

DIVORCE: AN ADJUSTMENT TO MARITAL BREAKDOWN

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ABSTRACT

Any marriage hampered, regardless of whether previously or previously or after the initiation of this Act, may, on a request introduced by either the spouse or the wife, be disintegrated by a declaration on the ground that the other party- The word 'savagery' isn't characterized in the Statute and the conditions prompting cold-bloodedness to draw from different occurrences removed by the gatherings. In the public activity, while the two players are living respectively according to conjugal ties, the couple needs to take certain careful steps for the smooth progression of the conjugal life. The personal conduct standard of the couple must be changed in every episode during the means of the conjugal tie. At the point when one of the solicitors argue and build up a specific episode at specific spot occurred or such occurrences occurred at specific spots during the resource of the conjugal relationship. Along these lines, 'pitilessness' as a ground for separateness isn't found in his proof. In the typical course of their wedding life, a few occurrences occurred while living in India and outside. As a piece of Section 12 (1)(a). The interest for settlement and claim of unlawful connection of the spouse in the composed explanation isn't demonstrated and those can't add up to brutality.²

Key Words: Marriage, marital breakdown, divorce.

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INTRODUCTION

It tends to be said that when the solicitor was out of the wedding home for a time of over two months and was not keeping up the respondent and their youngster, conditions constrained her to go to her folks' place. Further, it is seen that the solicitor never visited his in-law's home to bring the respondent and her youngster. Then again, it is the situation of the respondent that she has consistently carried on in the most amicable and aware way with the candidate and still, she is looking towards him with adoration and warmth. In this manner, it can't be said that the respondent abandoned the applicant, unexpectedly, it very well may be said that the solicitor abandoned the respondent.

Divorce and its conditions

To the extent that the claim of the candidate that the respondent allotted remorselessness to him is concerned, it is the proof of the applicant that there were negligible debates among him and the respondent before moving to the leased house and subsequent to moving to the leased house, when he trained the respondent to take their child for calls of nature outside, the respondent manhandled him in soiled language and asked him to 1Nair, AIR 2013 Kerala 143 go out, though it is asserted in the request that when he taught the respondent to wash the essence of their child, she lost control and chastened him in the foul language within the sight of the proprietor of the house.

Cruelty by husband

The conduct complained of it was per se unlawful or illegal. Demand for dowry by parents of husbands with the Support of the husband, is prohibited by law. The conduct of the respondent-husband in making the petitioner-wife to consume Harpic had a telling effect on the mind and body of petitioner. The cruelty practiced on the petitioner was distressing and shocking. The law has no norm by which to quantify the nature and level of barbarous treatment distributed to the solicitor. Now and again a solitary demonstration of viciousness may without anyone else be of such an intolerable and unforgivable nature to fulfill the trial of remorselessness. Then again, detached demonstrations of attack submitted spontaneously and on some genuine or liked incitement may not savage treatment.²

Cruelty by wife

The respondent has succeeded in proving the factum of cruelty by the appellant and further he has been able to prove animus deserendi on the part of the appellant spouse.³

Desertion

The mandate of the relevant provision that there should be desertion for a continuous period of two years immediately preceding the presentation of the petition for divorce on the ground is complied with whoever may be at fault. Desertion is the active or willful termination of an existing cohabitation without the consent, express or implied, of the party alleging desertion and against his or her wish.⁴

Divorce-Cruelty-Trivial allegations

It has always held that it was not set up by the offended party that the litigant has treated him with remorselessness and on this record, a declaration of separation might be passed. The above discovery seems, by all accounts, to be completely advocated in current realities and conditions of the case and material accessible on record. The conjugal ties are not to be broken on trifling issues among a couple. Remorselessness is an issue of certainty which must be demonstrated by citing examples and driving positive proof to demonstrate those cases. In this manner, in all cases, the Court needs to gauge the proof drove by the gatherings and a positive discovering with all fulfillment must be recorded that the offended party was treated with remorselessness by the respondent creation him/her qualified for get an announcement of separation.⁵

Divorce-Cruelty and desertion

In the present matter, in our considered opinion, the alleged acts do not come under the definition of mental cruelty. Such acts, which are ordinary wear and tear of life, cannot be said to be of such a nature so as to cause in the will be harmful or injurious for him to live with respondent-wife Kavita. It is also pertinent note that the wife is still living in the house of her husband along with her son Sahil.⁶

Divorce-Cruelty by wife-Condonation

The appellant was in the habit of abusing, insulting, misbehaving and threatening the plaintiff to inflict him and his family members in false criminal cases. The above conduct of the appellant clearly amounts to cruelty, within the meaning of Section 13 (1)(ia) of the Act as the above conduct may create a reasonable apprehension in the mind of the plaintiff that it is not safe for him and his family members to live with the appellant. Although the appellant was guilty of cruelty but the respondent condoned it, the trial Court, without considering this aspect of the matter, has granted decree, which is not sustainable in law.¹

Divorce-Cruelty by wife

Wife needed sexual intercourse five times a day. The learned trial Judge, without properly evaluating the said evidence, seems to have acted with a determination to believe the case of the respondent herein/petitioner (husband) and disbelieve the case of the appellant herein/respondent(wife). The same is obvious from the procedure adopted by the trial Judge in accepting the evidence of PW2 without there being any pleading and on those aspects that were not even touched by PW1. It is also obvious from the observation made by the learned trial Judge, that too based on the evidence of PW2, that the appellant insisted her husband to have sexual intercourse five times a day and unable to cope up with such demand, the respondent/husband narrated the same to his father, namely PW2, was the sexual torture given by the appellant and that such an act on the part of the appellant. The learned trial Judge has exhibited his ignorance by calling the appellant herein/respondent (wife) impotent, when the allegation is that she needed sexual intercourse five times a day, whereas her husband was not able to cope up with such insistence.

Till now as the finding of the preliminary Court with respect to savagery based on inclusion in a bogus criminal case is concerned, it might be said that that in itself establishes adequate ground for conceding divorce as it added up to brutality. In *K. Srinivas Rao v. D.A. Deepa*³, where it was held by Hon'ble SC that where foul/abusive explanations are submitted in the question/criminal procedures, the equivalent separately and aggregately added up to mental remorselessness justifying the award of separation. In the event that a bogus protest is documented against the mate or his/her family members, it adds up to mental remorselessness. In the said case additionally, the spouse had documented a case under Section 498-A, IPC and the husband and his relatives were vindicated and pronouncement of separation was conceded to the husband on that ground, as it added up to mental brutality. The preliminary Court properly come to the end result that the spouse was qualified for a pronouncement of separation and the wife was not qualified for any relief.⁴

In view of the requirements of Section 13, no fault can be noticed in the impugned reasoning of the trial court in so far as it relates to grant of decree of divorce dissolving the marriage between the parties. In our opinion, the petition did contain requisite pleadings and the evidence in support thereof for passing a decree for divorce. The husband was also able to discharge the initial burden that lay on him to prove the factum of cruelty against his wife and the instances pleaded by him in the petition despite affording an opportunity to wife, she did not enter into the witness box and did not lead any evidence in rebuttal.⁵

It is abundantly clear that the matrimonial bond between the parties had been wrecked beyond the hope of savage and public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. Dissolution of marriage will relieve both sides of pain and anguish. The learned trial Court has rightly dissolved the marriage between the parties by granting decree of divorce.⁶

Divorce-Ground of cruelty, desertion and mental disorder of wife

It is 20 years after the marriage that the appellant filed the O.P., for divorce by pleading the three grounds, referred to above. Though the ground of cruelty was mentioned in the O.P., no specific acts in relation there to be pleaded. According to the appellant, the alleged conduct of the respondent caused harassment and cruelty to him. The O.P., discloses that the grievance of the appellant was mostly about the alleged "extraordinary behavior and rude manner of the respondent".¹

Unmistakably supported baseless lead and conduct of one companion really influencing the physical and emotional well-being of the other mate could be one of the legitimate reasons for conceding a declaration of separation. In the moment case, respondent and the child were completely ignored by the appealing party and she has not decided to deal with her intellectually hindered child and she has likewise not satisfied her conjugal commitments. Besides, she went to the degree of making an allegation against her significant other killing his character, which harmed the notoriety of the respondent.²

So far as the desertion is concerned admittedly the wife is willing to join the husband. After she was sent for confinement, no attempt was made by the husband to bring her back to the matrimonial home. He has not even visited the house of her parents. No legal notice is issued calling upon the wife to join him. In the circumstances we are of the view that the trial Court did not consider the case of desertion properly. When the wife has contended that she was sent for confinement and thereafter an attempt made by her to join the husband has gone in vain, in such circumstances the question of granting decree of divorce on the ground of desertion does not arise at all. If really the husband was having love and affection towards doing so only with an intention to take a second wife, a divorce petition is filed on false and frivolous grounds.³

Divorce-Ground that husband was made to marry wife by show of force at point of pistol

It is not in dispute that no criminal complaint was lodged by the appellant for such forcible taking away deceit and marriage by show of force at the point of a pistol. The plaint does not allege that no family member of the

appellant was present during marriage or that the guests during the marriage ceremony were extremely limited because of the nature of the marriage being performed, much less the relatives of the marriage being solemnized, none of his family members were present or that extremely limited number of guests were present. The name of the priest or even location of marriage has also not been stated. We are therefore satisfied that this ground sought to be urged in the plaint was but a ploy to build up a case for divorce only.⁴

Divorce-Grounds of unsoundness of mind and desertion by wife

It stands proved that the respondent/wife had not left her matrimonial home without any just and reasonable cause of her own accord, but it is only on account of cruel treatment meted out to her by the appellant and of having been driven out of the house that she is residing at her parent's house. It also stands proved that the appellant during subsistence of his mistress and three children have been born out of their physical relations and it is only after coming to know of this fact, that the respondent/wife had become mentally sick, for which the appellant alone is responsible. As such the appellant/husband has not been able to establish any of the grounds enumerated in Section 13 of the Act, 1955 for grant of a decree of divorce. Learned Family Court has not committed any illegality or infirmity in passing the impugned judgment and decree, which deserves to be affirmed.¹

Divorce-Irretrievable breakdown of marriage

This marriage has hopelessly separated. Lost breakdown of marriage isn't a ground for separate under the Hindu Marriage Act, 1955 But, where marriage is hopeless by virtue of harshness made by the demonstrations of the spouse or the wife or of both, the courts have consistently accepted unrecoverable breakdown of marriage as an exceptionally profound situation among other requiring severance of conjugal tie, A marriage which is dead for all reasons can't be restored by the court's decision, if the gatherings and in the event that they are evaporated there is not really any possibility of their springing back to life because of counterfeit get-together made by the court's decree.²

Divorce by mutual consent

The parties have been residing separately since 2006. Petition for divorce was filed under section 13(1) in 2010 and it was dismissed on 12/06/2012. Appeal was filed in July, 2012. The consent terms which are filed before us are indicative of some sober thinking, after exploring all possible avenues for bringing about union or to dissolve the marriage. We have also asked both, husband and wife who were present in Court and they have reiterated that consent terms have been filed after great deliberation and after taking into consideration the advantages and disadvantages involved in the case. The terms and conditions in the advantages and disadvantages involved in the case. The terms and conditions in the assent terms clarify that every one of them has no further staying alive cases over one another. We are fulfilled that there is no chance of compromise between the gatherings. We are likewise fulfilled that the choice isn't affected by any outside components including compulsion terrorizing or unjustifiable impact by any individual including the guardians. Both the gatherings are instructed and developed and completely appreciate the thought about farewell party. Having respect to these realities, we are fulfilled that order for disintegration of marriage solemnized between the gatherings must be passed regarding the assent terms recorded in this court.¹

Divorce on ground of impotency

Impotency is one of the grounds for divorce under the provisions of the Hindu Marriage Act, 1955. In *Sharada*², the SC held that without proper medical examination, it would be difficult to arrive at a conclusion as to whether the husband is suffering from impotence or not and that if the husband avoids such medical examination on the ground that it violates his right of privacy or personal liberty as enshrined under Article 21 of the Constitution of India, it would become impossible to arrive at the definite conclusion on the impotency or otherwise of the husband. The SC further held that avoidance of medical examination to ascertain the impotency of the husband may render the very ground on which the divorce is permissible nugatory and that where the legislature has conferred a right of that spouse which comes in conflict with the so called right to privacy of the husband and that the Court has to reconcile these competing interests by balancing the same.³ In absence of direct medical evidence impotency cannot be presumed merely because the respondent was medically treated for infertility. Impotence is defined as 'a party' is impotent if his or her mental or physical condition makes a consummation of the marriage a practical impossibility.⁴

Divorce by mutual consent

The further proceedings continuing before the Family Court, Pala can be completed in the absence of the petitioners, in the presence of their counsel. Family Court need not insist for appearance of the parties on 12.02.2014 or on any other dates. The Family Court shall dispose of original petition within a period of one month from the date of receipt of copy of this judgment.¹ the reason stated by the court below that the

husband is having connection with another woman and he has children in that illegal relationship cannot lead to the conclusion that there is collusion between the parties.

CONCLUSION

Divorce gives a hope to people that they can leave their partner anytime if they start facing issues in their marriages. In earlier times, there was no such thing like divorce and some marriages often changed into imprisonment of people. In those times, there was no way to escape from this never ending pain if one's spouse turned out to be someone not possible to live with. Divorce gives protection and ensures that if someone is not happy in their marriage then they can happily leave their partner and marry someone else. It gives power to correct wrong decisions taken in the past and provides another chance to people to live in peace and be happy alone rather than being in a marriage which is just a punishment in prison and nothing more.

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