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Reserved on: 27.06.2024
Delivered on: 19.07.2024

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No. 707 of 2023

..........Revisionist

Vs.

State of Uttarakhand and others .... Respondents

Present : Mr. Aditya Singh, Advocate for the petitioner.
Mr. M.A. Khan, AGA with Mr. Vipul Painuli, Advocate for the State/respondent no.1.
Mr. Navneet Kaushik, Advocate for respondent nos.2 & 3.

JUDGMENT

Per: Hon'ble Ravindra Maithani, J.

The challenge in this revision is made to the Judgment and Order dated 06.09.2023, passed in Case No.50 of 2017,

, by the court of Additional Judge, Family Court, Roorkee, District Haridwar ("the case"), by the impugned judgment and order, the revisionist has been directed to pay ₹25,000/- to the respondent no.2 and ₹20,000/- per month to the respondent no.3, as maintenance under Section 125 of the Code of Criminal Procedure, 1973 ("the Code").

2. Heard learned counsel for the parties and perused the record.

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3. The case is based on an application filed under Section 125 of the Code filed by the respondent no.2 ("the wife") and the respondent no.3 ("the son") against the revisionist. Briefly stated, according to it, the revisionist and the respondent no.2 were married on 08.12.2010. But, after marriage, the respondent no.2 was harassed and tortured in connection with demand of dowry. The revisionist would consider the respondent no.2 as material and would commit sexual intercourse against the order of nature with her which had adverse effect on her health. The revisionist had no mercy on the respondent no.2. He continued anal sex with the respondent no.2 by force and by beating her. Not only this, the revisionist would show obscene videos to their child, so that the respondent no.2 would succumb to his demands. He would behave in a very cruel manner. He would throw the glass. He would hit the doors with iron rod. He would urinate at the doors. When the parties were in Roorkee, atrocities and harassment continued. The revisionist did not pay the school fee of the child. The respondent no.2 has been staying in the Government accommodation allotted to the revisionist.

4. It has been the case of the respondent no.2 that due to repeated anal sex done by the revisionist on

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her, she was admitted in a hospital at Balangir. Thereafter, she was admitted in FORTIS Jindal Hospital, Raigarh, Chhattisgarh, where surgery was suggested, but was not conducted by the revisionist. In Roorkee also, the respondent no.2 was treated with her injuries in one Nursing Home. All the documents were kept by the revisionist.

5. According to the respondent no.2, on 16.09.2016, at about 10:00 PM, the revisionist visited her, did *maar peet* with her and tried to forcibly establish physical relations with her. The respondent no.2 raised alarm. Thereafter, the respondent no.2 left the place. Since then, he has not been maintaining the respondent nos.2 and 3. It is stated by the respondent no.2 in her application that the revisionist earns ₹97,254/- per month whereas she is not able to maintain herself.

6. The revisionist did file objections to it and denied all the allegations. It has been the case of the revisionist that the respondent no.2 is a highly educated woman. After marriage, the revisionist tried his best to entertain her and has taken her for honeymoon and they travelled at various places in India and abroad. At the time of marriage, neither dowry was demanded nor was it given.

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The revisionist has written that, in fact, the respondent no.2 had problems of constipation and piles before marriage and she also used to go to the doctor for her treatment and after marriage, she also got her treatment in Germany. She has made false story.

7. According to the revisionist the behavior of the respondent no.2 was so abusing and abnormal and she had asked the revisionist to leave her house. Finally, according to the revisionist, he was thrown out from the house by the respondent no.2, threatening him for putting behind bars by implicating him in false cases and deserted him.

8. It has been the case of the revisionist that the respondent no.2 is a teacher and gets ₹25,000/- per month salary and she also gets interest from her deposited amount.

9. After hearing the parties by the impugned judgment and order, the application under Section 125 of the Code, filed by the respondent nos.2 and 3 has been allowed and the revisionist has been directed to give maintenance, as stated hereinbefore.

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10. The only ground that is argued on behalf of the revisionist is that the respondent no.2 had herself withdrawn her from the company of the revisionist on the ground that he commits anal sex with her. It is argued that the anal sex is no offence, as such in view of the judgment in the case of Navtej Singh Johar and others vs. Union of India, (2018)10 SCC 1.

11. Learned counsel for the revisionist has referred to the principle of law, as laid down in the case of Samar Ghosh vs. Jaya Ghosh, (2007)4 SCC 511. In the case of Samar Ghosh (*Supra*), the Hon'ble Supreme Court has enumerated some of the situations which may amount to, "Mental cruelty". In para 101, the Hon'ble Supreme Court has observed as follows:-

> "**101.** No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour 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:
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> (*xii*) Unilateral decision of refusal to have intercourse for considerable period without there being any

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physical incapacity or valid reason may amount to mental cruelty."

12. It is argued that in one criminal case lodged by the respondent no.2, the revisionist has been summoned under Section 377 IPC and Section 11/12 of The Protection Of Children From Sexual Offences Act, 2012 that has been challenged under Section 482 of the Code by the revisionist in Criminal Misc. Application No.2697 of 2019 ("C-482 petition"), which had already been argued. It is argued that if the revisionist cannot be *prima facie* held liable for the offence under Section 377 IPC, withdrawing from carnal relations by the respondent no.2 would amount to cruelty and she would not be entitled to any maintenance.

13. Learned counsel for the respondent nos.2 and 3 would submit that the husband is liable for punishment under Section 377 IPC *qua* wife.

14. What is essentially argued is that since a husband may not be held liable for the offence under Section 377 IPC *qua* wife, the wife may not deny the husband to commit such an act. If it is done, it is argued that this unilateral decision of refusal to have intercourse for considerable period would amount to mental cruelty.

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15. This Court has already decided C-482 petition and has held that, "Exception 2 to Section 375 IPC cannot be taken out from it while reading Section 377 IPC in relation to husband and wife. If an act between husband and wife is not punishable due to operation of Exception 2 to Section 375 IPC, the same act may not be an offence under Section 377 IPC."

16. The question is, as to whether the respondent no.2 has committed mental cruelty to the revisionist?

17. The revisionist has nowhere stated in his objections that he wanted to have sexual intercourse against the order of nature with the respondent no.2, to which, she denied.

18. The revisionist has nowhere stated that by denying carnal intercourse against the order of nature by the respondent no.2, mental cruelty was committed to him or he felt ill-treated.

19. If a person is ill-treated, it can be best described by the person, so treated.

20. The revisionist had filed objections to the application under Section 125 of the Code filed by the

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respondent no.2, but the revisionist has nowhere stated that the mental cruelty was committed to him by the respondent no.2 by denying carnal intercourse against the order of nature.

21. Refusal to have intercourse by a wife at times may amount to mental cruelty. In the case of Samar Ghosh (*Supra*), the Hon'ble Supreme Court has observed on this aspect. At the cost of repetition, this Court quotes "**unilateral decision of refusal to have intercourse for consideration period without there being any physical incapacity or valid reason may amount to mental cruelty**."

22. The respondent no.2 in her application under Section 125 of the Code has categorically stated that the revisionist would establish carnal intercourse against the order of nature with her by force, by beating her. She has stated that she got injuries on her body parts due to such act; she was taken to various hospitals. She was also taken in a Nursing Home at Roorkee, but the documents are with the revisionist. Documents, as such have not been provided. But, it may be noted that in para 6 of parawise reply of his objections to the application under Section 125 of the Code, the revisionist has stated that

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the respondent no.2 had problems of constipation and piles before marriage and she also used to go to doctor for her treatment and after marriage, she also got her treatment in Germany.

23. It is not a criminal case that only the respondent no.2 had to prove her case beyond reasonable doubt. If the revisionist has reasons to deny the claim made by the respondent no.2 in her application under Section 125 of the Code, he could have also produced evidences. The revisionist could have produced such documents to show that, in fact, the respondent no.2 was having problems of constipation and piles before marriage.

24. One thing is clear that the revisionist has admitted that the anus of respondent no.2 was injured. Unilateral decision of refusal to have intercourse *per se* may not amount to mental cruelty. If there is any physical incapacity or valid reason such refusal may not amount to mental cruelty. In the instant case, the respondent no.2 has been examined and she has supported her case, the respondent no.2 has stated that she had injuries in her anus. Therefore, she was not agreeable for carnal intercourse against the order of nature, which the

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revisionist wanted to establish with her. As stated, the revisionist has impliedly admitted that there were injuries on the anus of the respondent no.2, although he had given other reasons like constipation and piles. But, as stated, it has also not been established by documents or otherwise by the revisionist.

25. In view of it, this Court is of the view that for refusal to have carnal intercourse against the order of nature which was done by the respondent no.2 had valid reasons. The respondent no.2 was physically incapable to do so because she had injuries. Therefore, this refusal does not amount to mental cruelty.

26. The impugned judgment records quite in detail the reasons for which the respondent no.2 was staying separately and the court below has rightly concluded that the respondent no.2 has sufficient reasons to stay separate from the revisionist.

27. No other point has been raised.

28. In view of the foregoing discussion, this Court is of the view that no interference is needed in the instant matter. Accordingly, the revision deserves to be dismissed.

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29. The criminal revision is dismissed.

(Ravindra Maithani, J.)
19.07.2024

Sanjay