

GAHC010101962020



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

Case No. : Review.Pet. 73/2020

1:SMTI RENU DAS
D/O LATE RAKESH CH. DAS, R/O BORBARI RAILWAY COLONY, P.O. AND
P.S. DIBRUGARH, DIST. DIBRUGARH, ASSAM, PIN 786001

VERSUS

1:SRI BHASKAR DAS
S/O LATE HARIPADA DAS, R/O NO. 1 GOLAI GAON, P.S. DIGBOI, P.O.
GOLAI, DIST. TINSUKIA, ASSAM, PIN 786171

Advocate for the Petitioner : MR. S R GOGOI

Advocate for the Respondent : MR. N HASAN

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

JUDGMENT & ORDER

Date : 17-09-2020

For the Petitioner : Mr. H. Baruah, Advocate.

For the Respondent : Mr. N. Hasan, Advocate.

Date of Hearing : **17.09.2020**

Date of Judgment : **17.09.2020**

(Soumitra Saikia, J.)

This review application has been brought by Smti. Renu Das for review of

judgment dated 19.06.2020 rendered in Matrimonial Appeal No. 20/2019 (*Shri Bhaskar Das –Vs- Renu Das*).

2. The skeleton of facts necessary for addressing the issue raised by virtue of this review application are that Bhaskar Das, the appellant filed Divorce Case TS(M) No.9/2014 In the Court of District Judge, Dibrugarh, essentially taking the ground of cruelty and desertion against his wife Smti. Renu Das. The suit was dismissed by judgment & decree dated 15.12.2018. Aggrieved thereby, the husband Bhaskar Das filed the matrimonial appeal.

3. Essentially it appears that review is sought on the ground that not wearing or refusal to wear 'sindoor' by wife cannot constitute cruelty so as to justify dissolving the marriage. Further it was urged by the learned counsel for the review petitioner that the agreement entered between the parties was at the instance of the family members of both the parties to sort out the misunderstanding between them. The learned counsel for the review petitioner urged that as per the agreement no family members of either the husband or the wife were to visit them. As such, the finding of the judgment in this Court under review, the wife had compelled the husband from performing his statutory duties towards his aged mother under the provisions of the 2007 Act will amount to an error apparent on the face.

Since this order is being rendered in a review application, we are not referring to the facts in detail. Suffice it to say that the grounds for allowing the matrimonial appeal, setting aside judgment dated 15.12.2018 (*supra*) and dissolving the marriage essentially are –

(a) It is the admitted case of the wife that three proceedings of criminal nature had been initiated against the husband and his family members. In Digboi P.S. Case No.159/2013, under Section 498(A) IPC, acquittal had been recorded by a court of law. It thus stood established in law and facts that the wife indulged in making irresponsible and false accusations against her husband and his family members. This justified dissolution of marriage and grant of divorce in terms of

judgment rendered by the Hon'ble Supreme Court of India in **Rani Narasimha Sastri –Vs- Rani Suneela Rani, (2019) SCC Online SC 1595.**

- (b) The relations between the wife and the husband had become so strained that written agreement was executed with a stipulation that the husband Bhaskar Das shall maintain his wife, the review applicant Smti. Renu Das in a separate rented accommodation where family members of the husband shall not be allowed to come.

Depriving the husband of the company of his family members certainly does not indicate a successful marriage. Rather, it would be an act of cruelty if the husband is bound by an agreement to not meet his family members. Rather, the wife Smti. Renu Das went to the extent of initiating criminal proceedings vide Digboi P.S. Case No.230/2013, under Sections 471/420 IPC for non-compliance of conditions incorporated in the agreement. At the point in time when the appeal was decided the proceeding was still pending.

- (c) The Court also took judicial notice of the fact that the wife Smt. Renu Das in the witness box on oath stated *"That I am not wearing/putting sindoor right now because I don't consider him as my husband"*. This portion of the statement/cross-examination and other important portions of the statement given by the wife on oath have been extracted in para 12 of the judgment under review. From the said portions, this Court concluded that in the given circumstance when the wife states that she is not wearing 'sindoor' **because** she does not consider Bhaskar Das as her husband, the marriage was irrevocably broken. Surely, if the wife takes a plea on oath that she is not wearing 'sindoor' because she does not consider the husband as her husband, it does not indicate a surviving and a happy marriage. Such stand of the wife would hurt the husband's feelings to a great extent. By making such a statement, the wife has repudiated the marriage. In such circumstances, it would be inequitable for a court to force the husband to live with the wife. It

would be considered as an incident of cruelty, however might not be sufficient in itself, and in isolation as a ground of cruelty for grant of divorce.

The circumstances can be considered differently if the wife never wore 'sindoor'. In such circumstances, the husband would not be justified in pleading not wearing 'sindoor' as an incident of cruelty. In this case, however the circumstances appear to be different. On considering the evidence cumulatively and on plain reading of the statement given by the wife, it appears that the wife earlier used to wear 'sindoor' however when she stopped considering him as her husband, she stopped wearing 'sindoor'. Surely, when the facts and circumstances and evidences are considered collectively, such statement given by the wife can also be considered for concluding that the marriage had irrevocably broken. It is in this sense that the evidence has been read.

It appears that the review applicant is reading the statement in regard to the wife not wearing 'sindoor' out of context. The review application has been argued as if this was the only ground considered by the Court for dissolving the marriage, however as explained herein above it is not so. The Court has essentially relied on the circumstance of cruelty caused by initiating false criminal proceedings. The Court has relied on judgment rendered by Hon'ble Supreme Court of India in **Rani Narasimha Sastri's** case (supra). The other facts and circumstances, as mentioned in the judgment under review, convinced the Court that the marriage was irrevocably broken on account of various acts done by the wife. Learned counsel for the review petitioner, in reference to the facts and circumstances emanating from the evidence available on record, admits that there was no matrimonial harmony left between the husband and wife, and the matrimonial relations had fractured.

4. We having again carefully gone through the judgment under review in the context of the evidences available on record, are of the view that the husband was treated with cruelty which justifies dissolution of marriage by grant of divorce. The judgment does not call for review.

5. Review application is accordingly dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant