

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/FIRST APPEAL NO. 728 of 2020
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In R/FIRST APPEAL NO. 728 of 2020**

FOR APPROVAL AND SIGNATURE:

**HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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DHARMENDRA BABUBHAI PRAJAPATI
Versus
KHUSHALIBEN D/O MAHESHBHAI PATEL

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Appearance:

MR. EKRAMA H QURESHI(7000) for the Appellant(s) No. 1
NISHITH P ACHARYA(9308) for the Defendant(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

Date : 25/01/2023

**CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)**

Heard learned advocate Mr. Ekrama Qureshi for the appellant and learned advocate Mr. Nishith Acharya for the respondent at length.

2. The present appeal under Section 96 of the Code of Civil Procedure, 1908, read with section 28 of the Hindu Marriage Act, 1955, preferred by the appellant-husband is directed against judgment and decree dated 20.11.2019 passed by learned Principal Judge, Family Court, Amreli, whereby the Court below granted the prayer of the respondent wife for dissolution of marriage between the parties, deciding the Family Suit No. 66 of 2017 accordingly.

3. The said suit was instituted by the applicant plaintiff-wife under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') pleading inter alia that the plaintiff-respondent herein had contracted civil marriage with defendant-appellant herein. The parties are addressed as per their original status in the suit as plaintiff-wife and defendant-husband.

3.1 On 04.08.2018, the marriage between the parties was registered by the competent authority at village Chakkargadh of the Amreli District. It was the case of the plaintiff that after one month, the plaintiff-wife had gone to stay at matrimonial house at Bhavnagar in joint family. Before the marriage, the plaintiff had been studying Civil Engineering at

Amreli and was in third year of the course. The respondent-defendant was a teacher in the college and used to take classes where the plaintiff also used to study. It was averred by the plaintiff that the defendant was in habit of telling her that she should secure double 'A' grade in the subject in which the defendant was teacher and if such result was not secured, the plaintiff will have to succumb to the wishes of the defendant.

3.1.1 It was the case that defendant obtained the mobile number of the plaintiff and wanted her to maintain a relationship as friend. It was averred that the defendant used to convey and tell to the plaintiff while in college that the relationship of teacher and pupil was to be upto 6.00 PM only whereafter, both had to behave as friends. The defendant had been been pressing the plaintiff, it was further stated, to contract marriage with him. The defendant was already married and had two children out of the first wedlock. He used to tell, averred the plaintiff in the plaint, that if the plaintiff married with him, his children would get the love of a mother.

3.1.2 The plaintiff averred stated that she was of very young age and was unwilling to marry against the wish of her parents. However, the defendant behaved to blackmail her and used to give threats to commit suicide. He even once attempted suicide. The

plaintiff stated that out of fear, pressure and coercion, she was forced to go for civil marriage. It was alleged that the defendant had obtained signature of the plaintiff in the marriage application form, etc. and thus contracted marriage.

3.1.3 It was further the say of the plaintiff wife that after marriage, she was initially given proper treatment, however, after some time, the respondent started taunting her and commenting on her for small issues upon instigation of his mother and father. It was in respect of cooking work and household work. The in-laws and the appellant also used to tell the plaintiff to bring share of property from the parental house and demanded Rs.5 lakhs towards making of furniture. It was averred that since the plaintiff refused, she was driven out from the matrimonial home.

3.1.4 The plaintiff stated that she stayed at her parental house thereafter for some time. The defendant came back and took the plaintiff wife to Bhavnagar. The plaintiff wife became pregnant for three times. However, she was forced to go for abortion by husband and in-laws against her wish. It was the case of the plaintiff that she was treated like a maid.

3.1.5 It was stated that prior to marriage, promise was given to her that the husband would allow

her to complete her studies, however, subsequently refused and asked the plaintiff that unless she brings some share of money from her father, she would not be permitted. The plaintiff stated that since she was threatened by the husband not to say anything and not name anyone and further threatened to kill her brother, she did not file any complain and went on to tolerate the torture to continue to suffer. It was the averment that in the year 2013, the defendant and his parents drove away the plaintiff from the house, committing of the above acts of cruelty.

3.1.6 The plaintiff stated that ever since the marriage, the defendant husband did not care for maintenance nor extended to her the matrimonial rights and he gave up all efforts to continue the matrimonial life. It was averred that husband behaved with cruelty and since 2013, deserted the wife without any good cause. On such pleadings and allegations, the plaintiff prayed for decree of divorce. The grounds for divorce were cruelty and desertion.

3.2 Defendant filed written statement at exhibit 14 denying the allegations of the plaintiff. It was denied that the plaintiff had contracted the marriage forcefully or out of threat. It was alleged that the family members of the wife used to threaten the defendant to kill him since since they had contracted marriage out of love. It was stated that the

plaintiff herself was frightened because of the threats from her father and without informing the defendant husband, went to stay to the parental house.

3.2.1 It was stated by the defendant that plaintiff herself asked to file complaint against her mother and father and therefore, the defendant filed complaint against father-in-law and mother-in-law. It was stated that thereafter, father and mother of defendant was reported to have severed all relationship with the plaintiff including in respect of her share in the property and such press note was published in the local newspaper.

3.2.2 It was sought to be contended that the matrimonial life between plaintiff and defendant was smooth. That admission was secured for plaintiff to study B.Sc. at Bhavnagar and defendant used to take care of all the needs of the plaintiff. According to the defendant, other friends of the plaintiff's wife had completed diploma, therefore, the plaintiff wanted that she may also be permitted to complete the course, whereafter she would go to father's house and would thereafter come to stay with the defendant. It was submitted that wife tactfully wanted to leave her parents to come to stay with defendant. It appears that the defendant went away to Amreli from Bhavnagar without telling anybody. According to the defendant, the plaintiff stopped

contacting him on telephone and it appeared that her inclination had changed.

3.2.3 It was the say of the defendant that after passage of one year, the children of the plaintiff were taken admission and wife was told to come to the matrimonial house and stay there. It was stated by the defendant that the plaintiff conveyed to him that in order that the reputation of her parents was not tarnished, she would not be able to come back to the defendant. According to defendant, the plaintiff stated that he should settle the dispute by paying Rs. 25 Lakhs to her father. The defendant also stated that out of the pressure of family dispute, his mother committed suicide by taking acid. The appeal for divorce was opposed on such premise.

3.3 The trial court noted that from the side of defendant, oral or documentary evidence was not produced. It was observed that during the trial proceedings, adjournment reports were given by the side of the defendant, which were time and again granted and the defendant was thus given adequate opportunity to lead his evidence. At one point of time, cost was also imposed while granting adjournment but the amount was not paid by the defendant. The right to lead evidence of the defendant was thereafter closed. It was subsequently stated by the trial court that even as the defendant filed application for reopening the stage of

evidence, he continued to give adjournment applications and lead evidence. He did not remain present and virtually gave up the prayer to seek reopening of the evidence. Rojkam was referred to and it was observed that after service of summons till the stage of completion of arguments, defendant never appeared before the court.

3.4 The trial court framed the issues. The first issue was whether the petitioner wife proved that the respondent treated her with cruelty. The second was whether the petitioner had proved that the respondent deserted her for continuous period of not less than two years immediately preceding the filing of the petition.

3.4.1 The trial court answered all the issues in affirmative. It was recorded that the plaintiff and defendant had contracted civil marriage. The trial court relied on the deposition of the plaintiff at exhibit 24 wherein the plaintiff reiterated her case pleaded in the plaint and passed the decree of divorce.

4. Learned advocate for the appellant assailing the impugned judgment and decree, submitted that the entire story put up by the plaintiff wife was not correct. He submitted that the plaintiff had willingly developed the relationship with defendant while she had been studying under the defendant at

the college. She had contracted marriage, it was submitted, with full knowledge that the defendant was married and had two children. It was submitted that plaintiff was of major age and was capable of taking her own decisions. He further submitted that it was not correct to mention that the appellant was at Amreli at the time of marriage, and that in fact he was at Bhavnagar at that time.

4.1 It was further submitted that though allegations were made by the wife, her three pregnancies were forced-terminated without her wish, no evidence was produced by the wife in this regard. It was submitted that the appellant used to take care of the plaintiff and was neither put to any coercion or to act against her wish. It was submitted that the appellant himself arranged for her studies at Science College, Amreli. It was contended that in the year 2013, Diploma course was completed by her which could not have been done without the cooperation of the appellant husband.

4.2 On the other hand, learned advocate for the respondent submitted that the facts were clear. He referred to the evidence of the plaintiff to submit that questions were not put to the wife and the wife could prove her case. It was submitted that respondent was well aware of the factum that she was his student and took unfair advantage of the relationship to contract marriage with her and then

to exert cruelty.

5. The plaintiff submitted his examination-in-chief by affidavit. She reiterated her case put forth in the plaint. It was stated that her marriage with the appellant was a civil marriage contracted on 04.08.2011, which was registered, that after marriage she stayed in the joint matrimonial family. It transpires from her evidence before marriage, she was a student in Amreli Polytechnic College where the appellant was teacher who used to tell her every time that in the subject he had been teaching, the plaintiff should obtain AA grade otherwise, she will have to obey him. The plaintiff deposed that the appellant used to send messages time and again asking her to maintain the friendship. The appellant used to blackmail and threaten her with death and also once took poisonous liquid also.

5.1 It was given out by the plaintiff that she was coerced, forced and harassed mentally to enter into marriage relationship. It was deposed that the appellant had obtained signature in the application form by playing deceit stating that in order to avoid any objection from any family member especially parents of the plaintiff, that the signature was required.

5.2 It was in plaintiff's evidence that after some time, her in-laws started asking for dowry. They

asked Rs.5 lakhs to tell the plaintiff that such amount she should bring for the purpose of furniture. As the plaintiff refused to obey the demands, the appellant and his parents deserted her. It came out from plaintiff's evidence that she had conceived thrice but all the time, she was forced to undergo abortion. She stated that after some time, she was taken back but again she was driven out in 2013 and since then, she has been leading miserable life.

5.3 On behalf of the defendant husband, cross-examination of the plaintiff was taken. The plaintiff was asked about her date of marriage, the time since the marriage was registered. She was also asked whether she was aware about the fact that the appellant had two children from his earlier wedlock. The wife stated that after marriage, she stayed for about one year in the matrimonial house with the appellant.

5.4 About the complaint filed on 03.03.2012 by the plaintiff against her own parents, she stated in the cross-examination that the said act on her part was out of compulsion as the husband compelled her to give such complaint before the police to create a cleavage in the relationship between her and her parents. She denied that the suit was wrongly filed to harass the appellant. No other questions were put in the cross-examination. There was no re-examination also. The decree of divorce was prayed for by the

plaintiff wife on the ground of cruelty and desertion. The trial court accepted the grounds of cruelty and desertion and passed the decree of divorce.

5.5 The evidence highlighted above reveal material facts about the relationship between the parties and the treatment meted out to the respondent wife by appellant husband. Even otherwise, it may be recollected that section 14 of the Family Courts Act deals with the application of Indian Evidence Act, 1872. It says that a Family Court may receive as evidence any report, statement, documents, information or matter that may in its opinion assist to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act. In other words, the aforesaid provision gives certain leeway to the Family Court in dealing with the matters which are matrimonial in nature. These matters are permitted to be dealt with without being strictly bound by the Rules of evidence.

5.5.1 Though the Evidence Act would apply, a kind of leeway is given to the Family Court. The legislature wanted the Family Court to receive the documents, etc., irrespective of its relevance or admissibility under the Indian Evidence Act, when otherwise they throw light on the issues involved. Any such report, statement, document or information

could be received by the Family Court.

5.5.2 The object of the above provision was explained by the Bombay High Court in **Deepali Santosh Lokhande vs. Santosh Vasanttrao Lokhande**[2018(1) Mh LJ 944] in paragraph 6 as under,

"The object, effect and consequence of this provision is to remove any embargo on the Family Court to first examine the relevancy or admissibility of the documents under Indian Evidence Act in considering such documents in adjudication of the matrimonial dispute. The Statement of Object and Reasons leading to the enactment of the Family Court's Act would also become a guiding factor so as to ascertain the intention of the legislature in framing Section 14 when it uses the above words. One of the objects of the legislation as Clause 2 (h) of the Statement of Object and Reasons would provide is "simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute". This clearly manifests the intention of the legislature to remove complexities in the application of rules of evidence to make the procedure more comprehensible so as to enable a Family Court to deal effectively with a matrimonial dispute under the Family Courts Act, which is a special Act."

5.5.3 Thus the position emerges is that the Family Court may receive the document even if not legally admissible in evidence and consider such facts out of the rigour of the relevancy or admissibility under the Evidence Act if the Family Court is of the opinion that such document, material

or such fact in issue would assist to deal with the dispute effectively.

5.5.4 The following observations in **Deepali Santosh Lokhande (supra)** become more relevant in the facts obtained in this case, extracted from paragraph 10,

"In matrimonial cases, the Family Court is expected to adopt standards as to how a prudent person would gauge the realities of life and a situation of commotion and turmoil between the parties and applying the principle of preponderance of probabilities, consider whether a particular fact is proved. Thus, the approach of the Family Court is required to be realistic and rational to the facts in hand rather than technical and narrow. It cannot be overlooked that matrimonial disputes involve human problems which are required to be dealt with utmost human sensitivity by using all intelligible skills to judge such issues. The Family Court has a special feature where in a given case there may not be legal representation of the parties."

5.5.5 The very proposition of section 14 read with section 20 of the Act in permitting the court dealing with matrimonial disputes to consider the evidence irrespective of its admissibility and relevance and thus, in a way distancing from strict rules of evidence, is intended to facilitate the adjudication of matrimonial disputes in right direction. It is rather wisdom of facts and not the insensitive corners of law which should guide the Family Court and the Courts dealing with matrimonial

disputes in its decision making process.

5.5.6 In other words, as the matrimonial disputes are peculiar by their very nature, special standards to deal with the facts and evidence have to be employed by the courts to cull out the truth. The courts are often required to read the facts and assessed the evidence, between the lines. The Courts are often needed to scan the facts to deduce the reality. The veil may have to be lifted to see through and behind the curtain as to what are the real implications from the facts obtained and how the matrimonial relationship work. An approach of prudence would require in the process of arriving at conclusion. The ground of cruelty is also required to be addressed and assessed from facts and evidence accordingly.

5.6 Now, section 5 of the Hindu Marriage Act, 1955 provides for condition for Hindu Marriage. It says that a marriage may be solemnized between two Hindus if certain conditions are fulfilled. One of the condition in section 5(i) is that neither party as a spouse living at the time of marriage. In view of the aforesaid provision, it is to be observed at the outset that the appellant herein was already a married person having two children out of the first wedlock. His earlier wife was living though claimed to have obtained divorce with her. He contracted marriage with respondent who was his student. The

marriage between the parties could be said to be suffering from basic infirmity that one of the party-appellant had been living at the time of marriage.

5.6.1 Section 11 of the Act is about void marriages. The provision says that any marriage solemnised after commencement of the Act shall be null and void and may, on a petition presented by either party against the other party, be so declared by the decree of nullity if it contravenes any of the conditions specified in clauses (i), (iv) and (v) of Section 5. Therefore, one of the ground on which the marriage could be treated as nullity and could be so declared is that, as provided in section 5 (i) that either party has a spouse living at the time of marriage.

6. The above propositions provide background to assess the grounds of desertion and cruelty on which the decree of divorce has been passed. The evidence suggested in no uncertain terms that the respondent was driven out of matrimonial house and was deserted in the year 2013. These were acts and conduct amounting to cruelty to the wife. Before noticing them from the facts on record and the evidence, the concept of cruelty as judicially recognised and perceived to be a statutory ground for passing decree for dissolution of marriage. Section 13(1)(ia) of the Act envisages ground of cruelty providing that where other party has, after solemnization of marriage,

treated the petitioner with cruelty, the marriage may be dissolved.

6.1 In **G.V.N. Kameshvar Rao vs. G. Jebily**[AIR 2002 SC 576], the Supreme Court observed that since cruelty is not being defined, the inference of cruelty-mental cruelty in particular has to be drawn from the circumstances of each case. It was observed that dimensions and parameters of cruelty cannot be circumscribed.

6.2 In **Smt. Mayadevi vs. Jagdish Prasad** [AIR 2007 SC 1426], the Supreme Court held that where the cruelty is alleged and in the divorce proceedings, the proof as regards the element of cruelty is elicited, the concept of proof beyond reasonable doubt would not apply.

6.2.1 The Court observed,

"In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a 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."

(para 9)

6.2.2 As the expression "cruelty" has not been defined in the Act, it has to be gathered from the facts of each case. The cruelty may be physical or mental to be the ground for dissolution of marriage. To judge the mental cruelty, host of factors attending to facts of the case may become relevant.

6.2.3 In **Smt. Mayadevi (supra)**, the Apex Court stated the question of mental cruelty,

"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."

(para 9)

6.2.4 It was observed that cruelty is a concept used to be employed in relation to human conduct and

human behaviour. It is to be judged from the disposition of spouse towards other. Assessing the proof of physical cruelty may not pose any difficulty, however, when the cruelty is of mental nature, well it is a matter of inference to be drawn by taking into account the nature of conduct and its effect on the complaining spouse. The Supreme Court stated that in a given case, there may be the conduct which itself is bad enough and per se not approvable to amount to cruelty.

6.3 In **Vishwanath Sitaram Agrawal vs. Sarla Vishwanath Agrawal [AIR 2012 SC 2586]**, the Apex Court observed in paragraph 17 of the judgment that,

"The expression 'cruelty' has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status."

6.3.1 It was however observed that cruelty may have nexus with the culture and human value in a particular society and the conditions which may be attached to the matrimonial tie,"....The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance."

6.4 Assessed and considered in the above light,

certain facts manifested from record stare at the face. The relationship between the appellant and the respondent-original plaintiff was a teacher-student relationship. According to the case of wife, she was forced and trapped to contract marriage. There is gainsaying that the appellant held the position of dominance and trust both. The plaintiff aged 28 years was the student in the Polytechnic College. The husband aged 40 years was the teacher who used to take the classes where the plaintiff was also one of the pupil.

6.4.1 It appears from the unrebutted evidence and pleadings that the appellant advanced himself to the plaintiff to seek relationship with her. It also emanated from the facts and evidence on record that appellant could manage to develop confidence and relationship with her and also got married with her. It is also not in dispute that the appellant husband was already married, had two children out of the first marriage and his first wife was living.

6.4.2 The evidence suggested that even when the plaintiff was in college, studying as student of the appellant, she was pressurised directly or indirectly by the appellant who used to tell her that she was expected to pass out with 'A' Grade and if she does not pass out in 'A' Grade, she would have to obey whatever the appellant wanted. The appellant used to tell her on phone, which is also not denied, that if

the plaintiff marries with appellant, the two children born out of the first wedlock of the appellant would get mother's love. Recurring incidences of sending of message to the plaintiff was a kind of harassment and has to be viewed as harassment only when a person positioned as teacher sends such luring message to the student.

6.5 The plaintiff has narrated the details about cruelty exerted to her when she went to her matrimonial home to stay there. The details about asking of dowry and requiring the plaintiff wife to bring Rs. 5 Lakhs towards furniture, etc., are not controverted or could not be demolished by the other side in course of leading evidence, at this juncture the wife was driven away and deserted as she did not succumb to the demands. The case was specific by the plaintiff wife that as many as three times, she was required to undergo abortion against her wish.

6.6 It may be true that the appellant has produced various documents such as copies of Aadhar card, bank passbook, college fee receipt, college identity card, pregnancy report, it does not in any way discard the theory of cruelty specifically pleaded by wife. On the contrary, the medical prescription and pregnancy sonography report produced by the respondent support and stand to fortify the case of the wife that she was pregnant and abortion was forced on her as many as three times.

6.7 The case put forth by wife was not rebutted by the appellant husband. In the totality of facts, the plaintiff could be said to have proved her case. Cruelty is not a defined concept. Whether cruelty is acted upon or not depends upon facts and circumstances. It is only the facts and circumstances of the particular case, which helped to determine that cruelty was proved or not as legal ground to grant the decree of divorce. A student forced to marry a teacher, both having large gap in terms of age and prospects, and post marriage treatment meted out to the plaintiff in the present case makes out to prove that the plaintiff wife was subjected to cruelty.

6.8 It is not possible to accept the submission on the part of the learned counsel for the appellant that it was a case of no evidence. At times, the facts themselves speak the story. It cannot be said that there is a dearth of evidence so as not to believe the version of the plaintiff-wife. The facts stated in the plaint by the wife and the allegations made were supported by her evidence. Little was trashed out in the cross-examination. In view of such facts, absence of some evidence would not be construed as absence of such facts otherwise gatherable from circumstantial facts.

6.9 In view of the aforesaid reasons and discussions, challenge to the judgment and decree

passed by the Court below granting divorce between the parties allowing the suit of the plaintiff wife book no error. It has to be upheld.

7. This appeal is liable to be dismissed. It is dismissed. Connected Civil Application also stands disposed of.

Registry shall send back the Record and proceedings.

(N.V.ANJARIA, J)

(SANDEEP N. BHATT, J)

BIJOY B. PILLAI