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NARENDRA

v.

K. MEENA

(Civil Appeal No. 3253 of 2008)

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OCTOBER 06, 2016

[ANIL R. DAVE AND L. NAGESWARA RAO, JJ.]

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*Hindu Marriage Act, 1955 – s. 13(1)(ia) – Divorce – Ground of cruelty – Husband’s case that wife levied serious allegations against him regarding his character, extra-marital relation with a maid, her attempt to commit suicide and her persuasion for getting the husband separated from his family members and live separately – Grant of decree of divorce by family court, however, set aside by the High Court – On appeal, held: Family court rightly dissolved the marriage by a decree of divorce on the ground in s.13(1)(1a) of the Act – Threats and attempt to commit suicide constitutes mental cruelty and could not have been taken lightly by the High Court – Persistent effort of the wife to constrain the husband to be separated from the family would be torturous for the husband and constitutes an act of ‘cruelty’ – There is no reliable evidence to show that the husband had an extra-marital affair with someone, except for the baseless and reckless allegations which can be a cause for mental cruelty – Thus, order passed by the High Court quashed and set aside – Decree of divorce passed by the Family court is restored.*

**Allowing the appeal, the Court**

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**HELD: 1.1 With regard to the allegations of cruelty levelled by the appellant, the findings of the trial court are concurred with. There was no fault on the part of the appellant nor was there any reason for the respondent wife to make an attempt to commit suicide. No husband would ever be comfortable with or tolerate such an act by his wife and if the wife succeeds in committing suicide, then one can imagine how a poor husband would get entangled into the clutches of law, which would virtually ruin his sanity, peace of mind, career and probably his entire life. The mere idea with regard to facing legal consequences would put a husband under tremendous stress. The thought itself is distressing. Such a mental cruelty could not have been taken**

lightly by the High Court. Only this one event was sufficient for the appellant husband to get a decree of divorce on the ground of cruelty. Such threats or acts constitute cruelty. [Para 10] [846-C-G]

1.2 In the instant case, upon appreciation of the evidence, the trial court came to the conclusion that merely for monetary considerations, the respondent wife wanted to get her husband separated from his family. The averment of the respondent was to the effect that the income of the appellant was also spent for maintaining his family. The said grievance of the respondent is absolutely unjustified. A son maintaining his parents is absolutely normal in Indian culture and ethos. There is no other reason for which the respondent wanted the appellant to be separated from the family-the sole reason was to enjoy the income of the appellant. Unfortunately, the High Court considered this to be a justifiable reason. In the opinion of the High Court, the wife had a legitimate expectation to see that the income of her husband is used for her and not for the family members of the respondent husband. There is no reason to justify the said view of the High Court. In a Hindu society, it is a pious obligation of the son to maintain the parents. If a wife makes an attempt to deviate from the normal practice and normal custom of the society, she must have some justifiable reason for that and in this case, there is no justifiable reason, except monetary consideration of the respondent wife. Normally, no husband would tolerate this and no son would like to be separated from his old parents and other family members, who are also dependent upon his income. The persistent effort of the respondent wife to constrain the appellant to be separated from the family would be torturous for the husband and the trial court was right when it came to the conclusion that this constitutes an act of 'cruelty'. [Para 11] [847-D-H; 848-A]

1.3 With regard to the allegations about an extra-marital affair with maid named K, the re-appreciation of the evidence by the High Court does not appear to be correct. There is sufficient evidence to the effect that there was no maid named K working at the residence of the appellant. Some averment with regard to some relative has been relied upon by the High Court to come to a conclusion that there was a lady but the High Court ignored the

A fact that the respondent wife had levelled allegations with regard  
to an extra-marital affair of the appellant with the maid and not  
with someone else. Even if there was some relative named K,  
who might have visited the appellant, there is nothing to  
substantiate the allegations levelled by the respondent with  
B regard to an extra-marital affair. True, it is very difficult to establish  
such allegations but at the same time, it is equally true that to  
suffer an allegation pertaining to one's character of having an  
extra-marital affair is quite torturous for any person-be it a  
husband or a wife. No reliable evidence could be found to show  
that the appellant had an extra-marital affair with someone. Except  
C for the baseless and reckless allegations, there is not even the  
slightest evidence that would suggest that there was something  
like an affair of the appellant with the maid named by the  
respondent. Levelling of absolutely false allegations and that too,  
with regard to an extra-marital life to be quite serious and that  
can surely be a cause for mental cruelty. [Para 12] [848-B-E]  
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1.4 The unsubstantiated allegations levelled by the  
respondent wife and the threats and attempt to commit suicide  
by her amounted to mental cruelty and therefore, the marriage  
deserves to be dissolved by a decree of divorce on the ground  
stated in Section 13(1)(ia) of the Act. [Para 14] [849-D-E]  
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1.5 Taking an overall view of the entire evidence and the  
judgment delivered by the trial court, there was no need to take  
a different view than the one taken by the trial court. The  
behaviour of the respondent wife appears to be terrifying and  
horrible. One would find it difficult to live with such a person with  
F tranquility and peace of mind. Such torture would adversely affect  
the life of the husband. It is also not in dispute that the respondent  
wife had left the matrimonial house more than 20 years back.  
Though not on record, the counsel submitted that till today, the  
respondent wife is not staying with the appellant; the daughter of  
the appellant and respondent has also grown up and is working  
G in an IT company. There is no reason to disbelieve the facts  
because with the passage of time, the daughter must have grown  
up and the separation of the appellant and the wife must have  
also become normal for her and therefore, at this juncture it would  
not be proper to bring them together, especially when the  
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appellant husband was treated so cruelly by the respondent wife. Thus, the judgment by the High Court is quashed and set aside. The decree of divorce passed by the Family Court is restored. [Paras 15, 16] [849-E-H; 850-A] A

*Pankaj Mahajan v. Dimple @ Kajal* 2011 (14) SCR 945 : (2011) 12 SCC 1; *Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate* 2003 (3) SCR 607 : 2003 (6) SCC 334 – referred to. B

Case Law Reference

2011 (14) SCR 945	referred to	Para 10	
2003 (3) SCR 607	referred to	Para 13	C

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3253 of 2008.

From the Judgment and Order dated 08.03.2006 of the High Court of Karnataka at Bangalore in Miscellaneous First Appeal No. 171 of 2002(FC). D

S. R. Singh, Sr. Adv., Anilendra Kant Srivastava, Anurag Tomar, B. V. Bhandarkar, R. S. Mishra, (For V. N. Raghupathy), Advs. for the Appellant.

Ms. Kamakshi S. Mehlwal, Adv. for the Respondent. E

The Judgment of the Court was delivered by

**ANIL R. DAVE, J.** 1. This appeal has been filed by the Appellant husband, whose decree for divorce passed by the trial Court has been set aside by the impugned judgment dated 8th March, 2006 passed by the High Court of Karnataka at Bangalore in Miscellaneous First Appeal No.171 of 2002 (FC). F

2. The facts giving rise to the present appeal, in a nutshell, are as under :

The Respondent wife filed Miscellaneous First Appeal under Section 28(1) of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act”) before the High Court as she was aggrieved by the judgment and decree dated 17th November, 2001, passed by the Principal Judge, Family Court, Bangalore in M.C. No.603 of 1995 under Section 13(1)(ia) of the Act filed by the Appellant husband seeking divorce. G  
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A           3. The Appellant husband had married the Respondent wife on  
26<sup>th</sup> February, 1992. Out of the wedlock, a female child named Ranjitha  
B           was born on 13<sup>th</sup> November, 1993. The case of the Appellant was that  
the Respondent did not live happily with the Appellant even for a month  
after the marriage. The reason for filing the divorce petition was that the  
Respondent wife had become cruel because of her highly suspicious  
C           nature and she used to level absolutely frivolous but serious allegations  
against him regarding his character and more particularly about his extra-  
marital relationship. Behaviour of the Respondent wife made life of the  
Appellant husband miserable and it became impossible for the Appellant  
to stay with the Respondent for the aforesaid reasons. Moreover, the  
D           Respondent wanted the Appellant to leave his parents and other family  
members and to get separated from them so that the Respondent can  
live independently; and in that event it would become more torturous for  
the Appellant to stay only with the Respondent wife with her such nature  
and behaviour. The main ground was cruelty, as serious allegations were  
levelled about the moral character of the Appellant to the effect that he  
was having an extra-marital affair with a maid, named Kamla. Another  
important allegation was that the Respondent would very often threaten  
E           the Appellant that she would commit suicide. In fact, on 2<sup>th</sup> July, 1995,  
she picked up a quarrel with the Appellant, went to the bathroom, locked  
the door from inside and poured kerosene on her body and attempted to  
commit suicide. On getting smell of kerosene coming from the bathroom,  
the Appellant, his elder brother and some of the neighbours broke open  
F           the door of the bathroom and prevented the Respondent wife from  
committing suicide. The aforesaid facts were found to be sufficient by  
the learned Family Court for granting the Appellant a decree of divorce  
dated 17<sup>th</sup> November, 2001, after considering the evidence adduced by  
both the parties.

G           4. Being aggrieved by the judgment and decree of divorce dated  
17<sup>th</sup> November, 2001, the Respondent wife had filed Miscellaneous First  
Appeal No.171 of 2002 (FC), which has been allowed by the High Court  
on 8<sup>th</sup> March, 2006, whereby the decree of divorce dated 17<sup>th</sup> November,  
2001 has been set aside. Being aggrieved by the judgment and order  
passed by the High Court, the Appellant has filed this appeal.

H           5. The learned counsel appearing for the Respondent was not  
present when the appeal was called out for hearing. The matter was  
kept back but for the whole day, the learned counsel for the Respondent

did not appear. Even on an earlier occasion on 31<sup>st</sup> March, 2016, when the appeal was called out, the learned counsel appearing for the Respondent wife was not present and therefore, the Court had heard the learned counsel appearing for the Appellant. A

6. The learned counsel appearing for the Appellant submitted that the High Court had committed a grave error in the process of re-appreciating the evidence and by setting aside the decree of divorce granted in favour of the Appellant. He submitted that there was no reason to believe that there was no cruelty on the part of the Respondent wife. He highlighted the observations made by the Family Court and took us through the evidence, which was recorded before the Family Court. He drew our attention to the depositions made by independent witnesses, neighbours of the Appellant, who had rescued the Respondent wife from committing suicide by breaking open the door of the bathroom when the Respondent was on the verge of committing suicide by pouring kerosene on herself and by lighting a match stick. Our attention was also drawn to the fact that serious allegations levelled against the character of the Appellant in relation to an extra-marital affair with a maid were absolutely baseless as no maid named Kamla had ever worked in the house of the Appellant. It was also stated that the Respondent wife was insisting the Appellant to get separated from his family members and on 12th July, 1995 i.e. the date of the attempt to commit suicide, the Respondent wife deserted the Appellant husband. According to the learned counsel, the facts recorded by the learned Family Court after appreciating the evidence were sufficient to show that the Appellant was entitled to a decree of divorce as per the provisions of Section 13(1)(ia) of the Act. B  
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7. We have carefully gone through the evidence adduced by the parties before the trial Court and we tried to find out as to why the appellate Court had taken a different view than the one taken by the Family Court i.e. the trial Court. F

8. The High Court came to the conclusion that there was no cruelty meted out to the Appellant, which would enable him to get a decree of divorce, as per the provisions of the Act. The allegations with regard to the character of the Appellant and the extra-marital affair with a maid were taken very seriously by the Family Court, but the High Court did not give much importance to the false allegations made. The constant persuasion by the Respondent for getting separated from the family members of the Appellant and constraining the Appellant to live separately G  
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A and only with her was also not considered to be of any importance by  
the High Court. No importance was given to the incident with regard to  
an attempt to commit suicide made by the Respondent wife. On the  
contrary, it appears that the High Court found some justification in the  
request made by the Respondent to live separately from the family of  
B the Appellant husband. According to the High Court, the trial Court did  
not appreciate the evidence properly. For the aforesaid reasons, the  
High Court reversed the findings arrived at by the learned Family Court  
and set aside the decree of divorce.

9. We do not agree with the manner in which the High Court has  
re-appreciated the evidence and has come to a different conclusion.

C 10. With regard to the allegations of cruelty levelled by the Appellant,  
we are in agreement with the findings of the trial Court. First of all, let us  
look at the incident with regard to an attempt to commit suicide by the  
Respondent. Upon perusal of the evidence of the witnesses, the findings  
arrived at by the trial Court to the effect that the Respondent wife had  
D locked herself in the bathroom and had poured kerosene on herself so as  
to commit suicide, are not in dispute. Fortunately for the Appellant,  
because of the noise and disturbance, even the neighbours of the  
Appellant rushed to help and the door of the bathroom was broken open  
and the Respondent was saved. Had she been successful in her attempt  
to commit suicide, then one can foresee the consequences and the plight  
E of the Appellant because in that event the Appellant would have been  
put to immense difficulties because of the legal provisions. We feel that  
there was no fault on the part of the Appellant nor was there any reason  
for the Respondent wife to make an attempt to commit suicide. No  
husband would ever be comfortable with or tolerate such an act by his  
F wife and if the wife succeeds in committing suicide, then one can imagine  
how a poor husband would get entangled into the clutches of law, which  
would virtually ruin his sanity, peace of mind, career and probably his  
entire life. The mere idea with regard to facing legal consequences would  
put a husband under tremendous stress. The thought itself is distressing.  
G Such a mental cruelty could not have been taken lightly by the High  
Court. In our opinion, only this one event was sufficient for the Appellant  
husband to get a decree of divorce on the ground of cruelty. It is needless  
to add that such threats or acts constitute cruelty. Our aforesaid view is  
fortified by a decision of this Court in the case of *Pankaj Mahajan v.*  
*Dimple @ Kajal (2011) 12 SCC 1*, wherein it has been held that giving  
H repeated threats to commit suicide amounts to cruelty.

11. The Respondent wife wanted the Appellant to get separated from his family. The evidence shows that the family was virtually maintained from the income of the Appellant husband. It is not a common practice or desirable culture for a Hindu son in India to get separated from the parents upon getting married at the instance of the wife, especially when the son is the only earning member in the family. A son, brought up and given education by his parents, has a moral and legal obligation to take care and maintain the parents, when they become old and when they have either no income or have a meagre income. In India, generally people do not subscribe to the western thought, where, upon getting married or attaining majority, the son gets separated from the family. In normal circumstances, a wife is expected to be with the family of the husband after the marriage. She becomes integral to and forms part of the family of the husband and normally without any justifiable strong reason, she would never insist that her husband should get separated from the family and live only with her. In the instant case, upon appreciation of the evidence, the trial Court came to the conclusion that merely for monetary considerations, the Respondent wife wanted to get her husband separated from his family. The averment of the Respondent was to the effect that the income of the Appellant was also spent for maintaining his family. The said grievance of the Respondent is absolutely unjustified. A son maintaining his parents is absolutely normal in Indian culture and ethos. There is no other reason for which the Respondent wanted the Appellant to be separated from the family - the sole reason was to enjoy the income of the Appellant. Unfortunately, the High Court considered this to be a justifiable reason. In the opinion of the High Court, the wife had a legitimate expectation to see that the income of her husband is used for her and not for the family members of the Respondent husband. We do not see any reason to justify the said view of the High Court. As stated hereinabove, in a Hindu society, it is a pious obligation of the son to maintain the parents. If a wife makes an attempt to deviate from the normal practice and normal custom of the society, she must have some justifiable reason for that and in this case, we do not find any justifiable reason, except monetary consideration of the Respondent wife. In our opinion, normally, no husband would tolerate this and no son would like to be separated from his old parents and other family members, who are also dependent upon his income. The persistent effort of the Respondent wife to constrain the Appellant to be separated from the family would be torturous for the husband and in our opinion,

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A the trial Court was right when it came to the conclusion that this constitutes an act of ‘cruelty’.

12. With regard to the allegations about an extra-marital affair with maid named Kamla, the re-appreciation of the evidence by the High Court does not appear to be correct. There is sufficient evidence to the effect that there was no maid named Kamla working at the residence of the Appellant. Some averment with regard to some relative has been relied upon by the High Court to come to a conclusion that there was a lady named Kamla but the High Court has ignored the fact that the Respondent wife had levelled allegations with regard to an extra-marital affair of the Appellant with the maid and not with someone else. Even if there was some relative named Kamla, who might have visited the Appellant, there is nothing to substantiate the allegations levelled by the Respondent with regard to an extra-marital affair. True, it is very difficult to establish such allegations but at the same time, it is equally true that to suffer an allegation pertaining to one’s character of having an extra-marital affair is quite torturous for any person – be it a husband or a wife. We have carefully gone through the evidence but we could not find any reliable evidence to show that the Appellant had an extra-marital affair with someone. Except for the baseless and reckless allegations, there is not even the slightest evidence that would suggest that there was something like an affair of the Appellant with the maid named by the Respondent. We consider levelling of absolutely false allegations and that too, with regard to an extra-marital life to be quite serious and that can surely be a cause for mental cruelty.

13. This Court, in the case of *Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate, 2003 (6) SCC 334* has held as under:-

“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.”

14. Applying the said ratio to the facts of this case, we are inclined to hold that the unsubstantiated allegations levelled by the Respondent wife and the threats and attempt to commit suicide by her amounted to mental cruelty and therefore, the marriage deserves to be dissolved by a decree of divorce on the ground stated in Section 13(1)(ia) of the Act.

15. Taking an overall view of the entire evidence and the judgment delivered by the trial Court, we firmly believe that there was no need to take a different view than the one taken by the trial Court. The behaviour of the Respondent wife appears to be terrifying and horrible. One would find it difficult to live with such a person with tranquility and peace of mind. Such torture would adversely affect the life of the husband. It is also not in dispute that the Respondent wife had left the matrimonial house on 12<sup>th</sup> July, 1995 i.e. more than 20 years back. Though not on record, the learned counsel submitted that till today, the Respondent wife is not staying with the Appellant. The daughter of the Appellant and Respondent has also grown up and according to the learned counsel, she is working in an IT company. We have no reason to disbelieve the aforesaid facts because with the passage of time, the daughter must have grown up and the separation of the Appellant and the wife must have also become normal for her and therefore, at this juncture it would not be proper to bring them together, especially when the Appellant husband was treated so cruelly by the Respondent wife.

**A** 16. We, therefore, quash and set aside the impugned judgment delivered by the High Court. The decree of divorce dated 17<sup>th</sup> November, 2001 passed by the Principal Judge, Family Court, Bangalore in M.C. No.603 of 1995 is hereby restored.

17. The appeal is, accordingly, allowed with no order as to costs.

**B** Nidhi Jain

Appeal allowed.