

Kiran Mandal v. Mohini Mandal (G. R. Majithia, J.)

Commission and the National Police Commission, yet he has pleaded that the Court should not presume lack of objectivity and impartiality merely because the head of the Prosecution Agency happens to be a police officer. We do not agree with the stand taken by the learned Additional Advocate General, as the very idea of appointing a police officer as incharge of the Prosecution Agency is abhorrent to the letter and spirit of sections 24 and 25 of the Code. As we are told, mostly the police officers, who are brought from the Police Department to occupy the high office of Director of Prosecution, are not even Law Graduates, as probably the position has been during the tenure of the last seven or eight incumbents. If that is so, then the question of impartiality, independence or unbiased approach of the Head of the Department apart, even the benefit of having day to day guidance of expert and professional nature by the Public Prosecutors would also be denied to them, making the interest of the State suffer to a considerable extent.

12. In view of the above factual and legal position, we find that the action of the respondent-State of Haryana, in appointing a police officer as Director of Prosecution, that is, incharge of the Prosecution Agency of the State, is wholly illegal and violative of the very letter and spirit of sections 24 and 25 of the Code of Criminal Procedure. We, therefore, by issuing a writ of Certiorari, quash the appointment of the Director of Prosecution, Haryana, who happens to be an officer of the Police Department, and by issuing further a writ of Prohibition, we forthwith restrain the State of Haryana from permitting any police officer to occupy the office of the Director of Prosecution. By issuing a writ of Mandamus, we command the State of Haryana to fill the post of Director of Prosecution only by appointing a senior officer belonging to the Prosecution Agency, having sufficient experience of actual working as a Public Prosecutor. This writ petition is allowed with costs, which are quantified as Rs. 1,000

P.C.G.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

KIRAN MANDAL—Appellant.

versus

MOHINI MANDAL,—Respondent.

Letters Patent Appeal No. 856 of 1985

March 10, 1989.

Hindu Marriage Act (XXV of 1955)—S. 13—Cruelty—Wife making unending accusations and imputations against husband of having

illicit relations with his sister-in-law—Such allegations—Whether amount to cruelty.

Held, that cruelty within the meaning of S. 13 of the Hindu Marriage Act, 1955 is not confined to physical violence but includes mental torture caused by one spouse to the other. The wife had made it insufferable for the husband to live with her. Any man with reasonable self respect and power of endurance will find it difficult to live with a taunting wife when such taunts are in fact insult and indignities. Human nature being what it is a reasonable man's reaction to the conduct of the offending spouse is the test and unending accusations and imputations can cause more pain and misery than physical beating. (Para 15)

Letters Patent Appeal under Clause X of the Letter Patent from the decree of the Court of the Hon'ble Mr. Justice G. C. Mital, dated 13th day of March, 1985 reversing that of the Additional District Judge, Ludhiana, dated 29th November, 1983 and dismissing the divorce petition filed by the husband.

Claim :—Petition Under Section 13 of the Hindu Marriage Act, for dissolution of marriage by a decree of divorce.

Appellant in Person.

Respondent in Person.

JUDGMENT

G. R. Majithia, J.

(1) This Letters Patent Appeal, under Clause X of the Letters Patent, is directed against the judgment of the learned Single Judge who on appeal reversed the judgment of the trial Judge and dismissed the application filed by the husband for the dissolution of the marriage under Section 13 of the Hindu Marriage Act.

(2) Facts first :—

The appellant-husband sought divorce on the ground that the respondent-wife had been nagging him in the presence of his friends and relations and would use, in the process, a language of insult and abuse. The Mundan ceremony of his brother's son was performed at Ludhiana. The wife instead of joining the ceremony left for Bombay and her non-participation in the function caused embarrassment to

Kiran Mandal v. Mohini Mandal (G. R. Majithia, J.)

him. In January, 1980 when his sister was wedded, the wife refused to spare her bed room for the sister and her bride-groom even for a night when she was requested to do so by the husband's parents as well as by the husband. In October, 1980, the mother of the husband fell ill and the wife did not even enquire about her health. In November, 1980, the brother of the husband who was earlier working at Sonapat took up an assignment in Dubai. His wife and his children came to live with the parents of the husband at Ludhiana. This triggered jealousy in the mind of the wife who picked up quarrels not only with the appellant, but also with the sister-in-law insinuating that they had illicit relations. This incident distressed his parents so much that his father was taken ill of gastric ulcer and his mother of hypertension.

(3) The wife denied all the material allegations made against her and claimed that in fact she was treated with cruelty by the husband and her parents particularly by his father. She was beaten up and expelled from the matrimonial home by the husband in wearing apparels. She alleged that when a sum of Rs. 500 was received from her bridal house on the occasion of the first *Karwa Chauth* after marriage, it was treated with contempt by her father-in-law; that the husband got addicted to liquor and would come home late and would beat her. She said that on one occasion she was beaten by the husband and his parents and she had to take shelter at the house of her relation, Shri Sat Brat Mohindra. She said that at her matrimonial house her requests for new clothes and ornaments were declined. She said that on the occasion of the marriage of her husband's sister she declined to join a family photograph because she was not properly dressed and that this was taken as insult and disobedience. She pleaded that the treatment given to her by her husband was such as it caused a reasonable apprehension in her mind that it would be injurious and harmful for her to live with him. She denied that the parties had last resided at Ludhiana and claimed that this Court had no jurisdiction to try the petition.

(4) From the pleadings of the parties, the following issues were framed :—

- (1) Whether the respondent has been guilty of cruelty towards the petitioner, as alleged ?

(2) Whether the Court at Ludhiana had no jurisdiction to try the petition ?

(3) Relief.

(5) The learned trial Judge who had the opportunity to watch the demeanour of the witnesses came to the conclusion that he did not have the slightest doubt that the wife treated the husband with cruelty after the solemnisation of the marriage. Issue No. 2 was found in favour of the husband and it was held that the Civil Court at Ludhiana had the jurisdiction to try the petition. The decree for divorce was granted in favour of the husband.

(6) This judgment was challenged in appeal. The learned Single Judge negatived the plea of the husband and held that the evidence produced in the case was beyond the pleading and that he would not rely upon the evidence of the husband and his witnesses and that the husband has miserably failed to prove the allegation of cruelty against the wife. The learned Single Judge referred to the statement in detail only of one witness P.W. 4 Sh. Mela Singh and held that the story of the incident with regard to which the witness had deposed was not specifically pleaded in the divorce petition and could not be relied upon and the witness was disbelieved because the wife had denied that he ever visited their house.

(7) Before we deal with the case, it will be useful to reproduce the following dictum of the Apex Court in *Sarju Parshad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh and others* (1). It was observed that as a rule of practice where the :—

“decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact.”

(8) This rule of caution was not observed by the learned Single Judge while appreciating the oral evidence. The important point which requires determination is whether the wife had made false

(1) A.I.R. 1951 S.C. 120.

Kiran Mandal v. Mohini Mandal (G. R. Majithia, J.)

allegations against the husband; that he had illicit relations with his elder brother's wife. It will be useful to reproduce the averment made in the petition with regard to this incident:—

In November, 1980, petitioner's elder brother Sharad Mandal, who was working as Deputy Maintenance Engineer, in Atlas Cycle Industries Ltd., Sonapat, left for Dubai, to seek higher prospects. So his wife and 2 sons came to Ludhiana, to stay with the petitioner's parents, till they were to be called to join the petitioner's elder brother at Dubai. Their arrival at Ludhiana, became an excuse for the respondent to pick up daily quarrels, not only with the petitioner's sister-in-law (Bhabi) but also with the petitioner, openly and falsely insinuating that the petitioner had illicit relations with his sister-in-law (Bhabi). These open and false allegations and taunts degraded the petitioner in the eyes of his friends and colleagues, and caused mental torture to the petitioner. Over and above this, the atmosphere in the house became so tense by the quarrels of the respondent that the parents of the petitioner became permanently sick. The mother of the petitioner became a patient of high blood-pressure, while the father got gastric ulcer in the stomach. Though both of them are getting treatment, but the tension caused by the respondent, would always stand in the way of their recovery.

(9) In the reply, the wife denied the allegations and stated thus :—

“It is wrong that in November, 1980, the petitioner's elder brother was to go to Dubai and plaintiff and his wife came to the house of the petitioner for stay and they were misbehaved. It is wrong that the petitioner was insulted with the allegations that he had illicit connections with his sister-in-law. It is also wrong that the respondent was the cause of illness of the parents of the petitioner as alleged. All the allegations are false.

It is wrong that the respondent was sent to her uncle's house at Bombay on 27th June, 1981 by the father of the petitioner in order to pacify the alleged tense atmosphere in which the petitioner was allegedly left to resign from

the post. The respondent was beaten and turned out by the petitioner in three clothes and she had to take shelter with his relations. She is still ready to live with the petitioner as his wife despite this torture and she is Hindu lady and worships the petitioner as her husband."

(10) The incident of November, 1980 has come from the father of the husband Shri Satya Parkash, P.W. 8. He is 65 years of age and is a gentleman wisened by years. An old respectable person would not depose about an incident in open Court which would disgrace his family members unless it is true. The consequences of a social ridicule and disgrace in such matters would force an individual to exercise restraint. If it is not exercised, this would place him and his family in a sad, ugly and unfortunate predicament. The father of the appellant gave details of the incident in which accusation was made against the husband that he had illicit relations with his brother's wife and the learned trial Judge on appraisal of the evidence came to the conclusion that the statement of the witness deserves to be believed and he came to the Court to state the truth. Despite the fact that his disclosure will ridicule the family, he disclosed the truth. The learned Single Judge has discarded this evidence with the following observations :—

"This is followed by the fact that in November, 1980, the husband's brother left for Dubai and his wife and two children came to Ludhiana to live in the parental house and their presence was taken as an excuse by the wife to pick up daily quarrels and for levelling false allegations of illicit relations between the husband and his brother's wife. Therefore, the evidence brought on the record has to be scrutinised with a little caution. It is true that the statement of the husband about the allegation of illicit relations levelled by the wife in January, 1980 is supported by the statement of his father but this allegation was not raised in the pleadings. All possible details had come about the incident of January, 1980 but this fact is conspicuously absent. Hence, the husband and his father have made false statements with regard to the wife's levelling allegation of illicit relations of the husband with his brother's wife in January, 1980."

(11) The learned Single Judge is in error in making the above observations. The details of the incident of November, 1980 were

Kiran Mandal v. Mohini Mandal (G. R. Majithia, J.)

given in the divorce petition: The wife denied these allegations on the ground that these are false. The husband in proof of the allegations examined his father as P.W. 8. It will be relevant to reproduce the statement of this witness *in extenso*:—

“Some days after the marriage my son-in-law and my daughter came to visit us. During this period the parties were with us and I had allotted them the best bed room available in my house. When my son-in-law and my daughter came, I requested them to move into some other bed room in my house. The respondent considered this to be an affront. When I requested them to move to the other bed room which was occupied by my elder son and his wife Kusham. The respondent at once blurted out pointing out towards her husband: “He is accustomed to sleep with his sister-in-law because he has illicit relations with her”. She also said “I will sleep in the room set apart for sweets rather sleeping in that room”. The respondent then chastised her husband saying “You are eunuch. You did not have the guts to refuse to vacate the bed room before your parents.” The respondent and the petitioner exchanged hot words.”

On the next day my son-in-law wanted a family photograph to be taken. I asked the petitioner to call up the respondent to join the rest of the family. The petitioner reported to me that the respondent was not willing to have her photographed with our family. He quoted her having said “that it was below her dignity to have herself photographed with our family.” She did not join the photograph. She told me that she did not want to live in our family. After telling me that she wanted to go to live with her uncle Bihari Lal Sood. She left with her son, Vishal and one servant Ramu provided by me. From there she left to Bombay.”

The statement of this witness that the respondent had informed him that her husband had illicit relations with his sister-in-law was not challenged in cross-examination. In cross-examination he was asked if he felt offended when the respondent-wife refused to get herself photographed with the other members of the family when his son-in-law came to visit him after the marriage. The witness replied that he was a grown up person and he treated the

respondent as a child and he did not feel offended. The statement of this witness leaves no shadow of doubt that he is a matured person. He did not feel offended over trifles, but the fact remains that the respondent made insinuation against her husband that he had illicit relations, with his brother's wife which injured him and his parents. The husband in his statement on oath about the November incident stated as under :—

“I have only one brother now in Dubai. He attended the marriage of my sister with his wife and children. He came from Sonapat to attend the marriage. He is elder to me and his wife did the work with full responsibility. Thereafter when my sister and her husband were to visit us for the first time I referred to the sense of responsibility displayed by my brother's wife and asked her that we should vacate our bed room for the new couple. The respondent accused me of having illicit relations with my brother's wife. My father was also present at that time and he felt very much upset over the remarks of the respondent. My father also wanted our bedroom to be vacated for the new couple on which the respondent called me a ‘*Hijraa*’ (impotent) and the slave of my parents. My parents, brother and his wife were also present at that occasion and they intervened and requested the respondent to control herself.”

He was subjected to lengthy cross-examination, but nothing could be brought out in cross-examination to discredit his statement. In his cross-examination he reiterated that the wife had accused him twice about his having illicit relations with his brother's wife. This evidence gets corroboration from the statement of P.W. 4 Shri Mela Singh Gill who is an Executive Engineer in the Electricity Department and is a colleague of the husband. He deposed that he came to Ludhiana on June 15, 1981 to attend the monthly meeting and had to stay overnight there. He was invited to dinner by the husband at his residence and the sister-in-law of the husband served food to them and when they were approaching the dining table, the respondent appeared and used vulgar language against the husband, and stated as follows :—

“She also said that the petitioner had illicit relations with his sister-in-law and that either she or the sister-in-law of the petitioner would live in the house. The respondent

Kiran Mandal v. Mohini Mandal (G. R. Majithia, J.)

did not let us dine. The father of the petitioner was also attracted by the commotion caused by her. When the dispute escalated, I left the house. About ten days thereafter I came to Ludhiana again and met him in the office. The petitioner felt embarrassed and perturbed about the incident.

The evidence of this witness corroborates the version of the husband that the wife had made allegation against him that he had illicit relations with his brother's wife. The learned Single Judge was not justified in discarding the evidence of this witness on the ground that it was not pleaded that this witness was invited to dinner and the wife made the insinuation during his visit and that the wife had denied that this witness was known to her and she had not met him. The incident of June 15, 1981 is corroborated by the evidence of Mr. Mela Singh. It is correct that this incident does not find mention in the pleadings, but this corroborates the husband's version that the wife had been making allegations against him that he had illicit relations with his brother's wife.

(12) In *Ram Niwas and others v. Rakesh Kumar and others* (2), a Division Bench of this Court held as under:—

“It is well settled that if the parties know that a point arises in a case and they produce evidence on it, though it does not find place in the pleadings and no specific issue has been framed on it, the Court can still adjudicate thereon. None of the parties can be allowed to say that the Court cannot decide the matter because it was not raised in the pleadings.”

(13) The wife was conscious of the plea taken by the husband and she had enough opportunity to cross-examine the witnesses. In these circumstances, it is difficult to discard the statement of P.W. 4 Shri Mela Singh Gill—a responsible officer. The statement has a ring of truth and he cannot be disbelieved merely on the ground that he is a colleague of the husband. It will be useful to allude to the letters written by the respondent to her mother-in-law, Ex. p/-1; by Shri Amar Kumar, uncle and guardian of the respondent to the father of the husband, Exhibit P-2; and the letters written by Shri

Kewal Kumar, another uncle of the respondent to the father of the husband, Exhibit-5 to P-8. In the letter Exhibit P-2 Amar Kumar writes that Mohini is an impetuous child. When she is in a burst of anger and rage, she does not know what she is talking. Shri Amar Kumar wrote a conciliatory letter to the father of the husband. He has also said that "this foolish girl actually does not mean what she says in a movement of heat". Kewal Kumar writes in his letter dated March 10, 1980. "Mohini regrets her disobedience to you at the wedding of your daughter Neelam." In his letter dated May 7, 1980. Kewal Kumar writes, "You will be glad to know that dear Mohini has improved so much that there will be no chance for complaints of extreme anger and ego etc., against her."

(14) The documentary evidence reveals that the respondent is a lady with a bad temperament. In her written statement she has not hesitated from alleging that the husband and his parents had treated her with cruelty. We find that the plea taken in the written statement is false. On April 24, 1980, the wife addressed a letter, Exhibit P-1, to her mother-in-law in which she paid tributes to her for treating her so affectionately and she paid glowing tributes to the parents of the husband for their good conduct. Even in the letter dated March 10, 1980, Exhibit P-5, the uncle of the respondent wrote to the father of the appellant that the respondent was sorry for her misconduct at the time of his daughter's wedding. From the documentary evidence, it transpires that it is the respondent who is in the habit of making very wild allegations against the husband and her parents for which she and her relations subsequently repented. She made false allegations against her husband that he had illicit relations with his brother's wife. These false allegations did have an injurious effect on the husband.

(15) Cruelty within the meaning of Section 13 of the Hindu Marriage Act is not confined to physical violence but includes mental torture caused by one spouse to the other. The wife had made it insufferable for the husband to live with her. Any man with reasonable self respect and power of endurance will find it difficult to live with a taunting wife, when such taunts are in fact insult and indignities. Human nature being what it is, a reasonable man's reaction to the conduct of the offending spouse is the test and unending accusations and imputations can cause more pain and misery than physical beating. In *Dr. Keshaorao Krishanji Londhe v. Mrs. Nisha*

Kiran Mandal v. Mohini Mandal (G. R. Majithia, J.)

Londhe (3), we have recent formulation of cruelty and we respectively agree with the statement of law made therein. It was concluded thus:—

“To conclude, in our view, the cruelty contemplated under S. 13(1)(i-a) of the Act neither attracts the old English doctrine of danger nor the statutory limits embodied in old S. 10(1)(b). The cruelty contemplated is a conduct of such type that the petitioner cannot reasonably be expected to live with the respondent, and, therefore, *Madan Lal Sharma v. Smt. Santosh Sharma's case* (4) does not lay down the law on the point correctly.”

(16) We have no doubt in our mind that the wife has treated the husband with cruelty after solemnisation of the marriage.

(17) We made an attempt to bring about the reconciliation between the parties, but we could not succeed. The husband had felt so much tortured that he was not willing to accept the respondent in his matrimonial home at any cost. Even the wife had pleaded in the written statement that the husband had caused a reasonable apprehension in her mind and it would be injurious and harmful to live with him. It appears that the marriage has been irretrievably broken.

(18) The parties have two offsprings, out of the wedlock. We sent for them and after meeting them we found that they were well looked after by the husband.

(19) In the circumstances, we are left with no option but to grant the petitioner of the husband for divorce. The judgment of the learned Single Judge is set aside and that of the trial Judge is restored. However, before we part with the judgment, we want to make a provision for permanent alimony for the wife. In fact the husband agreed to provide alimony during her life time. Accordingly, she will be entitled to alimony till her life-time irrespective of the fact that she re-marries after their marriage has been dissolved by a decree of divorce. The husband is directed to deposit a sum of Rs. 1,20,000 in the State Bank of Patiala, High Court Branch, Chandigarh, within two months from today in the name of the res-

(3) A.I.R 1984, Bombay 413 (F.B.)

(4) 1980 Mah. L.J. 391.

pondent. The deposit will be made in the fixed deposit initially for thirty years or till the life-time of the wife, whichever is later. This amount will yield a monthly interest of Rs. 1,000 which will be paid to her. If the rate of interest is revised by the Reserve Bank of India and it exceeds Rs. 1,000 per month, the same will be paid to her. On the expiry of the above period if the wife is alive, the amount will remain in deposit for twenty years more on the same terms and condition. The wife will not be entitled to withdraw the principal amount or any part thereof. On her death, the principal amount will devolve upon the two children or their heirs in equal shares. There will be no order as to costs.

PCG.