

Harsha Dinesh Savla v/s Dinesh Samji Savla

Family Court Appeal No. 54 of 2013

decided on

10-03-2014

at

High Court of Judicature at Bombay

by

**THE HONOURABLE MRS. JUSTICE V.K. TAHILRAMANI & THE HONOURABLE
MR. JUSTICE V.L. ACHLIYA**

advocates

**For the Appellant: Milan Desai i/by Sunil C. Dubey, Advocates. For the Respondent:
Vivek Kantawala, Urvi Dave i/by Vivek Kantawala and Company, Advocates.**

Equivalent
Citation(s)

Judgment Oral Judgment: (V.K. Tahilramani, J.)

1. Heard the learned counsel for the appellant and the respondent. By consent, taken up for final hearing.

2. The learned counsel for the appellant stated that this appeal is confined to the judgment allowing petition No.A-2511 of 2008 filed by the husband for divorce on the ground of cruelty. It is stated that the appellant will file separate appeal in relation to the judgment of the Family Court in Petition No.C-104 of 2008 filed by the appellant wife for maintenance wherein permanent alimony of Rs.2 Lakh was granted to the appellant. The statement that a separate appeal will be filed in relation to the order passed in maintenance petition is accepted. The appellant is permitted to file a separate appeal in relation to granting of permanent alimony of Rs.2,00,000/- to the appellant in Petition No.C-104 of 2008. Thus, this appeal is being heard only in relation to the decree of divorce granted by the Family Court on petition No.A-2511 of 2008, which was filed by the respondent/husband for divorce.

3. The admitted facts are as under :

On 03/03/1991, the appellant and the respondent got married at Mumbai as per Hindu Vedic rites and on 02/06/1992 son-Keval was born. The Respondent/husband filed a petition for divorce in the year 2008. The

respondent/husband filed petition for divorce on the ground of cruelty, which ultimately came to be allowed by judgment and decree dated 19/01/1993. Hence, this appeal.

4. The case of the respondent is that :

(a) The appellant was in the habit of lying.

(b) She was not following the rules and regulations of the house.

(c) She was in the habit of stealing money.

(d) She forged signature of other persons and withdrew money from their bank account.

(e) She was involved in a Debit Card fraud of Rs.37,000/- in relation to which F.I.R. was lodged on 07/05/2008 at Khar Police Station vide C.R.No.190 of 2008 and the appellant was arrested and was in custody in the said case.

On account of these reasons, it was impossible for him to live with the appellant without undergoing tremendous mental agony, suffering and harassment.

5. The appellant opposed the petition filed by the husband by filing written statement. She admitted that the marriage took place between the parties on 03/03/1991. She has admitted the birth of child-Keval on 02/06/1992. Thereafter, she has denied rest of the contents.

6. In support of his claim in petition No.A-2511 of 2008, the respondent/husband had adduced the oral evidence of five witnesses as well as documentary evidence. He has examined himself as PW1, his sister-in-law - Jyoti as PW2. He has examined Jayesh-the brother of appellant as PW3. He has examined Lakhamshi-PW4, who is the father of the appellant and he has examined Keval as PW5 who is the son of the appellant and the respondent. On the other hand, the appellant only examined herself.

7. The issue is relating to cruelty. The respondent namely Dinesh has reiterated the contents of the petition in his oral evidence. He has stated that the appellant/wife was in the habit of lying. She was not following the rules and regulations of the house. He has stated that he has found money short which was kept in the cupboard. In June 1995, the appellant was caught red handed by PW2-Jyoti while taking money from the cupboard. He has further stated that the appellant was in the habit of forging signatures and withdrawing money from bank account of other persons.

8. PW2-Jyoti has specifically stated in her evidence that she has personally

caught the appellant while stealing money. Jyoti has also stated that the appellant has forged her signature and removed money from the account of Jyoti in the bank. Her evidence further shows that she was cooking food since last five years for the respondent and his child as though the appellant was residing in the same house, she was cooking food only for herself. The fact that the appellant was not cooking food shows that the appellant was not following the rules and regulations of the house. The admission of the appellant that her husband had engaged a cook further corroborates the case of the Respondent/husband. The evidence of respondent/husband shows that the behaviour of wife was not according to the set standards accepted by the society and her behaviour of not giving food to her husband and son in the year preceding the divorce petition amounted to cruelty.

9. In Indian society, the closest people to a woman are her father, mother, brother, sister, husband and children. It is seen that out of the above persons, the husband, the father, the brother and the son have deposed against her. The facts of this case are very peculiar. This may be the first matrimonial dispute in which elder brother and father of a woman are deposing against their own sister/daughter and in favour of the son-in-law. Not only this, her own son has also deposed against the appellant.

10. The defence of the appellant is that her brother and father are falsely deposing because respondent has given money to them from time-to-time. It is pertinent to note that the appellant has not given the details/specifications as to when and how much amount was given by her husband to her brother and father.

11. It has also come in the evidence of the Respondent that appellant was working in a construction company in the year 2008. At that time, one Veronica Kini was also working in the said company. Veronica had a debit card of Vijaya Bank. The appellant committed a debit card fraud by withdrawing Rs.37,000/- from the bank account of Veronica by using her Debit Card fraudulently. Therefore, Veronica lodged F.I.R. The F.I.R. is on record. Veronica lodged F.I.R. on 07/05/2008 at Khar Police Station against the appellant. The evidence on record further shows that the appellant was arrested in the said case and she was in custody for many days. This shows willful and unjustifiable conduct on the part of the appellant which has justifiably caused an apprehension in the mind of the husband regarding his mental welfare.

12. Witnesses PW3-Jayesh and PW4-Lakhamshi are the brother and father of the appellant. PW4-Lakhamshi-the father of the appellant has stated that on 26/11/2009, he along with his family members visited the appellant's house and he tried to make her understand about her behaviour. But the appellant raised hand on her father and hit him. This fact is further corroborated by the evidence of PW3-Jayesh, who is the brother of the appellant. It is their common evidence

that within one year of marriage, they received complaint from the husband (respondent) regarding the behaviour of his wife-Harsha (appellant). It is submitted that she used to quarrel with everyone in the family over small issues. Father and brother of the appellant i.e. PW4 and PW3 tried to make her understand, but she did not listen to anyone. Both of them have further stated that the appellant cultivated the habit of stealing money, ornaments and forging signature. They have further stated that the appellant was arrested and she was in jail for five days and that the respondent/husband tolerated every nonsense of the appellant/wife for the sake of child. They have specifically stated that they have never seen such a gentleman in their life.

13. PW5 Keval, is the son of the appellant and respondent. He has stated that his mother-appellant was not only quarreling with his father but disputing with him. He has stated that since four to five years she has completely stopped preparing food for him and his father and they were getting their food through his aunt-Jyoti Savla. This fact is corroborated by PW2-Jyoti Savla. Keval has stated that the appellant was cooking food for herself, but not cooking any food for him and his father. The learned counsel for the appellant submitted that the evidence of Keval that since four to five years his mother had completely stopped preparing food for him and his father, is clearly a false stand taken by Keval which is clear from the evidence of the respondent/husband wherein he has stated that relations between the parties were smooth till 2006. However, it is seen that affidavit of PW5-Keval was filed on 17/04/2012. This fact shows that since 2007 to 2008, the appellant was not cooking food for her son-Keval as well as her husband. This fact nowhere shows that the evidence of Keval is false and hence cannot be relied upon. Keval has also stated that he caught his mother while taking money from his pocket. This fact has gone unchallenged.

14. The learned counsel for the appellant submitted that the evidence of the husband shows that up to the year 2006, the appellant was doing all the work in the house and they were living a happy marital life. He submitted that this would mean that all the acts of the appellant prior to 2006 are condoned and only the fact that on 07/05/2008, F.I.R. was lodged against her on the ground of theft is not sufficient as to make out a case of cruelty. It is just not only this fact which is to be taken into consideration, but it is seen that the appellant is indulging in a continuous series of acts which shows that she is in habit of stealing money of family members and others, forging signatures and withdrawing money from the bank and even misusing the debit card of her colleague-Veronica in Pooja Construction by withdrawing an amount of Rs.37,000/- from her bank account. The evidence further shows that the wife addressed a letter to the construction company wherein she has admitted that she worked in said company till 07/05/2008 and that she has committed theft in the office, therefore, she left the job of the company of her own free will.

15. 'Mental cruelty' u/s. 13(1)(ia) can broadly be defined as that conduct which

inflicts upon other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such nature that the parties can not reasonably be expected to live together. The above principle was laid down by the Hon'ble Supreme Court in the case of V. Bhagat Vs. D. Bhagat, A.I.R. 1994 S.C. 710. Love, trust, mutual respect are the founding pillars of successful married life. If the trust is shattered on account of illegal acts then it would make it impossible for one party to live with the other.

16. The term 'cruelty' is not defined. There cannot be straight jacket formula for determining whether there is cruelty or not. Each case depends upon its own facts and circumstances. Conduct complained of should be grave and weighty. It should touch a pitch of severity to satisfy the conscience of Court that parties cannot live together with each other any more without mental agony, distress and torture.

17. Keeping in mind the above settled legal principles and after scrutinizing the evidence on record, it is crystal clear that wife-Harsha has lost her way from the path of truth. She is in the habit of doing anything for the sake of money. There is nothing on record to disbelieve the evidence adduced by the respondent. The same is consistent on material aspects. The evidence adduced by respondent appears to be natural and inspires confidence.

18. In matrimonial proceeding, the evidence has to be assessed on the basis of probability. The petitioner has to first prove the allegations and thereafter the question arises whether the proved allegations are sufficient to constitute cruelty or not. In the case at hand, it can be certainly said that the husband has succeeded to prove the allegations not only on probability but beyond reasonable doubt. The proved facts are sufficient to constitute mental cruelty.

19. The learned counsel for the respondent relied on the decision of the Supreme Court in the case of Mayadevi v. Jagdish Prasad reported in (2007) 3 S.C.C. 136, wherein it is observed that

"9. 10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an

apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes."

"11.....There may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be inquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

"12. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty."

20. The Supreme Court in the case of Mayadevi (supra) has observed that if in case the conduct complained of itself is bad enough and per se unlawful or illegal, then the impact or injurious effect on the other spouse need not be inquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. In the present case, the respondent has stated that the F.I.R. was lodged against the appellant in relation to a case

wherein the appellant has misused the debit card of her colleague in Pooja Construction and had withdrawn Rs.37,000/- due to which the colleague-Veronika Kini had lodged F.I.R. Pursuant to said F.I.R. the appellant was arrested and was in custody for a number of days. This incident clearly shows that it is an illegal act committed by the appellant. Looking to the social status of the parties and the strata of society to which they belong, the enormity and magnitude of this act is such that it clearly constitutes cruelty. This single incident by itself is of such a serious nature that it would make it impossible for the respondent to live with the appellant without mental agony, torture or distress. It is sufficient to entitle the respondent to secure divorce on the ground of cruelty. It has come on record that the appellant is continuously indulging in acts which were detrimental to the harmony of marital life and her behaviour is such as to render it impossible for the appellant and respondent to live together. There is no effort on the part of the appellant to change for the better, in fact on the other hand day by day her illegal activities are getting more and more serious. The effect of the conduct of the appellant cannot be said to be ordinary wear and tear of married life but in fact her conduct is so grave and weighty that the respondent cannot reasonably be expected to continue to live with her. Thus we find no merit in the appeal. Appeal is dismissed.