GAHC010192332017

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

Case No. : Mat.App. 5/2017

1:SMT RAKHI PAUL
W/O SRI AMIT PAUL, INDIRA NAGAR TILA, WARD NO. 4, RANGAPARA, DIST. SONITPUR, ASSAM

VERSUS

1:SRI AMIT PAUL
S/O LT. LAKHI KANTA PAUL, PERMANENT R/O WARD NO. 4, RANGAPARA, DIST. SONITPUR, ASSAM, PRESENTLY RESIDING AT, SILIGURI, MALLAGURI, P.S. PRADHAN NAGAR, DIST DARJEELING, WEST BENGAL

Counsel for appellant : Ms. A Neog

Counsel for respondent : Mr. B Sharma

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

JUDGMENT & ORDER (CAV)

(S. Saikia, J.)

Heard Ms. A Neog, learned counsel for the appellant and Mr. B Sharma, learned counsel for the respondent.

2. This appeal is preferred by the appellant wife being aggrieved by the judgment dated 19.9.2016 passed in Title Suit (M) Case No.114/2014 filed under Section 13 (1) (i-a) (i-b) of the Hindu Marriage Act, 1955 by District Judge, Sonitpur at Tezpur whereby the petition

seeking divorce by the respondent husband was allowed.

3. The husband as the petitioner filed the title suit for divorce on the ground of cruelty and desertion by the appellant wife. The short case projected by the husband was that the marriage was solemnized between the parties on 18.11.2010 in the Satsang Mandir, near Polofield, Tezpur, Sonitpur, according to Hindu Religious rites. The respondent husband and the appellant wife thereafter started living together as husband and wife in the matrimonial house situated at Ward No.4, Rangapara. The respondent/husband owned a small jewellery shop situated in Rangapara town from which he earned his livelihood. The appellant wife and the respondent husband were followers of Shri Shri Anukul Thakur and used to visit frequently the Ashram at Deoghar at Jharkhand. The case projected by the respondent husband is that the appellant wife insisted on visiting the Ashram at Deoghar several times in a year and consequently, the husband had to spend about Rs.1,60,000/- towards those visits, within a year and half after the marriage. The further case of the husband is that the appellant wife and her elder brother requested the respondent husband to lend an amount of Rs.2 lakhs with a promise to return it after 15 days. The husband managed to arrange the said amount by borrowing it from his well wishers and handed over the money to the elder brother of the appellant wife. However, instead of returning the loan amount, the brother of the appellant wife, i.e. brother-in-law instigated the appellant wife against the husband because he had requested for returning the borrowed amount. When the brother-in-law failed to return the money, the respondent husband had to sell out a plot of his hereditary land situated at Bardhaman, West Bengal for an amount of Rs.3,50,000/- for repaying the amount he had borrowed as loan from his well wishers. However, the wife made a hue and cry and managed to gather people around and alleged that the respondent husband was not known to her and that he had robbed her of her money. Having no alternative, the respondent husband had to hand over the entire amount of Rs.3,50,000/- to the appellant wife. Thereafter she proceeded towards her parental home situated in Diphu, Karbi Anglong, Assam. It is the case of the respondent husband that the appellant wife of her own volition left the matrimonial home and started living separately in a rented house at Rangapara since the month of October, 2012. Although the husband and his family members tried to bring back the appellant wife to the matrimonial home, she refused to come. Consequently, the respondent husband was deprived

of his conjugal rights as the appellant wife had deserted the husband for no fault of him and without any reasonable cause.

4. The appellant wife contested the suit by filing her written statement and denied the allegations made against her by the respondent husband. The appellant wife in her written statement projected the case of cruelty by the husband and his family members as well as desertion by the husband, and therefore she contended that the husband was not entitled to a decree of divorce as prayed for. The appellant wife contended that she was physically assaulted by the husband and there was consistent demand that the appellant wife procure money from her father, which she refused. The appellant wife also contended that on 6.5.2011, the respondent husband took her to Bhalukpung and forcibly obtained her signatures on a few blank papers.

It is also contended by the appellant that after she became pregnant in the month of March, 2011, the respondent husband repeatedly advised her for abortion and ultimately the appellant wife was forcibly compelled to abort her foetus at Gogoi Nursing Home at Tezpur on 8.6.2011. It was also contended that on 11.2.2013, the respondent husband along with his mother came from Siliguri to Rangapara to the residence of the husband's maternal uncle. The appellant wife met the husband at his maternal uncle's house on the evening of 13.2.2013 and requested him to take her with him to Siliguri. But the respondent husband assaulted the appellant wife physically with a wooden lathi causing a fracture on her left wrist joint. After the assault, the respondent husband with his mother fled away from Rangapara to Siliguri in the early morning of the next day being apprehensive of arrest by police.

The appellant wife also contended that since the date of her marriage on 18.11.2010 her name was not recorded in the voters list, ration card, in the passbook of the husband as his nominee as well as in insurance policy which makes it evident that the respondent husband had married the appellant wife only as a means to recover his immovable property situated at Bardhaman. The appellant wife contended that she was unemployed and had no personal income to maintain herself whereas the husband earns an amount not less than Rs.45,000/- per month and in spite of that the husband had not paid a single rupee to the appellant wife since the date of leaving the wife at Rangapara. The appellant wife therefore prayed for dismissal of the suit with cost.

5. Learned trial Court upon these facts framed the following issues:

"*1. Whether the petitioner has been subjected to cruelty by the respondent?*

2. Whether the Respondent deserted the petitioner without any cause?

3. Whether the petitioner is entitled for a decree of divorce as prayed for?

4. To what other relief/reliefs the parties are entitled?"

6. The husband as the petitioner adduced three witnesses and the respondent wife adduced two witnesses.

7. Upon consideration of the evidences adduced by the parties and upon hearing the parties at length, learned trial Court vide the impugned judgment and order allowed the suit for divorce on the ground of desertion and cruelty. Learned trial Court answered the Issues No.1, 2 and 3 in favour of the respondent husband and allowed the suit granting a decree of divorce and dissolving the marriage between the appellant wife and the respondent husband.

In so far as Issue No.4 is concerned, the learned trial Court awarded an amount of Rupees three lakhs as permanent alimony which was directed to be deposited by way of bank draft either at a time or in six monthly installments and the divorce suit was accordingly disposed of.

8. In view of the facts narrated above, we now proceed to examine the matter as well as the judgment impugned in the present appeal.

9. The present appeal filed by the appellant wife is premised on the following grounds:

"*I. For that the Learned Trial Court committed manifest error in law as well as in facts apparent on the face of the records entailing miscarriage of justice in passing the impugned judgment and decree dated 19.09.2016, in as much as, the same is contrary to the judicially evolved principles.*

II. For that the Learned District Judge, failed to appreciate the evidence on record in its proper prospective, and as such the impugned Judgment and Decree dated 19.09.2016 is not legally sustainable and the same is liable to be set aside.

III. For that the learned trial court committed gross error in holding the ethical or

religious belief and faith of the appellant as a ground of cruelty. The religious principles of an individual is totally his/her choice and following the path of a 'Guru' and once in a while visiting the sacred place cannot be ground of cruelty and as such the impugned order dated 19.09.2016 is bad in the eye of law and, as such, is liable to be set aside and quashed.

IV. For that the Learned Trial Court failed to appreciate the fact that the respondent himself was also a disciple of the same 'Guru' as that of the appellant that is Sri Sri Thakur Anukulchandra and he took the initiation of the 'Guru' much before the appellant. In fact it was he who used to visit the ashram and the appellant used to accompany him after marriage.

V. For that the learned Court below failed to appreciate the fact that cruelty was actually meted upon the appellant. She was forced to abort her baby which is evident from the evidences on record.

VI. For that the learned Court below did not apply its judicious mind that as far as the deserting spouse is concerned to constitute the ground of desertion two essential conditions must be there – first, the factum of separation (factum deserdendi) and second, the intention to bring the cohabitation permanently to an end (animus deserdendi). When both the elements, intention to desert and fact of separation co-exist desertion takes place. From the evidences on record it is evident that it was the respondent himself who kept the appellant separately from him and not the appellant which he has admitted in his cross-examination. It is also apparent from his cross-examination and the evidences on record the intention of the appellant to reconcile. As such the impugned judgment is bad in law and is liable to be set aside.

VII. For that the Failure on the part of the Learned Court below to appreciate the above facts while passing the impugned order renders the same bad in the eye of law.

VIII. For that the impugned judgment is perverse and contrary to the evidence on record and hence is liable to be set aside.

IX. For that the conclusion reached by the learned Judge for passing a decree of divorce is contradictory to the preceding discussion of the evidences and as such the

same is not sustainable in law.

X. For that the learned trial Judge acted on the basis of conjecture and surmises in assuming cruelty and desertion in your appellant which is not at all applicable in the instance case in as much as the desertion was not voluntary one but it was under compelling circumstances.

XI. For that the Learned District Judge did not apply its judicial mind properly at the time of passing the impugned Judgment and Decree and as such arrived in a wrong decision causing serious miscarriage of justice. As such, the same is liable to be set aside and quashed.

XII. For that the learned judge failed to appreciate the fact that the case for divorce was completely on vague grounds and as such the learned trial judge ought to have dismissed the suit with heavy cost.

XIII. For that in any view of the matter, the impugned Judgment and Decree dated 19.09.2016 is not legally sustainable and the same is liable to be set aside and quashed.

XIV. For that any other ground/grounds may be submitted at the time of hearing of the instant appeal."

10. The respondent husband as the petitioner filed his evidence-on-affidavit on 22.5.2015 before the trial Court. In the said evidence-in-chief, he has stated that pursuant to marriage on 18.11.2010 at the Satsang Mandir near Polofield, Tezpur, Sonitpur, the respondent husband and the appellant wife started to live as husband and wife. The respondent husband stated in his evidence-in-affidavit the case as projected in the petition as discussed above.

In his cross examination, the husband has admitted that he met the appellant wife in Deoghar and they had love affair pursuant to which they got married. It is also admitted that he did not take his wife to Siliguri when he went with his mother. He has also admitted that he is also a disciple of Sri Sri Anukul Thakur. It is also admitted by the respondent husband that in the year 2013, the appellant wife and his brother had gone to Siliguri but he informed her that he would not keep her. The respondent husband denied the suggestion that he had forcibly taken the appellant wife's signature on blank papers at Bhalukpung. He denied having

demanded Rs.3 lakhs from the maternal family members of the appellant wife or that he started inflicting cruelty both physically and mentally upon the appellant wife. He also denied that he forced the appellant wife to undergo abortion in the Gogoi Nursing Home at Tezpur. He admitted that he had jewellery shop while he was in Rangapara but denied that he continued to have it even when he shifted to Siliguri. He denied to depose falsely with regard to availing of loan from the Bank. He also admitted that he did not lodge any complaint before police in respect of his allegations that the appellant wife had taken away an amount of Rs.3,50,000/-.

11. PWs-2 and 3 also supported the evidence of the respondent/petitioner (husband). The cross-examination of PWs-2 and 3 could not bring forth any material in contradiction in the evidence adduced by them.

12. The appellant wife in her evidence-in-chief projected the case as stated in the written statement. In the cross-examination, she admitted that she was with the husband for two years and that in the matrimonial home she had TV, furniture and other articles to meet the daily requirements. Although she admitted about her visits to Deoghar at Jharkhand to the Ashram of Anukul Thakur before her marriage as well, she was unable to recall the expenses incurred for the visit to the Ashram from her maternal home in Karbi Anglong, Assam. She also admitted to have visited the Ashram after her marriage with her husband and that the expenses for the same had been borne by the husband. She admitted to visiting the Ashram alone after her marriage. She denied the suggestions that her elder brother had taken a loan of Rs.3 lakhs from her husband. The appellant admitted that she did not inform anyone after her husband took her signatures on blank papers on 6.5.2011 nor did she file any case to recover those blank papers. She denied the suggestion that because her husband asked her to do a DNA test she had undergone abortion in fear.

DWs 2 and 3 also adduced evidence supporting the case of the appellant wife.

13. The documents exhibited by the appellant wife, namely, Exts- 'ka', 'kha' and 'ga' available in File C1 of the LCR reveals that those are prescriptions from Gogoi Nursing Home at Tezpur and Maitreyi Women's Clinic also in Tezpur. The prescriptions are at page 52 to 55 of the LCR. The examination reports are at page 56 to 59. The discharge slip of Gogoi

Nursing Home is at page 60. A perusal of the documents referred above along with the discharge slip does not indicate anywhere that the appellant wife had undergone abortion. Rather the discharge slip at page 60 indicates diagnosis as "UTI". No evidence is found in those documents regarding abortion as claimed to have undergone by the appellant wife. There was not even a query/suggestion put to the respondent husband during his cross-examination relating to the alleged forcible abortion as claimed to have been undergone by the appellant wife, although the accusation is serious in nature.

14. Although from the evidence adduced before the trial Court and examined by us, it becomes evident that the ground of desertion by the appellant wife is not strongly made out, however, strong allegation made by the appellant wife in her written statement and in her oral evidence adduced before the trial Court to the effect that the petitioner husband and his family members had forced her to undergo abortion, is not at all supported by any documents produced before the trial Court. The medical documents produced before the learned trial Court do not indicate any finding by a medical professional which would suggest abortion let alone forcible abortion on the appellant wife. The discharge slip as mentioned above clearly reflects the diagnosis as "UTI". Assuming that there was indeed an abortion undergone by the appellant wife at the instance of the respondent husband/his family members, the same ought to have been complained of by the appellant wife before appropriate authorities by lodging appropriate complaints. No such statement is made nor any evidence has been brought out by the appellant wife before the learned trial Court. The allegation of forcing her to undergo forcible abortion being a very serious allegation against the husband without corroboration has to be construed to be an act of cruelty. Such unfounded serious allegations made by the appellant wife against the husband amounts to acts of cruelty as had been held by the Apex Court.

In this context, the Supreme Court of India in the case of *Vijaykumar Ramchandra Bhate vs. Neela Vijaykumar Bhate,* reported in *(2003) 6 SCC 334*, has held that mere questioning the integrity and character of wife (or husband), judged by the Indian Standard would amount to the worst form of cruelty and insult, sufficient to substantiate cruelty in itself towards the husband (or wife) and their family members. Relevant paragraphs of *Vijaykumar Ramchandra Bhate* (supra) are extracted hereinbelow:

"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 extramarital 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.

8. The allegations made in this case do not appear to have been the result of any sudden outburst. On the other hand, such injurious reproaches, accusations and taunts as were found to have been made in this case lend credence to the fact that the husband was persisting in them for sufficiently a long time humiliating and wounding the feelings of the wife to such an extent as to make it insufferable for the wife to live in matrimonial home any longer with the husband. The Division Bench of the High Court, in the course of its judgment in FCA No. 57 of 1994, particularly in paras 31 to 38 adverted to the nature and details of the allegations as culled out from the written statement extensively and meticulously and considered them in the light of the settled principles of law governing the same before affirming the judgment of the trial court which also recorded findings against the respondent after a detailed discussion of the relevant materials on record in paras 26 to 30 of the judgment in M.J. Petition No.382 of 1983. On going through them we are convinced that the findings of the courts below are well merited and fully justified on the

materials available on record and that they are neither shown to suffer any infirmity in law nor substantiated to be based on no evidence or vitiated on account of any perversity of approach to call for a different conclusion in our hands and interfere with the concurrent verdicts recorded by them.

9. The learned Senior Counsel for the appellant husband, as indicated supra, also was mainly trying to contend that once those allegations were unconditionally withdrawn by filing an application for amendment on 17.8.1988 which came to be also allowed by the trial court on 16.9.1988 and the amendments actually carried out on 5.10.1988, they could not have provided any basis for consideration in the case any longer to record any findings against the appellant. The plea on behalf of the appellant now made, as had been before the courts below, is that those allegations must be considered to have never been on record and not available for being referred or relied upon for any purpose. This aspect also, in our view, is found to have been considered at length and in its proper perspective by both the courts below before rejecting the claim projected on behalf of the appellant husband. Apart from observing, from the nature of the allegations and details disclosed that those statements were made by the appellant himself and only at his instance and on instructions, the courts below were of the view that the reply filed on 17.1.1990 in court to an application filed by the wife seeking permission to engage her lawyer (mistakenly referred to as the appellant's application) and their contents substantially reaffirming what has been stated earlier in the written statement but got withdrawn by subsequent amendment rendered even the so-called withdrawal to be of no significance or consequence and that it does not appear to have been genuine, too. Cogent and convincing reasons have been assigned by the courts below, in this regard and we are unable to come to a different conclusion on the indisputable factual developments noticed and relied upon by the High Court in paras 40 to 48 of its judgment for rejecting the claim of the appellant in this regard. The slender claim of alleged condonation was also rejected by the High Court, rightly by placing reliance on the repetition of many such allegations in the reply dated 17.1.1990. In this connection, it would be of interest also to notice the observations of the learned trial Judge in the order passed on 16.9.1988 on the application for amendment filed by the appellant for withdrawal of certain allegations from the written statement. The respondent-wife who sent her response to the appeal filed by the appellant, in the form of an affidavit also enclosed with the same, the affidavit in reply dated 17.1.1990 filed by the appellant in the trial court and a copy of the order dated

16.9.1988 noticed above passed on the applications for amendment of the written statement. At paragraph 17 of the order dated 16.9.88, it is found observed as follows:

> *"17. It must be made clear that the amendment of the written statement cannot have any reference to anything that had happened prior to the filing of the petition on which the petitioner can place reliance, although such matters may have been covered by the statements now deleted. It may be remembered that the petitioner is not withdrawing her allegations. It has also to be remembered that the petitioner has not acted upon unilateral withdrawal of the allegations by the respondent by his letter dated 14.8.1986. "*

10. In the light of all these, it is futile to claim on behalf of the appellant that the withdrawal of allegations unilaterally by the appellant, by filing an application for amendment of the written statement wiped out completely all those allegations for all purposes.

11. That apart, in our view, even the fact that the application for amendment seeking for deletion of the accusations made in the written statement was ordered and amendments carried out subsequently does not absolve the husband in this case, from being held liable for having treated the wife with cruelty by making earlier such injurious reproaches and statements, due to their impact when made and continued to remain on record. To satisfy the requirement of clause (i-a) of Sub-section (1) of Section 13 of the Act, it is not as though the cruel treatment for any particular duration or period has been statutorily stipulated to be necessary. As to what constitute the required mental cruelty for purposes of the said provision, in our view, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct, but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home. If the taunts, complaints and reproaches are of ordinary nature only, the Courts perhaps need consider the further question as to whether their continuance or persistence over a period time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonable conclude that the maintenance of matrimonial home is not possible any longer. A conscious and deliberate statement levelled with pungency and that too placed on

record, through the written statement, cannot so lightly be ignored or brushed aside, to be of no consequence merely because it came to be removed from the record only. The allegations levelled and the incidents enumerated in the case on hand, apart from they being per se cruel in nature, on their own also constitute an admission of the fact that for quite some time past the husband had been persistently indulging in them, unrelented and unmindful of its impact. That the husband in this case has treated the wife with intense cruelty is a fact, which became a fait accompli the day they were made in the written statement. They continued on record at any rate till 5.10.1988 and the indelible impact and scar it initially should have created, cannot be said to have got ipso facto dissolved, with the amendments ordered. Therefore, no exception could be taken to the courts below placing reliance on the said conduct of the appellant, in this regard, to record a finding against him."

(emphasised by us)

15. In *Vijaykumar Ramchandra Bhate (supra),* relevant portion of which has been extracted above, the Hon'ble Supreme Court was dealing with slanderous accusations made by the husband against the wife. Although during the course of trial of the case, the husband made an attempt to withdraw the accusations, however, the Hon'ble Supreme in categoric terms has held that a conscious and deliberate statement levelled with pungency and that too placed on record, through written statement, cannot so lightly be ignored and brushed aside, to be of no consequence merely because it came to be removed from record. Spirit of law, as declared by the Hon'ble Supreme Court of India, appears to be to the effect that injurious reproaches, accusations and taunts, humiliating and wounding the feeling of the wife to such an extent as to make it insufferable for the wife to live in matrimonial home any longer with the husband, would per se constitute acts of cruelty. It has been held that levelling disgusting accusation, assault on character, honour, reputation and status, would constitute cruelty.

In the considered opinion of the Court, even if the circumstances are inverse viz. wife making such accusation against the husband, the result would be the same.

16. Perusal of the record clearly indicates that the appellant wife made specific accusation against the respondent-husband of subjecting her to forced abortion. For the said purpose, certain medical records has been relied upon.

17. As discussed in extenso hereinabove, there is not even an iota of evidence to suggest that abortion has taken place. Medical record only suggests a case of urinary tract infection. Therefore, it stands established that such slanderous accusation has been made against the respondent-husband without any basis. Such accusations attributing criminal actions to the husband for which even medical record was submitted by the wife would certainly establish cruelty towards the husband. Clearly, as held hereinabove, the medical record does not even suggest that abortion had taken place. Such imputations clearly tantamount to assault on the reputation and status of the husband and would have stigmatic impact. With such imputations being made, it can safely be concluded that conducive matrimonial home cannot be maintained between the wife and the husband, in such circumstances. The imputations made are a conscious and deliberate act for pungency through documents which stand belied.

18. In such circumstances, we confirm the findings recorded by the Trial Court on Issue No.1. It is hereby held that the respondent-husband had been subjected to cruelty by the appellant-wife.

19. In view of the above, we find no reason to interfere with the impugned judgment and decree. Consequently, the appeal is dismissed.

20. No order as to cost.

21. Lower Court record be sent back.

JUDGE **CHIEF JUSTICE**

Comparing Assistant