

High Court of Judicature at Allahabad

Lucknow

Reserved on 25.09.2024

Delivered on 14.11.2024

Court No. - 2

Case :- FIRST APPEAL No. - 55 of 2021

Appellant :- Dr. Bagish Kumar Mishra

Respondent :- Rinki Mishra

Counsel for Appellant :- Alok Tripathi, Anju Agarwal, Hari Om Pandey, Meena Bajpai, Nisha Srivastava, Shailesh Kumar Srivastava

Counsel for Respondent :- C.S.C., Rajneesh Kumar Verma, Surya Prakash Singh

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

(Per Om Prakash Shukla, J.)

- (1) Heard Mrs. Nisha Srivastava, learned Counsel representing the appellant and Mr. Surya Prakash Singh, learned Counsel representing the respondent.
- (2) This appeal under Section 19 read with Section 28 of the Family Courts Act, 1984 has been filed by the appellant/ husband, assailing the judgment and order dated 06.11.2020 passed by the Additional Principal Judge, Family Court, Faizabad, whereby Petition No. 773 of 2016 (Computer Registration No. 854 of 2019) filed by the appellant/ husband under Section 13 of the Hindu Marriage Act, 1955 seeking grant of a decree of divorce has been dismissed.
- (3) The facts, in nutshell, are that appellant-Dr. Bagesh Kumar Mishra is the husband and respondent-Rinki Mishra is the wife.

The matrimonial alliance was entered into between the parties as per Hindu rites and rituals in Devkali Temple Ayodhya on November 11, 2015.

- (4) Appellant, Dr. Bagesh Kumar Mishra, had filed Petition No.773 of 2016 (Computer Registration No. 854 of 2019) under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'Act, 1955') before the Family Court, Ayodhya, alleging therein that he was subjected to mental and physical cruelty by the respondent/wife with whom he married under coercion. It was the case of the appellant that while posted as Government Doctor at Community Health Centre, Pura Bazaar, Faizabad, he met the respondent in 2010. As he was new to Faizabad and was living alone, he engaged the respondent as a home Helper with the consent of her father, whereupon she confided to him about her family situation, narrating that her father was a chronic drinker; her mother was of bad character; and as such her education as well as that of her brother got disrupted. It has been further stated by the appellant that in the said peculiar family situation of the respondent/wife, he financially supported the education of respondent and her brother. The appellant and respondent were having a live-in-relationship. Appellant had also borne expenditure of her father's medical treatment, who eventually executed a 'Will' in favour of the respondent before his death on 15.10.2015.

- (5) It was also the case of the appellant that after demise of respondent's father, dispute arose between the respondent and her mother over employment and financial benefits. On 08.11.2015, the respondent and her mother called the appellant at Devkali Temple and got him married with the respondent under pressure. This marriage got notarized in Civil Court, Faizabad on 09.05.2016 and was also got registered in the office of Registrar on 18.10.2016. It was the case of the appellant that after marriage, the respondent began imposing severe restrictions, forbidding him from visiting or supporting his parents and brothers and further humiliated him in front of hospital staff and patients by making baseless allegations about his relationships with colleagues and lodging false police complaints about he having gone missing whenever he was away from home.
- (6) It was also the case of the appellant that the respondent had captured obscene images and videos of him, which were given to her brother, who then blackmailed the appellant with the manipulated materials, demanding money and threatening to publicly defame him. According to the appellant, the respondent had also physically assaulted him, dragged him by his hair, pushed him off the bed, and instigated her brother to attack him. Furthermore, the respondent and her family attempted to forcibly occupy a house under construction, which

was being built by him with a loan. The respondent and her family had also pressurized the appellant to transfer ownership of the house in the respondent's name and obstructed the workers from continuing the construction. On 29th May 2016, at around 10:00 PM, an incident occurred, and the appellant reported it to the In-charge Officer of Devkali Outpost. On 12th June 2016, the respondent filed a false report at Kotwali Nagar Police Station, claiming that her husband (the appellant) was missing.

- (7) It was also the case of the appellant that on 13th June 2016, at around 10:30 PM, the respondent fabricated a false incident, claiming that the appellant, along with two associates, forcefully opened her door and tried to establish physical relations with her. This allegation was reported to the Superintendent of Police (City), Faizabad, and was also published in various newspapers to defame the appellant publicly. Further, in the intervening night of 29/30th June 2016, at around 1:30 AM, the respondent made another false report through Dial No.100, accusing the appellant of planning to murder her. Furthermore, a complaint was submitted by the respondent on 14th July 2016 to the Principal Secretary of Medical and Health Services, Uttar Pradesh, Lucknow, reiterating the false allegations. The respondent also submitted a complaint against the appellant to the Chief Medical

Superintendent, Divisional Hospital, Darshan Nagar, on 22nd July 2016, branding him as a corrupt and immoral doctor, but the investigation revealed these claims to be baseless. On 2nd August 2016, respondent filed another complaint with the Women's Commission, Lucknow. The Respondent created a web of complaints against the Appellant, which caused immense mental harassment & cruelty. During this time, the appellant applied for his transfer to Lucknow due to his father suffering from paralysis and his brother being diagnosed with blood cancer. However, the respondent objected to his transfer request on 16th August 2016, though her objection was later dismissed.

- (8) It is the further case of the appellant that on 2nd September 2016, the respondent falsely accused him by lodging an FIR (Crime No. 595/2016) under Sections 498A, 323, 504, 506, 377, 467, 468, and 313 of the Indian Penal Code at Kotwali Ayodhya, Faizabad. On 18th October 2016 and 2nd November 2016, the respondent filed applications with the Senior Superintendent of Police, stating that the police had taken no action in these cases. Facing these continued allegations and harassment, the appellant claims to have developed hypertension and heart disease. Appellant also asserted that on 9th November 2016, the respondent caused a disturbance at his

house in Darshan Nagar and threatened him with severe consequences.

- (9) Notice was issued in the aforesaid Divorce petition and in response, the respondent had put in appearance and filed a written statement, denying the allegations made in the petition. She stated that she got married with the appellant out of her own free will on 8th November 2015 at Devkali Temple, Faizabad, as per Hindu rituals. She refuted the appellant claims about conflicting marriage dates (8th November 2015 and 8th November 2016), accusing him of trying to mislead the Court. According to her, the couple had lived together as husband and wife for several years in Government quarters and rented houses. She also claimed that the appellant had repeatedly established physical relations with her by promising marriage and that, in the course of time, he had developed an illicit relationship with another woman, Aradhana Mishra, from Lucknow. The respondent alleged that the appellant tried to manipulate her into a divorce and even executed a marriage agreement on 9th May 2016 through an Advocate in Faizabad, deceitfully obtaining her signature on a separation agreement at the same time. Despite this, the appellant continued to harass and abuse her, including coercing her into unnatural sexual activities and engaging in other forms of exploitation. As a result, she filed FIR No. 595 of 2016 under Sections 498A, 323,

504, 506, 377, 467, 468, and 313 IPC. She also alleged that fearing arrest, the appellant registered their marriage on 18th October 2016 at the Sub-Registrar's office to pacify her and secured a compromise in the case. Following the marriage registration, the respondent withdrew her earlier complaint, but the appellant resumed his abusive behavior. Appellant filed a frivolous police complaint on 3rd March 2017, attempting to implicate her in a fake case. Upon discovering the truth, the respondent submitted a request to the District Magistrate, Faizabad, seeking re-examination by a Medical Board, which the appellant allegedly tried to avoid. Respondent further alleged that on 20th February 2017, around 7 PM, the appellant forcibly evicted her from their house in Saketpuri, after which she called the police emergency number. The police detained the appellant, and a reconciliation attempt was made, during which the appellant issued a cheque for Rs. 5,000 (Cheque No. 010236, dated 22nd February 2017, drawn on Allahabad Bank, Devkali), however, the said cheque later bounced. The respondent also filed a case under Section 12 of the Domestic Violence Act, wherein during cross-examination, the appellant denied the validity of their marriage on 8th November 2015, but the respondent testified that they had lived together as husband and wife throughout. Respondent had accused the appellant of misleading the Court by falsely claiming that she resided in her parental home, while in fact, she had lived with him in rented

accommodation and currently resides in his house i.e. House No. 344, at Saketpuri, Ayodhya. The respondent also filed Domestic Violence Case No. 2420/16 (Rinki Mishra vs. Dr. Bagesh Kumar Mishra), which was decided on 8th November 2017, wherein the Court found that the appellant had subjected the respondent to physical and mental abuse, constituting domestic violence. The trial Court awarded the respondent Rs. 1,00,000/- as lump-sum compensation, Rs.25,000/- per month as maintenance, and directed that she be allowed to reside without obstruction in the shared household at House No. 344, Saketpuri, Ayodhya. Additionally, the trial Court ordered the appellant to furnish a personal bond of Rs.50,000/- with an undertaking before the District Probation Officer, ensuring that he would not harass the respondent in future. The respondent stated that under no circumstances, she is willing to grant a divorce.

(10) Based upon the pleadings led by the parties, the issues framed by the trial Court are as under :-

1. क्या प्रत्यर्थी श्रीमती रिकी मिश्रा द्वारा याची डाक्टर बागीश कुमार मिश्रा के साथ कूरता का व्यवहार किया गया है ?
2. याची डाक्टर बागीश कुमार मिश्रा किस अनुतोश को प्राप्त करने का अधिकारी है ?

(11) Parties led evidence before the trial Court. The appellant examined himself as P.W.1 by filing his affidavit as his examination-in-chief (marked as Paper No. 27Ka1), wherein he

reiterated the plaint averments. Appellant also examined his friend, namely, Rajendra Kumar Gupta, as P.W.2, who filed affidavit as his examination-in-chief (marked as Paper No. 28Ka2), wherein he stated that he is a Doctor by profession and the plaintiff/appellant is also a Doctor, because of which, he used to visit the house of the appellant and also knew the conduct of the respondent with the appellant. According to the said witness, after marriage, when he went to house of the appellant, the respondent used to trouble the appellant on a number of times in front of him, saying that the appellant would not go to meet his father nor his father will come to meet him and the respondent restrained the appellant to meet him also. P.W.2 has also stated that the respondent also used abusive languages against the appellant on a number of times and also misbehaved with him.

- (12) The respondent examined herself as O.P.W.1 by filing her affidavit as her examination-in-chief (marked as Paper No. 44Ka2), wherein she reiterated the averments of the written statement. The respondent has also examined her mother, namely, Kamini Mishra, as O.P.W.2, who also filed her affidavit as her examination-in-chief (marked as Paper No. 51Ka2).
- (13) The Family Court, after appraising the pleadings and evidence on record, has returned a finding that the parties had cordial relationship between 2010 to 2016 and the appellant filed the

suit for divorce on 16.11.2016, therefore, in such a circumstances, it was difficult to understand as to when the respondent had inflicted mental, financial and physical cruelty against the appellant. In these backdrops, issue nos. 1 and 2 were decided against the appellant and the suit filed by him was also dismissed vide judgment and decree dated 06.11.2020, which is under challenge in the present appeal.

- (14) Learned Counsel for the appellant has submitted that the respondent-wife has committed physical and mental cruelty by filing various complaints including false and frivolous criminal complaints against the appellant. According to the learned Counsel, though appellant has raised plea of cruelty at the hands of respondent by oral as well as by documentary evidence, but the learned Family Court has not considered the pleadings and the evidence on record, in its correct perspective. According to him, the Family Court has failed to consider the ill- treatment which was subjected to him by the respondent/wife. According to him, the very lodging of false allegations against the appellant/husband amounts to mental cruelty. He further submitted that the learned Family Court has ignored the bad habits of the respondent/wife, and also not considered that she used to quarrel with the appellant/husband in front of his friend and hospital staff. Lastly, he urged to allow the appeal in the interest of justice.

- (15) Per contra, learned counsel for the respondent/wife, while supporting the judgment and decree of the trial Court, has submitted that the learned trial Court, while dismissing the petition, has properly appreciated the evidence on record and that the appellant/husband could not make out a case to interfere with the well-reasoned judgment of the trial Court.
- (16) Having regard to the submission of the learned Counsel representing the appellant/husband and going through the record available before this Court in this appeal as well as the impugned judgment and decree and the record of the trial Court, the points of determination arise in consideration before us in the present appeal are as under :-

“Whether the findings of the Family Court regarding issues no. 1 and 2 with respect to the plea of cruelty as a ground for divorce, is perverse and unsustainable thereby rendering the impugned judgment unsustainable ?”

- (17) At the outset, it is readily available from records that the appellant/husband has sought divorce on the ground of mental and physical cruelty. Before advertent to examine the evidence on record to assess as to whether the appellant/husband could make out a case of mental, financial and physical cruelty, it would be advantageous to refer to one of the landmark judgments of the Hon'ble Supreme Court in the case of **Samar Ghosh vs. Jaya Ghosh** : (2007) 4 SCC 511 wherein the Apex

Court have enumerated some instances of mental cruelty. The relevant portion in para no. 101 in the said judgment is reproduced below :-

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommodate or render miserable life of the spouse.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to

live with the other party any longer, may amount to mental cruelty.”

(18) A careful perusal of the pleadings and the evidence in support as adduced by the appellant/husband, would at once reveal that the allegations with regard to cruelty as set out by the appellant/husband, are nothing but the normal wear and tear in married life. The couple lived together for around six years and the appellant-husband could not bring on record specific instances of mental harassment to enable this Court to adjudicate the case of mental cruelty in favour of the appellant/husband. The allegations that she was quarreling with him without any reason, in the considered view of this Court, are not sufficient to form any opinion that the appellant/husband is undergoing acute mental pain, agony, suffering, disappointment and frustration and therefore it is not possible for him to live in the company of the respondent/wife.

(19) All the allegations levelled by the appellant/husband are general and omnibus in nature. The major allegation amongst them is with regard to her not permitting him to meet his parents and friends and regarding misbehaviour with him in front of his friend and hospital staff and also having lodged frivolous complaints against the appellant, which alone is not sufficient to grant a decree of divorce. The complaints lodged by the respondent/wife had to be proved false and malicious by the Appellant, so as to meet the threshold of cruelty. On the

contrary, the appellant/husband in his cross-examination has admitted that they had physical relations between 2013 to 2016. At this stage, it would be relevant to add that the suit for divorce was filed by the appellant only on 14.11.2016. The instances of physical and mental harassment, as pleaded and asserted by the respondent/wife in her written statement, are on the better footing than those alleged by the appellant/husband. This Court also finds that the petition for Domestic Violence has been allowed in favour of the respondent/wife, wherein she has even been awarded a compensation and a monthly maintenance. This all goes on to show the contrary implication of the allegations made by the Appellant.

(20) Further, it is the specific allegations of appellant/husband that on 29.05.2016 at about 10:00 p.m., the appellant was beaten by the respondent/wife and he sustained injuries. However, the learned trial Court has rightly observed that though number of cases have been lodged by the appellant/husband against his wife but the appellant/husband has not lodged any complaint/F.I.R. in regard to the incident alleged to have been occurred on 29.05.2016, which shows that the allegations made by the appellant/husband are doubtful.

(21) Apart from the aforesaid, it has rightly been held by the learned trial Court that the pleadings of the appellant/husband are not so grave and weighty so as to dissolve the marriage. The learned

trial Court has rightly observed that the appellant has failed to prove his allegations of mental and physical cruelty.

- (22) In view of the aforesaid, we are of the opinion that no case is made out by the appellant/husband to interfere with the well reasoned findings of the learned trial Court. The point of determination is answered accordingly.
- (23) The appeal thus being devoid of merit deserves to be dismissed and is, accordingly, **dismissed**. The parties to bear their own costs.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date : 14th November, 2024
Ajit/-