

Court No. - 39

Case :- FIRST APPEAL No. - 543 of 2015

Appellant :- Kavita

Respondent :- Rohit Kumar

Counsel for Appellant :- Abhinav Gaur, Vibhu Rai

Counsel for Respondent :- Pawan Singh Pundir, Rakesh Ojha, Sukram Pal

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. Heard Shri Vibhu Rai, learned counsel for the appellant and Shri Pawan Singh Pundir, learned counsel for the respondent.

2. Present appeal has been filed under Section 19 of the Family Court Act, 1984 arising from the judgement and order dated 4.9.2015 passed by Principal Judge, Baghpat in Case No. 37 of 2013 (Rohit Kumar vs Smt. Kavita) whereby the marriage between the parties was dissolved without making provision for permanent alimony.

3. The Hindu marriage between the parties was solemnized on 15.12.2011. There are no children born to the parties. Accordingly, respondent filed divorce suit on 1.2.2013 i.e. within two years of the marriage. In that, he disclosed that the appellant was quarrelsome from beginning and that she offered rude behaviour towards the family (including the parents) of the respondent. Then, of his own, respondent narrated an incident of the date 16.4.2012 wherein the appellant was shot at and was grievously wounded while she was on a way to her parental home in the company of the cousin brother of the respondent.

4. According to the respondent, she was admitted to a hospital by

the respondent and treatment was provided to her. Upon being discharged from the hospital, the appellant returned to her matrimonial home but she did not change her ways. She remained quarrelsome and rude. She also did not restrain herself from using an abusive tongue towards the family members of the respondent. While those general/generic allegations were made as to cruelty committed by the respondent, only one specific allegation of cruelty was made. It was alleged, on 3.1.2013, while the respondent was away on duty, the appellant was alone at her parental home in the company of her aged mother-in-law. At that time, certain close relatives of the appellant including her father, brother and two other persons visited the parental home of the respondent and engaged in squabble with the mother of the respondent. Not only she was assaulted but she was attacked with sharp edged weapon causing grievous injuries to her person. It is also a fact that a criminal case was registered with respect to that occurrence and the appellant and her family members were tried. At the same time, it is not disputed to the respondent that the criminal trial being Case No. 391 of 2016 (Karan Singh vs Pappan & Ors.), under Section 323 I.P.C. resulted in acquittal of all accused persons, vide judgement dated 13.3.2020 passed by Civil Judge (S.D.)/F.T.C./A.C.J.M. Baghpat. Though a certified copy of that judgement is not on record, at the same time, on query made, learned counsel for the respondent fairly admits that the said judgement does exist and that it was not challenged in revision/appeal itself.

5. While the above criminal case was pending, the divorce suit was instituted on 01.02.2013 with the allegations as described above. Those were disputed by the appellant. Parties led oral evidence in support of their pleas.

6. Learned court below has accepted the plea of cruelty on the strength of evidence led. In that, it has observed that the appellant had offered very cruel behavior and assaulted her mother-in-law along with some other close relatives (of the appellant) on a day when other members of the family of the respondent were not at home to attend the thirteenth day rites of another close relative. Further, the learned court below has taken note of the other criminal case lodged by the appellant against the respondent being Case Crime No. 51 of 2013, under Sections 498-A, 323, 506, 307 I.P.C. read with Section 3/4 Dowry Prohibition Act, 1961 and other criminal cases. However, it is a fact that those criminal cases were lodged after institution of the divorce suit proceedings on 1.2.2023. In any case, the plaint in the divorce suit proceedings did not make mention of such facts. It was not amended, either during pendency of the divorce case or during pendency of this appeal. While the respondent never pleaded cruelty arising from the institution of any criminal case by the present appellant, the only act of cruelty alleged remained - the alleged assault committed on the mother of the respondent.

7. Learned counsel for the appellant would submit, the evidence of the respondent with respect to the act of cruelty alleged was wholly inconclusive. It was never proven by the respondent that the appellant and her close family members had assaulted the aged mother of the respondent. The entire allegation made in that regard was false and concocted. Its falsity was exposed during the cross-examination of the respondent wherein he admitted that no FIR was lodged on 03.01.2013 with respect to that incident. In fact, the respondent admitted that the police authorities refused to register the F.I.R. treating it to be a petty family squabble. Being a police officer (in the Delhi Police), respondent tried his best to get the

FIR registered using his influence, but no F.I.R. came to be registered. Referring to that cross-examination statement, it has been further asserted that the respondent admitted that no information was given to the police with respect to the alleged assault. As to the medical report that was referred to in the examination-in-chief (of the respondent), reference has been made to the cross-examination statement wherein the respondent admitted that the original document was not proven and a photocopy of such medical report was filed without injuries attempted to be proved in these proceedings. Even that photocopy of the injury report was of three to four days after the incident. The respondent specifically admitted that he was not aware of the treatment that may have been offered to his mother during that period i.e. from the date of occurrence to the date of treatment. He further admitted that he was not aware if there was any stitch mark received by his mother. In any case, the respondent could not give details of any treatment offered to his mother. Thus, it has been submitted, the entire case set up by the respondent of the alleged incident dated 3.1.2013, was concocted and false.

8. Last, reliance has been placed that no evidence was led to prove that occurrence to any extent (at the criminal trial). It resulted in acquittal of all the accused persons. Then, it has been submitted, other than the above incident, since the respondent had not pleaded any other fact occurrence of cruelty by the respondent (in his plaint), it never became open to the respondent to lead any evidence as to any other act of cruelty committed by the respondent. Unless the act of cruelty alleged was specifically pleaded in the plaint and the appellant had been thus given opportunity to rebut the same, no new fact occurrence may have been introduced at the stage of evidence to establish any alleged

act of cruelty.

9. In any case, it has been submitted, the allegations made by the appellant against the respondent are true and correct. Other than the allegation of offence under Section 307 I.P.C., rest are pending adjudication in the relevant criminal proceedings. As to the allegation of offence alleged under Section 307 I.P.C., the occurrence is not disputed to the respondent. In the plaint filed by the respondent, it is admitted that the respondent was shot at while she was traveling in the company of the cousin brother of the respondent. That F.I.R. was lodged, at the instance of the respondent. However, it was registered against unknown assailants. The matrimonial ties between the parties deteriorated immediately thereafter and the appellant was turned out of her matrimonial home on 3.1.2013. In that context of bad matrimonial relationship suffered, she may have developed doubts and suspicions, leading to allegations made against the respondent - of offence alleged under Section 307 I.P.C. However, the Revision filed by the respondent against the charge-sheet submitted against him (u/s 307 I.P.C.) was allowed. Thus, the respondent was never arrested and no undue harassment had been suffered by him, on that count.

10. In view of the above, it has been submitted, the learned court below has erred in traveling beyond the plaint case and it has further erred in relying on unreliable oral evidence, to infer that the appellant had offered cruel behavior towards the respondent. In fact, the appellant has suffered for no fault. She was always ready and willing to revive her matrimonial relationship with the respondent. In these proceedings, she has also offered to withdraw from all criminal and civil cases lodged by her against the

respondent but he has not accepted any terms to revive the matrimonial relationship between the parties.

11. On the other hand, learned counsel for the respondent would submit, in the first place, the acquittal in the criminal trial may not lead to dismissal of the divorce case proceedings arising from cruelty committed by the appellant on the mother of the respondent on 3.1.2013. He would submit that the present being a civil proceeding, it has to be decided on the strength of balance of evidence and preponderance of possibilities. Merely because strict test of evidence may not have been satisfied at the criminal trial, it may not be said that no cruelty was committed by the appellant or that no incident as described in the plaint occurred. Referring to the examination-in-chief and the cross examination statement of the respondent, it has been strenuously urged, the appellant along with her close relatives had assaulted the aged mother of the respondent. Further, referring to the cross-examination statement of the appellant, it has been submitted that the appellant did admit that her close relatives visited the residence of the respondent when all other family members of the respondent were away. As to his own cross examination statement, learned counsel for the respondent would submit that the respondent nowhere contradicted the plaint. However, he could not dispute the fact that neither the extent of injury allegedly suffered by the mother of the respondent nor the treatment that may have been received by her, were proven in the divorce case proceedings.

12. Second, heavy reliance has been placed on the fact that merely because the respondent has instituted the present divorce suit proceedings, the appellant proceeded to lodge repeated false criminal case against the respondent. Thus, it has been submitted,

not only false allegation of demand of dowry was made but that the appellant made wholly false accusation of the respondent having tried to kill the appellant. That allegation was wholly unfounded and an after thought only to cause deep harassment to the respondent. At the same time, on query made, learned counsel for the respondent would fairly state that such facts though narrated at the stage of evidence, those were not pleaded in the plaint. Last, it has been submitted, the marriage between the parties has irretrievably broken down. They have lived separately for 11 years. As to the marital status of the parties, though the appellant has strenuously urged that the respondent has remarried, learned counsel for the respondent states that no such remarriage has taken place. The respondent being a responsible government servant, is abiding by the law.

13. Having heard learned counsel for parties and having perused the record, in the first place, irretrievable breakdown of marriage is not available as a statutory ground to dissolve a Hindu marriage. Therefore, it is not open to us to consider that as a ground to dissolve a marriage. The present proceeding being a proceeding of statutory appeal, we may look to exercise our jurisdiction only in accordance with the statute. Therefore, we also do not intend to test the limits of the jurisdiction of that ground. As to the ground for divorce disclosed in the plaint, as noted above, the same was confined to a single act of cruelty alleged - being incident dated 3.1.2013. As to the other facts pleaded in paragraph 3 of the plaint, they did not bring out any ground of cruelty. The fact that the appellant suffered a firearm injury at the hands of an unknown assailants remained wholly extraneous to the ground of cruelty alleged. As to the further allegation that the appellant tried to trouble her father-in-law, no date, time and place of such

occurrence is disclosed in the plaint. Therefore, the same can never be acted upon.

14. As to the occurrence dated 3.1.2013, if true, it may constitute an act of extreme cruelty. However, the same was denied by the appellant in her written statement. The burden to prove the fact remained on the respondent. Though, during his examination-in-chief, he did give details of the occurrence and did mention that the medical injury report had been prepared on 8.1.2013. Neither such report was filed nor proven. In his cross examination statement, the respondent fairly admitted that he had only filed a photo-copy of that medical report. We have gone through the entire oral statement of the respondent. At the same time, during his examination-in-chief, he did not make any effort to prove that document. Besides the above conclusion drawn by us, the respondent was cross-examined in detail on the issue of injuries allegedly received by his mother. In the first place, the police authorities did not register any case. On the own say of the respondent, the police authorities treated it to be a petty family squabble. Then, the alleged medical report was prepared four to five days after the occurrence, on 8.1.2013. No evidence whatsoever was led to establish that the mother of the respondent received any medical attention during that long period of time. Even as to the medical attention received (if at all), on his cross-examination, the respondent admitted that he was not aware of the same and that he was not aware that there were any stitch marks received by his mother of any treatment offered to her. Thus, the fact of grievous injuries suffered by the mother of the respondent on being assaulted by sharp edged weapon was not proven, to any extent. What may have occurred may therefore, continue to be described as a family squabble which may never acquire the

degree or status of an act of cruelty as may lead to dissolution of a Hindu marriage.

15. We may stay reminded of the principle that while administering family law, Courts are not required to imagine an ideal family or ideal family relations to judge whether the act complained is one that may amount to cruelty. Unless proven facts are such as may lead the Courts to the inference that the aggrieved parties are entitled to construe the act of cruelty committed on them, the Courts may not impose their own morality or opinion as to the conduct that may have been offered by the parties in the situation in which they existed.

16. Then, as to all other acts of cruelty alleged, learned counsel for the appellant is right in his submission that those were never pleaded as a fact, in the plaint. Though such facts occurred after the plaint was filed on 1.2.2013, at the same time, if those acts were such as may have been construed to be the acts of cruelty committed by the respondent, it remained from him to file appropriate amendment application. At the relevant time, it was the admitted position on record that no such amendment was filed and no amendment was granted to the plaint. In that status of the plaint, the appellant was never called upon to deny or admit any such fact occurrence.

17. In absence of that opportunity granted to the appellant, it never became open to the respondent to rely on such fact occurrences - by introducing them at the stage of oral evidence. In absence of those essential facts being pleaded they could never be treated as proven. In fact, the learned court below ought not to have relied on that evidence. Unless material facts had not been pleaded they may not have been in dispute; consequently, no issue may have arisen

and; unless an issue had arisen, no evidence may have been led. That simple principle and flow of proceedings has been departed, without permission of law.

18. To that extent, the learned court below has fallen an error of procedure leading to error of judgement. The conclusions drawn on the strength of such fundamental error of procedure cannot be permitted to stand. Therefore, inferences drawn by the learned court below on the strength of evidence not arising on pleadings, must be treated to be extraneous to the issue before the learned court below.

19. Also, no merit conclusion have been reached by the learned court below merely occasioned by the fact that the appellant had lodged a criminal prosecution against the respondent as lodging of a criminal case *per se* not amount to cruelty. Only if such criminal case may be found to be false as may amount to malicious prosecution etc; that act may be inferred to be an act of cruelty. Otherwise, the standard in law remains that any person whether in a matrimonial relationship or otherwise who may be exposed to a criminal occurrence/offence may remain fully entitled to seek justice for such offence committed. Since the criminal prosecution lodged by the appellant are largely pending against the respondent, we are not in a position to reach any conclusion that those were false. At any rate, no evidence was led in these proceedings as may allow us to reach any conclusion that those allegations are completely false.

20. As to the allegation of offence under Section 307 I.P.C. that may be treated as a wrong allegation made. At the same time, peculiar facts of the present case where it is not denied to the respondent that the appellant was shot at few months before the

matrimonial relationship between the parties suffered stress and further since it is not disputed to the respondent that the FIR was lodged against unknown assailants, the allegation made against the respondent under Section 307 I.P.C. even if found untrue, may not encourage the Court to reach any premature conclusion of false and malicious prosecution lodged by the respondent. Such an allegation made in the totality of the circumstances noted above, may continue to be described as wrong.

21. Consequently, we find no ground of cruelty exists as may allow us to dissolve the marriage between the parties. Recognizing the fact that the parties have lived separately for long, we required them to remain present in Court on earlier dates. We interacted with the parties in the presence of their counsel. No room for settlement could be reached. Accordingly, that course is also not open.

22. In view of the above, the appeal succeeds and is **allowed**. The judgement and order dated 4.9.2015 passed by Principal Judge, Baghpat passed by the learned court below is set aside. No order as to costs.

Order Date :- 21.9.2024
Prakhar

(Donadi Ramesh, J.) (S.D. Singh, J.)