

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
BEFORE D.B. HON'BLE MR. JUSTICE S.C. SHARMA & HON.MR.
JUSTICE ALOK VERMA, JUDGE

First Appeal No.896/2008

Ajay Gokhale . . . Appellants

Versus

Smt. Ranjana @ Ashwini Gokhale . . . Respondent

CORAM

Hon'ble Shri Justice S.C. Sharma

Hon'ble Shri Justice Alok Verma

Whether approved for reporting ?

Shri Avinash Sirpurkar, learned senior counsel with Shri Yogesh Kumar
Gupta, learned counsel for the appellant.

Shri Pramod Choubey, learned counsel for the respondent.

Judgment

27.11.2017

Per : Alok Verma, Justice:

This First Appeal is directed against the judgment passed by Second Additional Principal Judge, Family Court, Indore in H.M.A. No.340/2008 dated 07.11.2008, wherein, the learned family Court dismissed the application filed by the present appellant under Section 13(1), (1a) (III) seeking divorce from the respondent on the

ground of cruelty and mental illness.

2. It was admitted before the family Court that appellant Ajay Gokhale was married to respondent, Ranjana @ Ashwini Gokhale, on 19.04.2008 and a daughter was born out of the marriage on 04.02.1999. It was also admitted that father of the appellant is a senior counsel. Immediately after their marriage, they lived with father of the appellant for sometime, and thereafter, they took flat in Sukh-Sagar Apartment on rent and there they lived up to 2000, and thereafter, they again came back to house of father of the appellant. It was also admitted in 2005 that appellant met with an accident and for sometime, he remain admitted in C.H.L. Appolo Hospital.

3. The appellant's case before the family Court was that after two months of marriage, she started behaving in cruel manner and in August, 1998, she started breaking household articles. In August 1999, she started beating their daughter mercilessly when mother of the appellant saved the child. In 1999, the respondent lost her father, and thereafter, her behaviour became so aggressive that she used to threaten the appellant that she would commit suicide and due to her mental condition Dr. Deepak Mansaramani, Dr. Vijay Bodhle and Dr. M.K. Acharya were consulted. Due to her mental illness, many times she became very aggressive, she used abusive language against the present appellant and his family members and also behaved in cruel manner against the child. In December 1999,

they were living in Sukh-Sagar Apartment. She locked herself along with her daughter and removed gas tube from the cooking gas cylinder and attempted to commit suicide. The neighbours broken open the door and saved them. On 13.03.2005, she left home without informing anybody and present appellant had to lodge a report of missing person in the police station. On 21.08.2005, she was admitted at Abhinav Nursing Home, as she was suffering from severe depression, and therefore, she was treated by Dr. Ujjawal Sardesai. According to the appellant, due to her mental condition, she can cause harm to the appellant and her family members and also to their daughter. In such conditions, it was not possible to live with the respondent, and therefore, a decree of dissolution of marriage may be passed.

4. In reply, the respondent denied all the allegations and requested that the application for grant of divorce be dismissed.

5. The learned trial Court mentioned in the impugned order that the respondent filed an application before the Court on 09.04.2007 seeking amendment of her reply as according to her, her advocate did not file an effective reply to the application, and therefore, detailed amendment was necessary. However, the same was dismissed by the trial Court stating therein that that was part of evidence and for adducing such evidence, no amendment was required.

6. The learned trial Court recorded evidence of both the sides and came to the conclusion that (i) the appellant failed to prove that the respondent committed any act of cruelty against him. The incidences were stray incidents and which could not be termed as acts of cruelty (ii) regarding mental illness, the trial Court observed that according to the learned author Modi, the mental illness Scizoframia had three stages and only in last and third stage, which was known as Catatonia, the patient became aggressive and violent. In all other stages, the patient might suffer from depression, illusions etc. and fears that others were going to harm her, but such stages were not violent and as such, it was not impossible for the appellant to live with the respondent as she was not suffering from violent gain of Scizoframia (iii) it was also observed by the learned family Court that referring to the medical evidence produced by the appellant, this mental stage was curable and when such medical stage was curable, it did not find any ground for divorce and accordingly, proceeded to dismiss the application for grant of divorce.

7. Aggrieved by such dismissal, this appeal was filed. Before proceeding further to consider the merits of the case, we may first consider I.A. No.14752/2017 filed on behalf of the respondent under Order 41 Rule 27 r/w section 151 of C.P.C.

8. The brief facts for disposal of this application were that the

respondent lodged an F.I.R. in Police Station-M.G. Road, which was registered at Crime No.454/2007 under Section 498-A of IPC and 3/4 of Dowry Prohibition Act. When investigation was in progress, the appellant filed an application for quashment of F.I.R. arising out of aforesaid crime number. The application was disposed of by this Court in M.Cr.C. No.7056/2007 by order dated 30.07.2009. This Court quashed the F.I.R. and charge-sheet arising out of it. With this application, a document was filed as Annexure-A/4, which was an apology letter purported to have been written by the respondent in Marathi dated 31.05.1999. Apparently, this Court placed reliance on this document while quashing the F.I.R.

9. Now, this application is filed for grant of permission to take on record a complaint made by the respondent to Superintendent of Police, Indore dated 09.08.2016 and report of handwriting expert Ms. Nutan Supekar. In her complaint, respondent alleged that such document, which was filed as an apology letter, was a forged document and was not signed by her and also it was not in her handwriting. To prove this fact, she got the document examined by private handwriting expert Ms. Nutan Supekar and she sought permission of this Court to bring these two documents on record.

10. Learned counsel for the appellant vehemently opposed the application and prays that the application be dismissed.

11. We have gone through the documents. These documents have

no relevance and no bearing on disposal of this appeal. The order passed in M.Cr.C. No.7056/2007 dated 30.07.2009 was filed way back on 30.07.2009, though, it is true that the respondent was not made a party in the aforesaid application. Still it cannot be assumed and does not averred by her that she was not aware of the order or when she came to know about the order passed by this Court.

12. As such, it is apparent that the handwriting expert engaged by her only on 30.07.2016 and the handwriting expert submitted her report on 30.07.2016. Apparently, the complaint was made so late that now it cannot be said that the document had any bearing on merits of this case, and therefore, this application has no force and liable to be dismissed. The respondent is at liberty to proceed against the appellant under the relevant provisions of law, if she so desires.

13. We may now proceed to consider the merits of the appeal. The cruelty should be stated when making for other partner impossible to live with the spouse. In the famous case *Dastane Vs. Dastane AIR 1975 SC 1534*, the Hon'ble Apex Court observed that the Court should ascertain whether the conduct charged as cruelty was of such character as to cause in the mind of the petitioner, a reasonable apprehension, that it will be harmful or injurious for him to live with the respondent. But it was not necessary that cruelty should be of such nature or character so as to cause dangerous to

life, limb or health, which was the requirement of English Law. The cruelty depends upon particular circumstance. In case of *Navin Kohli Vs. Neetu Kohli AIR 2006 SC 1675*, the Hon'ble Apex Court observed that cruelty should be of such nature so as to conclude that cruelty is resulted into a situation, where spouse can no longer live together and such behavior should be on part of the spouse and not on part of her relatives. So far as the present case is concerned, the appellant Ajay Gokhale in his statement before the family Court gave various incidences like he said that in August 1998, she started throwing things in the house. She used to abuse his mother and also beat her on some occasions. She was shown to the doctor, who told them that she was suffering from Scizofremia. While they shifted and started living separately in Sukh Sagar Apartment, she attempted to commit suicide by removing gas tube from domestic gas cylinder and tried to put herself on fire. Neighbours saved them by breaking open the door. He informed the brother of the respondent, who admitted that she was suffering from Scizoframia. He also produced medical papers of the respondent. In cross-examination, various suggestions were given to him including that appellant was alcoholic. He consulted doctors for his addiction of consuming accessive amount of alcohol. He denied all the suggestions including that when he met with an accident in 2005, he was under the influence of liquour.

14. To prove her medical condition, Dr. Ujjawal Sardesai (P.W-2) was examined, who stated that she was suffering from Paranoid Psychosis, in which, the patient thinks that all the persons were his enemy and would harm him.

15. Father of the appellant was also examined and he also supported the statement.

16. From the side of respondent, she examined herself as N.A.W-1. According to her, she lived with appellant till 21.04.2004, when she was thrown out of her house. He also kept her daughter with him. According to her, the appellant is suffering from Chronic Alcoholism and he used to beat her. He was also admitted to the hospital for treatment of hard alcoholism. She said that she was teaching in a school and she is not suffering from any mental disease. They were soon live separately in Sukh Sagar Apartment with parents of the appellant so that he would understand some sense of responsibility and stopped consuming liquor. She was forcibly admitted in the hospital. Injection was forcibly given to her. Dr. Deepak Mansaramani, Dr. Vijay Bodhle and Dr. M.K. Acharya were never consulted regarding her mental illness.

17. In her support, Chandrakant (N.A.W-2) was also examined, who was told by his wife regarding disputes that respondent was having with the appellant and Yashwant (N.A.W-3), brother of the respondent.

18. After going through the oral evidence as a whole, including the

cross-examination by both the sides, it is apparent that incidences, as narrated by the appellant took place, however, a different version was given by the appellant and respondent. There may be minor discrepancy in describing the incident by witnesses of both the sides. However, fact remains and emerge from the evidence adduced by both the sides that from the very beginning, dispute arose between them. From the statement of the doctor, it was also proved that she was suffering from Scizoframia, though, it was not clear as to what kind of mental disease she was suffering and whether it was curable or not but fact remains that they are not in a position to leave together.

19. So far as the allegation of alcoholism against the appellant is concerned, he totally denied that he ever drank liquor, however some documents are produced by the respondent, which clearly show that he was given treatment for accessive consumption of liquor. The appellant in his cross-examination said that these documents were forged and he never took any treatment, still, he did not take any steps to prove that the documents were forged and he never admitted in the hospital and never consulted the doctor.

20. In such situation, it is apparent that both, the appellant and the respondent were suppressing their respective diseases but one thing is very clear that from 2006, they were living separately. Many attempts were made to reconcile the disputes between them and they all failed. The girl child is also more than 18 years of age now and there appears to be a total breakdown of the marriage and there appears to be no

possibility of any reconciliation between them.

21. As such, in considered opinion of this Court and taking into consideration the oral evidence produced by both the sides, this Court is of the view that it is fit case where this appeal should be allowed and decree of divorce be passed.

22. Accordingly, this appeal is allowed. The judgment passed by the family Court is set aside. It is ordered and decreed that the marriage between appellant and the respondent stands dissolved.

The respondent is at liberty to apply separately for permanent alimony, if she so desires.

Parties to bear their own costs.

Counsels fee according to the schedule, if certified.

Certified copy as per rules.

(S.C. Sharma)
Judge

(Alok Verma)
Judge