

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FAMILY COURT APPEAL NO.70 OF 2015

Thalraj @ Anand s/o Jaisingh Khinchi,
Aged about 34 years, Occu. : Unemployed.
R/o Binaki Mangalwari, Near Cattlepond,
Rani Durgawati Square, Gayatri Sadan, Plot No.10,
Nagpur.

.. APPELLANT

-vs-

Sau. Jyoti w/o Thalraj @ Anand Khinchi,
name before marriage : Jyoti d/o Bajrangsingh Chauvan,
Uccha Prathmik Shala, Chankapur,
Khaparkheda, Tq. Saoner, District Nagpur.
Through its Education Officer (Prarthmik) Zilla Parishad,
Nagpur.

..RESPONDENT

.....

Shri P.K.Mishra, Advocate for appellant.
Shri A.B.Bambal, Advocate for respondent.

.....

CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.

DATED : 10th February, 2021.

Judgment : (Per A.S.Chandurkar, J.)

This appeal filed under Section 19 of the Family Courts Act, 1984 by the husband takes exception to the decree for divorce passed by the Family Court, Nagpur in Petition No. A-459/2012 on 25.09.2014.

2. The facts in brief are that the appellant and the respondent were married on 27.04.2008. Out of the said wedlock a child was born on 03.03.2009. Thereafter the appellant and his family members started ill-

treating the respondent. During Diwali-2010, the family members of the appellant quarreled with the respondent and after taking away all the gold articles she was driven away from the matrimonial house. On 06.12.2010 she filed proceedings under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. These proceedings however were withdrawn on 25.04.2012. Thereafter on 14.05.2012 the wife filed Petition No.A-459/2012 seeking a divorce on the grounds of cruelty and desertion. In the said proceedings it was alleged that the appellant and his family members were ill-treating the respondent physically as well as mentally. The respondent used to be abused time and again by the appellant and his family members as a result of which there were frequent quarrels between them and the respondent was also beaten on some occasions. She was required to do all the household work and other family members did not help her in that work. The respondent was required to approach Mahila Cell with her grievances and after understanding given to both the parties, they started residing together. However this arrangement did not continue for long. The respondent after finding it unsafe to continue the relationship filed the present proceedings.

3. In the written statement filed by the appellant the allegations as made were denied. It was denied that there was any occasion to appear before the Mahila Cell and give any undertaking as pleaded by the

respondent. It was also pleaded that the appellant's sister was residing on the ground floor and the allegations made against her about ill-treating the respondent were denied. In the specific pleading it was stated that the respondent and her family members belonged to 'Rajput' caste but they had obtained spurious caste certificate of belonging to 'Rajput Bhamta' for securing employment.

4. The parties led evidence before the Family Court and after considering the same the learned Judge of the Family Court held that the respondent had proved that the appellant was treating with her cruelty. It was further held that the allegation of desertion was not proved since continuous period of not less than two years prior to filing of the divorce petition had not elapsed. Hence by the impugned judgment, the Family Court proceeded to pass a decree for divorce on the ground of cruelty. Being aggrieved the appellant has preferred this appeal.

5. Shri P.K.Mishra, learned counsel for the appellant submitted that the allegations with regard to cruelty being inflicted by the appellant were not duly proved by the respondent. He referred to the evidence on record to contend that except normal wear and tear of marital life there was no substantial evidence brought on record by the respondent to prove the ground of cruelty. The appellant's sister was not residing with the appellant but was residing separately on the ground floor premises of the

joint family. There was no truth in the allegation that the appellant's sister was interfering in the marital life of the appellant and was ill-treating the respondent. He further stated that the appellant's brothers were also residing separately. In fact it was the respondent who had left the matrimonial house on 06.11.2010 and was not ready to reside with the appellant. Though it was the fact that the parties had approached the Mahila Cell, same indicated that the appellant did not intend to separate from the respondent but wanted to continue the marital ties. It was then submitted that the appellant had brought on record sufficient evidence to indicate that the respondent was suffering from epilepsy and this fact was not disclosed by the family members of the respondent to the family of the appellant before their marriage. Documentary evidence in that regard was also placed on record. According to the learned counsel, it was not open for the learned Judge of the Family Court to give importance to the allegation made by the appellant with regard to the family members of the respondent obtaining false caste certificate. Various complaints were made by the appellant because he was a social worker and this fact could not be taken into consideration for passing a decree of divorce. It was thus submitted that the burden to prove cruelty was on the respondent but without the same being established by the respondent the Family Court proceeded to grant a decree for divorce. He placed reliance on the decisions in *Uttara Praveen Thool Vs. Praveen 2014 (2) Mh L J 321* and

J Vs. JC 2020 (2) ALL MR (Journal) to submit that the impugned judgment of the Family Court was liable to be set aside.

6. Per contra, Shri A.B.Bambal, learned counsel for the respondent supported the impugned judgment. According to the learned counsel, the Family Court rightly held that the conduct of the appellant was such that the same resulted in causing cruelty to the respondent. Besides trying to physically cause hurt to the respondent, the conduct of the appellant also resulted in mental cruelty. He referred to the written statement filed by the appellant and submitted that there were no pleadings therein that the respondent suffered from epilepsy. This aspect was deposed by the appellant only during the course of his evidence. Similarly the allegations that the respondent and her family members belonged to 'Rajput' community but obtained false caste certificate of belonging to 'Rajput Bhamta' community to secure employment was not proved. Making of unsubstantiated false allegations resulted in causing mental cruelty to the respondent. These aspects were rightly taken into consideration by the learned Judge of the Family Court and hence it was submitted that there was no reason to interfere with the impugned judgment.

7. We have heard the learned counsel for the parties at length and with their assistance we have perused the records of the case. The

following point arises for consideration :

Whether in the facts of the case the Family Court was justified in granting divorce on the ground of cruelty ?

8. Perusal of the pleadings of the respective parties indicate that it is the case of the wife that the husband and his family members ill-treated the wife on various occasions for no justifiable reason and that in Diwali-2010 by raising such a quarrel she was beaten and her gold articles were taken away which resulted in the husband inflicting cruel treatment on the wife. On the contrary, according to the husband, a defence of denial was raised besides denying the proceedings before the Mahila Cell. In addition it was alleged that the wife and her family members had obtained false caste certificate of belonging to 'Rajput Bhamta' for securing employment. In the evidence led by the parties the wife denied that she was suffering from epilepsy and in her cross-examination she stated that she was taking treatment for giddiness prior to her marriage. The learned Judge of the family Court after considering the evidence on record rightly found that the deposition of the husband's sister-Chanda at Exhibit 51 did not inspire confidence in view of various incorrect statements made by her in her pleadings. The statements made in her affidavit were subsequently admitted by her to be incorrect and we find no reason to take a different view of the matter. Similar observations have been made with regard to the contradictions in the pleadings of the husband and his deposition.

Further it is an admitted position that both the parties had appeared before the Mahila Cell wherein the husband had undertaken to behave properly with the wife after which she joined his company again. Though the husband denied having given any such undertaking before the Mahila Cell, in his written statement it was admitted by him in his cross-examination that he had in fact given such written undertaking. It is also seen that thereafter from February 2010 to July 2010 the parties had resided together but the behaviour of the husband with the wife did not improve. The learned Judge of the Family Court thus found the case of the wife more probable than that of the husband.

9. It is to be seen that the husband in his affidavit at Exhibit 30 specifically stated in paragraph 7 as under :

“That, prior to my marriage with her, he was treated for epilepsy disease in the clinic of Dr. Chandrashekhar Meshram and so also at I.G.M.C. Nagpur and Government Medical College, Nagpur. I and my family members were kept in dark about her disease. Had it been disclosed to me, I would not have consented for the marriage. Thus the fraud was practiced upon me in the matter of marriage. I came to know about her disease on 21.07.2008 when the petitioner was admitted for delivery of the child in the hospital of Dr. Kala Sabu.”

Further in his cross-examination in paragraph 18 he stated as under:

“It is true that I have not pleaded in my reply that petitioner is suffering from epilepsy. It is not true that I have falsely mentioned in my affidavit that petitioner is suffering from the epilepsy and she was under the

treatment of Dr.Saboo and Chandrashekhar Meshram. It is not true that document produced by me are false and those are not pertaining to the petitioner. It is not true that I have defamed the petitioner in her relatives and office colleagues by alleging that she is suffering from epilepsy.”

It thus becomes clear that in the written statement filed by the husband there were no pleadings that the wife was suffering from epilepsy. This was sought to be raised for the first time during the course of his deposition. In absence of any pleading in this regard by the husband, there was no occasion for the wife to counter this allegation that she was suffering from epilepsy. It thus remained an allegation raised for the first time in evidence but not proved.

10. Further in the written statement filed by the husband in paragraph 17 it was pleaded as under :

“... The respondent consciously knew that the petitioner is very much proud of her earning from the job of teacher which she secured somehow on the basis of spurious caste certificates of ‘Rajput Bhamta’ obtained from Amravati although her forefathers were residents of Nagpur and of Rajput caste but at this crucial moment of his unemployment she is the host of his survival.”

During the course of his cross-examination the husband sought to justify this allegation and admitted that he had made various complaints about the aforesaid at the office where the wife was serving. The following was stated in his cross-examination :

“17. I am having documents to show that petitioner

has secured employment by showing herself as “Bhamta” although she is ‘Rajput’. I have not produced said documents on record. It is not true that with a view to defame the petitioner I have made such statement without having evidence with me. It is true that I have filed application with the petitioner’s office for removing her from service on the ground that she has secured employment by giving false information. It is not true that petitioner has not secured employment by showing herself as “Bhamta” and therefore no action has been initiated against her on the basis of my application/complaint. It is true that I have also made complaint to the petitioner office alleging that she is not residing at headquarter and therefore appropriate action be initiated against her.”

It is also seen that the husband placed on record newspaper cuttings on the list at Exhibit 70 to indicate that he had made various complaints against the wife to her employer. It is however seen that having made such allegations, it was necessary for the husband to have substantiated the same. This was not done by the husband by leading any evidence in that regard.

11. The learned Judge of the Family Court has considered these unsubstantiated allegations and has proceeded to hold that this conduct of the husband caused mental cruelty to the wife. We find in the facts of the present case that the learned Judge of the Family Court was justified in recording this conclusion. In ***K Srinivas Rao Vs. D. A. Deepa 2013(5)Mh.L.J.10*** it has been observed in paragraph 14 by the Hon’ble Supreme Court as under :

“14... Making unfounded indecent defamatory allegations against the spouse of his or her relatives in the pleadings, filing of complaints of issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the Court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”

It thus becomes clear that making of unfounded allegations against the spouse or his/her relatives in the pleadings or making complaints with a view to affect the job of the spouse amounts to causing mental cruelty to the said spouse. This conduct of the husband of not pleading that the wife was suffering from epilepsy and stating the same for the first time in his deposition as well as making wild allegations that the wife and her relatives had secured false caste certificate without attempting to substantiate the said allegations has resulted in causing mental cruelty to the wife. If such allegations would have been met in accordance with law the same could have been made by the wife. There could have been proper adjudication of these allegations. However it appears from the conduct of the husband that in one way or the other he intended to prejudice the service of the wife. The finding recorded by the learned Judge of the Family Court that the behaviour and the conduct of the husband of making wild and unsubstantiated allegations resulted in causing mental cruelty to the wife does not deserve to be interfered with.

12. The decision relied upon by the learned counsel for the appellant in *Uttara Praveen Thool* (supra) is on the aspect of desertion and the acts of condoning cruelty by the other spouse. The ratio of the said decision cannot be made applicable to the case in hand. Similarly the decision in '*J*' (supra) also does not assist the case of the husband. The point as framed is accordingly answered by holding that the Family Court was justified in granting a decree for divorce to the wife on the ground of cruelty.

13. In the light of aforesaid discussion, we find no merit in the Family Court Appeal No.70/2015. The same is accordingly dismissed by affirming the impugned judgment. The parties shall bear their own costs.

JUDGE

JUDGE

Andurkar..