from his family members can come and meet them. It is also evident from her cross-examination that she had categorically stated that either the appellant will come to Dibrugarh to live with her or fulfil her demands, i.e., monetary demands or only then she will divorce him.

The cross-examination of the respondent as DW1 is extracted herein below:

"XXX DW1

-That the signatures in the evidence in chief are mine. I don't know where the evidence was typed. But the advocate has written it according to my version.

-That I know what is written in the evidence but I don't remember it by para wise.

-That it is true that the first and last page of my evidence was typed and the remaining pages are written by computer and pages 2, 3, 4, 5 are photocopies and I have again signed there by overlapping my previous signatures.

-That it is a fact that no seal is there in page 2, 3, 4 and 5 of my evidence.

-That I have signed on my evidence before the Magistrate in the Court.

-That I have filed 3 more cases against Bhaksar Das other than this case.

(emphasised by us)

-That my current age is 35 years but i have given my age as 44 years in the evidence.

-That it is not a fact that I don't know the contents of pare no.2,3,4 & 5 of my evidence in chief because it was photocopy of some other document.

-That I don't want to stay with Bhaskar Das because he will again cheat on me and will beat me too.

-That I will not compromise with Bhaskar.

(emphasised by us)

-That it is not a fact that I have not purchased anything in his home after marriage.

-That we have no children.

-That it is not a fact that I asked him (Bhaskar) to live separately after 1 month of marriage.

-That it is not a fact that he is a daily wage labourer.

-That we stayed at Madhuban, Bordubi after marriage. Bhaskar used to work there.

-That Bhaskar's house is at Golai of Digboi.

-That it is not a fact that Bhaskar took me to Madhuban because of my harassments.

-That it is not a fact that I and Bhaskar went to Sristi Hospital for testing.

-That I have no knowledge about any positive/good Medical Report of Bhaskar.

-That it is not a fact that the Report of Bhaskar is with me.

-That it is not a fact that I was not doing any domestic/household work after marriage and said that I didn't come here to work.

-That I am not wearing/putting sindoor right now because I don't consider him as my husband.

-That on 30.06.2013 my brother, sister and ghatak (mediator) and his wife along with others went to take me from Bhaskar's home and Bhaskar did let them go too. And on that day we lodged an FIR at Digboi Police Station while coming from there and included all the names of Bhaskar's family there.

(emphasised by us)

- That it is not a fact that we went to compromise after lodging the F.I.R. It was Bhaskar who asked for compromise.

- That it is not a fact that we entered into an agreement after the F.I.R.

(emphasised by us)

- That it is not a fact that it was written in the agreement that Bhaskar will live separately with me in rented house and no one from his family can come there.

-That a case under Section 498(A) IPC is still pending at Digboi.

- That it is not a fact that since I did not want to live with Bjaskar therefore I have filed various false cases against him for only harassing him.

-That I have objection regarding divorce in this case as because either he come to Dibrugarh to live with me or otherwise fulfil my demand i.e. monetary demand, only then I will divorce him."

(emphasised by us)

13. Having noticed the evidence as discussed hereinabove, we proceed to examine the impugned judgment rendered on the issues as discussed above.

14. The Family Court below has accepted the evidence of both the parties that there were indeed criminal cases filed by the respondent wife under Section 498(A) IPC besides two other cases. In the

case lodged under Section 498(A) IPC, the SDJM (Margherita) acquitted the appellant husband, his step-mother and his sisters. However, the criminal cases filed under Sections 471/420 IPC and under Section 125 Cr.P.C. are presently pending disposal. The Family Court below proceeded to decide the matter on the basis of preponderance of probability by taking into account the evidence adduced before it by the contesting parties. It is seen that the Family Court accepted the evidence of the respondent wife that there was cruelty prevalent in the household. The Family Court also relied upon the evidence rendered by DW2 who was the cousin of the respondent and who has stated that the respondent wife was subjected to cruelty by her husband and that she was sent to his house on several occasions. Upon due consideration of the evidence, the court below came to the finding that there was no cruelty extended to the appellant husband and his family members or that they were neglected by the respondent wife and accordingly rejected the petition for divorce by the husband.

15. Upon due perusal of the judgment it is seen that the discussion of the court below does not refer to certain pertinent evidences, which were brought before the Court by the contesting parties while adducing evidences. As discussed above, it is not disputed by the respondent wife that there was indeed an agreement entered into by and between the appellant husband and the respondent wife whereby the appellant was required to provide separate accommodation to the respondent wife in a rented house away from the matrimonial house and that the appellant's family members were not to be permitted to come and visit them. The respondent wife categorically admitted in her cross-examination about the presence of the said clause in the said agreement. It is also seen from the evidence that the respondent had filed another case before Digboi Police Station being Digboi P.S. Case No.230/2013, under Sections 471/420 IPC pending before the SDJM, Margherita, District Tinsukia wherein, it was submitted at the bar that charge sheet has been filed against the petitioner and other accused. PW1/appellant also adduced in his evidence that the respondent had refused to wear 'sakha and sindoor' any more. Such statement was not confronted to the appellant during the cross-examination, and accordingly, the same remained uncontroverted and is therefore an evidence material for the purpose of this proceedings. Under the custom of Hindu Marriage, a lady who has entered into marriage according to Hindu rituals and customs, and which has not been denied by the respondent in her evidence, her refusal to wear 'sakha and sindoor' will project her to be unmarried and/or signify her refusal to accept the marriage with the appellant. Such categorical stand of the respondent points to the clear intention of the respondent that she is unwilling to continue her conjugal life with the appellant. Under such circumstances compelling the appellant husband to continue to be in matrimony with the respondent wife may be construed to be harassment inflicted by the respondent upon the appellant and his family members. This evidence although available before

the Family Court during the evidence adduced, was not taken into account during the discussion in the impugned judgment. As such the Family Court erred in evaluating the evidence in the proper perspective. During the course of hearing it was submitted at the bar that the criminal proceedings pursuant to filing of Digboi P.S. Case No.159/2013, under Section 498(A) IPC against the appellant has been dismissed as the informant, namely the respondent wife was not pursuing the said proceeding. As such the allegation of subjecting the respondent wife to cruelty was not sustained. Such acts of lodging criminal cases on unsubstantiated allegations against the husband and/or the husband's family members amounts to cruelty as held by the Supreme Court. In this context, the Hon'ble Supreme Court in a recent judgment being *Rani Narasimha Sastri vs. Rani Suneela Rani, 2019 SCC Online SC 1595* has held that filing of criminal cases like case under Sections 498(A) IPC etc. against the husband and the family members and which are subsequently dismissed/rejected by the Family Court, is sufficient to be construed as an act of cruelty by the wife. The Hon'ble Supreme Court has held as under:

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12. *This Court has laid down that averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. This Court in Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate¹ has laid down following in paragraph 7:*

"7. The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no

exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible."

13. *In the present case the prosecution is launched by the respondent against the appellant under Section 498-A of IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498-A of IPC not only acquittal has been recorded but observations have been made that allegations of serious nature are levelled against each other. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established. With regard to proceeding initiated by respondent under Section 498-A of IPC, the High Court made following observation in paragraph 14:*

14.....Merely because the respondent has sought for maintenance or has filed a complaint against the petitioner for the offence punishable under Section 498-A of IPC, they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty."

14. *The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband. As per pleadings before us, after parties having been married on 14.08.2005, they lived together only 18 months and thereafter they are separately living for more than a decade now.*

15. *In view of forgoing discussion, we conclude that appellant has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955.*

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16. This aspect of cruelty was not gone into by the Family Court even though the same was apparent from the evidence adduced by the parties before the court below.

17. As discussed above, attempts to reconcile between the appellant and the respondent by this Court also did not yield any positive response and considering the fact that the appellant and the respondent have remained separately since 30.06.2013, it is evident that there will be no purpose served to keep the marriage alive as there was no matrimonial harmony between the parties to be reached.

18. There is another aspect of the matter which needs to be reflected upon in the face of the evidences adduced by the parties. Under the "Maintenance and Welfare of Parents and Senior Citizens Act, 2007" children (which includes the son) shall mandatorily be required to maintain parents and senior citizens. In terms of the definition under Section 2 (d), a parent includes step-mother also. Under Section 2 (h), senior citizen means any person being a citizen of India who attained the age of 60 years. Under Section 2 (k) "welfare" means provisions for food, health care, recreation centres and other amenities necessary for senior citizens. A perusal of the provisions of the Act reveals that under this Act every child including a son is mandatorily required to provide for maintenance/welfare of any parent.

19. In the evidence of the appellant as PW1 it is stated that PW2 is her widowed step-mother who has no personal source of income. It is also evident from the evidence that the widowed step-mother is a senior citizen. Consequently, the agreement dated 06.07.2013, which, as brought out in the evidence led by the appellant, was compelled to be executed at the behest of the respondent wife prior to seeking pre-arrest bail by the petitioner and his family members. The said condition that the appellant and the respondent are required to live separately away from the family members of the appellant and that none of the family members including the step-mother of the appellant will be permitted to visit them, being present in the agreement is also not disputed by the respondent in the evidence led before the court below. It is also categorically stated by the respondent that because of non-compliance of the said agreement, another criminal case being Digboi P.S. Case No.230/2013, under Sections 471/420 IPC has been filed against the appellant and his family members.

20. Under the circumstances, it is seen that the Family Court completely ignored this fact brought out during the evidence that the respondent compelled and prevented the appellant from performing his statutory duties towards his aged mother under the provisions of the 2007 Act. Such evidence is sufficient to be construed as an act of cruelty as the non-compliance/non-adherence to the provisions

of the 2007 Act has criminal consequences leading to punishment or imprisonment as well as fine. There was completely no reference and discussion in the impugned judgment rendered by the Family Court although the same is sufficiently evident from the evidence adduced before the Family Court.

21. Consequently, we are of the considered view that the impugned judgment of the Family Court be overturned in view of the discussions rendered above and which we accordingly do.

22. The impugned judgment dated 15.12.2018 in TS(M) 9/2014 passed by the District Judge, Dibrugarh is hereby set aside and the petition being TS(M) No.9/2014 is hereby allowed and the decree of divorce is accordingly granted. The marriage between the appellant husband and the respondent wife is accordingly dissolved.

23. The decree be prepared accordingly.

24. On the question of maintenance it is seen that the appellant is presently paying a maintenance of Rs.3,000/- pursuant to order passed in the maintenance case filed by the respondent under Section 125 Cr.P.C. It will be open to the respondent wife to pray for further alimony in terms of provisions of the Hindu Marriage Act, if so advised.

25. Appeal is allowed.

26. No order to costs.

27. LCR be returned.

JUDGE

CHIEF JUSTICE

Comparing Assistant