

GAHC010028332018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Mat.App. 22/2018

1:DEBASHIS CHOUDHURY
S/O LATE BIROJA MOHAN CHOUDHURY ,
RESIDENT OF PROFESSOR COLONY,
HOUSE NO .43, ANIRBAN, NAGAR PATH (B.G.COLONY),GOTANAGAR,
GUWAHATI -33
DIST. KAMRUP (M) ,ASSAM

VERSUS

1:SMTI NIBEDITA CHOUDHURY
W/O SHRI DEBASHIS CHOUDHURY,
C/O CENTRAL BUREAU OF INVESTIGATION , NARENGI TINIALI,
GUWAHATI- 26
DIST KAMRUP (M), ASSAM

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : MR. A R SHOME

BEFORE
HONOURABLE THE CHIEF JUSTICE (ACTING)
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

CAV

Date : 24-09-2019
(Manish Choudhury, J)

Heard Mr. H. Das, learned counsel for the appellant and Mr. A.R. Shome, learned counsel appearing for the respondent.

2. This appeal is preferred under Section 19 of the Family Courts Act, 1984 against the judgment and order dated 14.12.2017 passed by the learned Principal Judge, Family Court – I, Kamrup, Guwahati (“the Family Court”, in short) in F.C.(Civil) Case No. 216/2015. By the said judgment and order dated 14.12.2017, the learned Family Court dismissed the petition preferred by the appellant as the petitioner, under Section 13(1)(ia) and Section 13(1)(ib) of the Hindu Marriage Act, 1955 (“the Act”, in short) seeking dissolution of his marriage with the respondent by a decree of divorce.

3. It is necessary to state the relevant facts, in brief, which led the appellant to institute the case, F.C.(Civil) Case No. 216/2015. The marriage of the appellant with the respondent was solemnized on 17.06.1998 as per the rites and rituals of Hindu religion. Out of the wedlock, a female child was born to the couple on 18.07.1999. The relationship between the spouses was cordial initially. At the time of marriage, the respondent, though educated, was unemployed. Though both of them were reluctant about the respondent joining any service after the marriage but when the respondent got an opportunity to join the Central Bureau of Investigation (C.B.I.), she decided to join the service due to pressure of her parents, to which the appellant had also agreed. After joining the Government service, the nature and conduct of the respondent had started changing and she became arrogant, picking up quarrels with the appellant on petty grounds. The attachment of the respondent towards the appellant started diminishing day by day. The appellant did not react to such change of the respondent believing that the respondent would be reformed automatically for the sake of their children and he went on accepting the repulsive behaviour of the respondent treating the same to be normal due to pressure of her duties in the office. The couple was blessed with a 2nd female child on 07.11.2003. But even after the birth of the 2nd child, the conduct and behavior of the respondent did not undergo any change and instead, the life of the appellant became nightmarish. The appellant who has his own land and house at Gotanagar, used to reside in a joint family property with his two brothers. In the building owned by the family, the appellant and his younger brother share the 1st floor. The appellant had allowed his married sister to stay temporarily in one part, out of three parts in the 2nd floor of the building. The appellant

used to reside with the respondent and his two daughters in the 1st floor of the building. The torture of the respondent on the appellant did not confine to mental one but physical torture also became a regular affair in course of time, which compelled the appellant to arrange for a separate dwelling in the 1st floor of the building itself as he was forced to leave the society of the respondent. He was compelled to live separately since 15.06.2012 and the respondent even stopped preparing food for the appellant due to which he had to prepare his own daily meals himself. The entrance of the appellant to the part occupied by the respondent with the daughters, was completely restricted by her and it was used to be kept under lock and key from inside, particularly when the appellant was at home. The appellant has a fair price shop at Gotanagar and the same is the only source of his livelihood. The appellant had been bearing the expenses of the respondent and the daughters including the education expenses. Despite all efforts on his part to live happily, the respondent kept the belongings of the appellant outside the house without saying any word to the appellant and the appellant for the sake of maintaining the prestige of the family despite being so humiliated in the society, had kept his silence which the respondent appeared to have taken as his weakness. Being a fair price shop owner dealing in commodities, the appellant used to come back home at night usually around 10 p.m. The respondent was adamant about the appellant reaching home early and used to misbehave with the appellant regularly accusing about the appellant spending time with his girlfriends maintaining illicit relationships with them. On 08.03.2015 at about 09.45 p.m., when the appellant after arriving at his house, rang the calling bell just to inform the respondent to open the main entrance gate of the house, the respondent after opening the gate scolded the appellant in unimaginable filthy language. The appellant, who was with one of his relatives at that time, felt ashamed and humiliated and requested the respondent to control herself at which the respondent became more furious and attempted to attack the appellant with an iron stick. The appellant had a narrow escape on that day due to intervention of the relative. Incidents of physical assault on the appellant by the respondent were plenty and it became a habit for the respondent to use defamatory and humiliating words against the appellant whenever they come face to face. The respondent priding herself to be a Government employee drawing higher salary, used to laugh at the petitioner as a petty shop keeper without any status in the society. The appellant stated that the respondent

had treated him with cruelty, both physically and mentally, during all these years since after few months of the marriage and such cruelty which were beyond the limit of tolerance, had made it impossible for him to continue marital relationship any longer as it had become unsafe and dangerous to the risk and health of the appellant. The appellant had learnt that the respondent had made plan secretly to construct a house on a plot of land belonging to her. Because of the conduct of the respondent which had lowered the status and dignity of the appellant in the society, the appellant had asserted that he was entitled to a decree of divorce. The withdrawal of the respondent from the matrimonial obligation of cohabitation between the appellant was termed as willful and cruelty of the highest degree. When on some occasions, the appellant approached the respondent for a sexual relationship, the respondent used to warn and threaten the appellant of lodging a complaint before the police alleging rape. Having realized that chance of restoration of the conjugal life between them as remote, the appellant stated to have instituted the petition seeking dissolution of his marriage with the respondent.

4. In the written statement filed by her, the respondent asserted that the petition being not maintainable, is liable to be rejected. While not denying the marriage and birth of the children, the respondent alleged that the appellant did not even remember the date of birth of their first child as he had wrongly mentioned the same in the petition as 18.07.1999, instead of 08.07.1999. It is stated that she joined the C.B.I. on 26.02.1998 which was before the birth of their first child. Denying the allegations of the appellant as false and concocted, the respondent stated that false allegations were leveled against her because the appellant himself was having an extra-marital affair. It was in order to save his skin and to get rid of the marriage, the appellant had made baseless allegations on her, thereby, making ground for getting divorce. The respondent stated that evidence regarding the lady with whom the appellant had an extra marital affair, would be led before the Court. The respondent stated that the appellant had allowed his sister to stay in a part of the house, owned by him, with full facilities and the sister despite being married, continued staying in that house and instigated the appellant to make quarrels with the respondent without any rhyme and reason. The respondent stated that the appellant used to take his meal with his other family

members till 10.10.2014. When on 11.10.2014, food was served to the appellant by her, the appellant with the plate, went to the house of his brothers shouting that the food prepared by the respondent for him was sub-standard and after creating a scene, the appellant declared that from that day he would manage his food on his own. The respondent denied the allegation of keeping the house under lock and key and had stated that it was the appellant who used to keep his room and almirah always under lock and key with ulterior motive. She stated that the fair price shop belonged to her father-in-law and after his death on 11.03.1994, the family decided to transfer the same in favour of the appellant and prior to that, the appellant was penniless. Apart from the fair price shop, the appellant had a grocery and stationary shop. She further stated that it was the appellant who started living separately for reasons best known to him. The respondent had alleged that the appellant developed and was maintaining an illicit relationship despite being a father of two children. The fact of such illicit relationship of the appellant came to the knowledge of the respondent in September, 2014 only and the appellant himself had admitted about his maintaining such illicit relation since long. The appellant never used to come home before 10 o'clock at night. It was stated that because of the attachment of the appellant with the so-called lady, he used to abuse the respondent often. On having raised objection for such relationship, the appellant even dared to beat the respondent in presence of their daughters. The respondent further asserted that the appellant had constructed an Assam type house at the premises of that so called lady at Krishna Nagar Pahar where the appellant used to fulfill his nasty desires. She further stated that the so-called lady used to arrange and bring lunch for the appellant. The respondent denied about occurrence of any unusual incident on 08.03.2015. The carelessness of the appellant, the respondent alleged, was evident from the fact that even during the period from 03.03.2015 to 19.03.2015 when the High School Leaving Certificate examination of the elder daughter was going on, the appellant did not care to come home early. Stating that the appellant has sufficient movable and immovable property, the respondent had provided a list of the same. But despite having good income, the appellant did not spend any money for the family for which the respondent had to spend her salary to meet all the household expenses and for the education of the two children. It was alleged that the appellant had lost his good senses as he became desperate to fulfill his desires. The respondent had prayed to reject the petition imposing heavy compensation upon the appellant for bringing mala fide petition

seeking divorce.

5. Upon consideration of the pleading of the parties, the learned Family Court had framed 3 (three) issues for trial :

- (i) Whether the opposite party had treated the petitioner with cruelty?
- (ii) Whether the petitioner is entitled to get a decree of divorce as prayed for?
- (iii) To what relief/reliefs the parties are entitled?

Though in the petition, dissolution of marriage was sought also on the ground of desertion, no issue was framed in that regard and the same was not taken up for consideration during the trial.

6. During the course of proceedings before the Family Court, the appellant adduced evidence of 3 (three) witnesses, P.W.1 – the appellant himself; P.W.2 – Sri Tapan Barman; and P.W.3 – Sri Arun Bora. Though the appellant was partly cross-examined by the respondent, P.W.2 and P.W.3 were not cross-examined at all. On the other hand, the respondent did not adduce any evidence.

7. In his examination-in-chief, the appellant as P.W.1, had reiterated the same facts what he had averred in the petition. In his cross-examination on 04.02.2017, he had admitted about mentioning incorrectly the date of birth of the first child as 18.07.1999, instead of 08.07.1999. He asserted that on 08.03.2015, his wife scolded him with a rod in her hands. He expressed ignorance about the salary of the respondent. When he was cross-examined by the respondent in respect of one Babita Das, he stated that he knew Babita Das as a customer and he also knew her house. Suggestion was made to the appellant that as he was having a relationship with and was trying to marry Babita Das he had categorized the respondent as bad, which suggestion he had denied. He denied the suggestion that he had married the respondent in view of her salary. On being cross-examined, he stated that he had seen his wife roaming around with others but he would not be able to submit any proof before the Court in that regard. He stated that the respondent sometimes used to have a talk with him.

Though he does not have much income, he stated that he tries to bear the household expenses. Though they reside in the same flat, their rooms and bathrooms are separate. The kitchen is used by the respondent and he has to take his food in hotels. From that stage, there was no further cross-examination of the appellant and finally, it was closed at that stage. This aspect of the matter will be considered in further detail at a later part of the judgment.

8. P.W.2 deposed that he knew both the parties and he was a customer of the shop of the appellant, which is near to the dwelling house. As a customer, their relationship is long-term one and there used to be invitations between them during social functions, etc. P.W.2 stated that sometimes he used to go to the appellant's house without any specific purpose and often he had seen quarrels between the couple. It became evident to him from the quarrels that the respondent did not give the appellant the status of husband and from the nature of the quarrels, there is no possibility of the two being united. P.W.3 stated to have known both the parties as well as the reason of their conflict. He had claimed that he had seen few incidents of fight between them and sometimes he used to break the fights. When he went to the house of the appellant about 1 (one) year ago, the respondent shouted, audible to all, at the appellant about having relationship with some other lady and having seen that he stated to have retreated from there. He deposed to have seen the respondent misbehaving with the appellant, by coming to the appellant's fair price shop, in front of others. As both of them had made arrangement to live separately since a long time, there is no chance, as per P.W.3, of getting them united.

9. The learned Family Court made observations that the factum of abuse of the appellant by the respondent at her matrimonial home has not been established by adduction of reliable evidence. The learned Court also observed that even if the allegations made by the appellant were accepted to have been established to some extent, it could only be considered as normal wear and tear of the marital life. Holding that the appellant had not been able to prove cruelty against the respondent, the learned Family Court dismissed the petition of the appellant.

10. Mr. Das, learned counsel for the appellant, has assailed the said findings of the learned trial Court submitting that the learned trial Court had failed to assess and analyze the evidence on record in the right perspective. It was not proper on the part of the learned trial Court to brush aside the incidents involving the respondent and the conduct and behaviour of the respondent all throughout the married life, highlighted by the appellant, as mere wear and tear of a married life. Persistent abusive misbehaviour, constant humiliation and hurling of false allegations with the intention to demean the appellant before his family members and the society cannot be termed as normal wear and tear of the married life. The respondent have made serious allegations about maintaining of illicit relationship by the appellant with some other lady in the written statement but she failed to substantiate the same by any evidence, not to speak of valid evidence and the same itself amounts to cruelty. In support of his submissions, Mr. Das has placed reliance in the decisions of *K. Srinivas Rao vs. D.A. Deepa*, reported in (2013) 5 SCC 226 and *Vijaykumar Ramchandra Bhate vs. Neela Vijaykumar Bhate*, reported in (2003) 6 SCC 334.

11. Mr. Shome has, on the other hand, supported the judgment of the learned Family Court. He further submits that there was abject failure on the part of the appellant to prove the aspect of cruelty by way of cogent evidence. The failure on the part of the respondent to prove about the alleged illicit relationship of the appellant after bringing in the allegation, is inconsequential when the onus is on the appellant to prove his case which he claimed to be a case of cruelty.

12. We have considered the submissions of the learned counsels for the parties and perused the materials on record including the case record of F.C (Civil) No. 216/2015, in original.

13. From the above conspectus of facts, it transpires the spouses after marriage lived together for a number of years during which period two children were born to them. But the relationship started to turn sour, according to the appellant, after the respondent got a job in

the C.B.I. Before dilating on the evidence led by the appellant, it is relevant to discuss the stand taken by the respondent in the written statement.

14. As has been alluded above, the respondent in her written statement had alleged about the appellant having and maintaining an illicit relationship with another lady and she went on to state that the said illicit relationship was the root cause behind the appellant seeking divorce in order to live with the other lady after divorce. Though no name was mentioned in the written statement, the respondent had gone on to allege that the appellant had constructed an Assam type house at the premises of that other lady in order to fulfill his desires. Thereafter, when the stage of evidence came, it was suggested to the appellant about his having relationship with one Babita Das and for the purpose of marrying said Babita Das, the petition for dissolution of marriage was made. When the appellant categorically denied that suggestion, it was for the respondent to substantiate the said allegation which otherwise is an assault on the character of the appellant. Such kind of allegations, pleaded in the written statement, which have a bearing, are required to be substantiated and proved by cogent and reliable evidence. Failure to substantiate the same may lead to drawal of adverse inference.

15. In the case in hand, it is reflected from the records that the evidence of the 3 (three) P.W.s were filed on 28.11.2016, supplying copies of the same to the respondent on that day itself. After cross-examining the appellant partly on 04.02.2017, further cross-examination of the appellant was deferred to 04.04.2017. A petition was filed by the respondent on 04.04.2017 stating that she wanted to shift from her matrimonial home where both of them were residing separately, to her own house along with her two daughters and personal belongings during the last part of April, 2017. On 06.04.2017, the appellant responded in writing by stating that he had no objection to the shifting of the respondent along with the two daughters and personal belongings, provided he is allowed to meet the daughters at any moment at the newly shifted house. In case of any difficulty, the appellant offered to extend his assistance and cooperation within his capacity to his daughters. In view of such no objection, the learned Family Court by its order dated 06.04.2017, had allowed the prayer of

the appellant as well as the prayer of the respondent. On that day i.e. on 06.04.2017, the respondent asked for a date for cross-examination of the P.W.s, which prayer was allowed by the learned Court by posting the case on 16.05.2017. Beginning from 16.05.2017, the respondent was found absent before the learned Family Court on 15.06.2017, 13.07.2017, 17.08.2017, 06.09.2017, 23.10.2017 and 23.11.2017 without any step. The learned Family Court in view of such absence of the respondent on 16.05.2017, 15.06.2017, 13.07.2017, 17.08.2017 and 06.09.2017, had ordered closure of cross-examination of the P.W.s on 06.09.2017.

16. In view of the aforesaid position, the averments made by the appellant as regards attack on his alleged lower status as a petty shop owner and his humiliation before others about he having an illicit relationship with some other lady stand unrebutted. The allegations of illicit relationship leveled by the respondent in the written statement which was carried up to the stage of cross-examination of the appellant by making suggestions to the appellant as regards one Babita Das to the appellant, which he categorically denied, also stand unproved.

17. The Hon'ble Supreme Court in the case of *Vijaykumar Ramchandra Bhate (supra)* had the occasion to consider the question 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)(ia) of the Act. The Hon'ble Court has observed that the position of law in that regard has come to be well settled and declare that leveling disgusting accusations of unchastity and indecent familiarity with the person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such allegations and aspersions made in the written statement or suggested in the course of examination and by way of cross-examination 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. Such unfounded accusations and character assassinations causes mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and causes 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 life impossible.

18. In *K. Srinivas Rao (supra)*, it is, inter-alia, held that making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings which may have adverse impact would, in the facts of a case, amount to causing mental cruelty to the other spouse.

19. The principle deductible from the decisions in *Vijaykumar Ramchandra Bhate (supra)* and *K. Srinivas Rao (supra)* is squarely applicable to the fact situation obtaining in the present case, though the decision in *Vijaykumar Ramchandra Bhate* was rendered in the context of the husband leveling false accusations and assassinating the character of the wife in the written statement. In the case in hand, it is the respondent-wife who has, at first, leveled and hurled accusations against the appellant-husband about his maintaining an illicit relationship with another lady since long in the written statement and thereafter, has sought to justify the same by making a suggestion to that effect, by naming a lady, to the appellant during the stage of cross-examination which the appellant-husband had denied. The records reveal that the respondent-wife had chosen not to cross-examine the appellant further and not to adduce any evidence on her part. As a result, the entire allegations of character assassination of her husband have remained in the realm of allegations only. But such allegation of illicit relationship has left the appellant-husband with grave assault on his character, honour, reputation, status and health. As the evidence of P.W.2 and P.W.3 about they having witnessed the respondent-wife casting aspersion of illicit relationship on the husband by accusing him in front of others and not giving the appellant the status of a husband, have gone unrebutted and the same goes to corroborate the version of the appellant about being inflicted with cruelty by the respondent.

20. Upon consideration of the entire matrimonial life of the parties prior to institution of the case and during the period subsequent to the institution of the case, we are of the considered

opinion that such kinds of sustained conduct and behaviour of the respondent have the effect of causing a lasting adverse impact in the mind of the appellant leaving him with feelings of deep humiliation and neglect. For such mental pain, agony and sufferings inflicted on the appellant, it cannot be reasonably expected of him to still believe that he can continue to live together with the respondent. Such reasonable apprehension of the appellant that it would be harmful and injurious for him to live with the other spouse definitely constitutes mental cruelty, as contemplated in Section 13(1)(ia) of the Act. Thus, we are of the considered view that the learned Family Court was not justified in its approach to dismiss the petition in the manner indicated above. Resultantly, the appellant is found to be entitled to a decree of divorce with a declaration of dissolution of his marriage with the respondent. Accordingly, this present appeal stands allowed.

21. The decree is to be prepared accordingly.
22. The Registry to return the LCR accordingly.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant