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## **CASE ANALYSIS – SATENDRA KUMAR GUPTA**

### **V. KANCHAN GUPTA 2015 (112) ALR 382.**

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### **CONCISE FACTS OF THE CASE**

The case was filed as an appeal to the Allahabad High Court by the Plaintiff, or the husband, against the Family Court's order, which dismissed the suit filed by the appellant under Section 13 of the Act.

The marriage was solemnized between the two parties on 10 December 1999. The Respondent stayed at the Appellant's house for a few days and was refusing to cohabit with the Appellant. The Respondent was very cruel towards the Appellant and his family members. The Respondent became pregnant during this period and did not want to give birth at this stage and insisted on her going to her parents' house. The Appellant and his family members feared that under her excuse, she would try to abort the child and thus, tried to keep her at his home. This resulted in increased cruel and abusive behaviour towards the Appellant's family and an increase in quarrels. Finally, the Respondent went to her parents' house on Raksha Bandhan along with all cash and jewellery.

The Appellant requested the Respondent to come back to his house, but she refused, leading to the Appellant sending a notice to the Respondent. The Respondent did not reply to the notice, and later sent a wrong reply to the Appellant. The Respondent refused to come back to the in-laws' house and thus, filed a frivolous suit in the Family Court on false allegations of demand for dowry. The Appellant and family members were summoned to the Police Station for questioning, leading to harassment by the police. This caused intense mental and physical torture to the Appellant and his family members. It was forced to agree to keep the Respondent in the Appellant's house. But the Respondent did not come to the Appellant's house, and instead, filed a suit for maintenance under Section 125 of the Code of Criminal Procedure (hereinafter referred to as 'the CrPC').

The Appellant was pressurized to invite the Respondent to his brothers' marriages. The Respondent came but left back to her parents' house immediately after the marriage. After returning to the Appellant's house, she used abusive language with the Appellant's family and refused to cohabit. After some time, she again left for her parents' house and filed a case against the Appellant and family

members. This caused the utmost mental and physical cruelty to the Appellant and his family members. Thus, as a last resort and the only solution available, the Appellant filed a suit for divorce under Section 13 of the Act.

The Respondent, in her written statement, denied all allegations. The Respondent alleged that immediately after the marriage, the Appellant was very cruel to her and that he had demanded an Indica car, which could not be given due to her inability. Due to this, the Appellant assaulted her. The Respondent never refused to cohabit with the Appellant, and contrastingly, the Appellant and his family members were forcing the Respondent to abort during pregnancy. She finally gave birth to a male child in her parents' house on 26 October 2000. Even on invitation by the Respondent, the Appellant and his family members refused to see the child.

The Respondent had given an Indica to the Appellant after marriage, but the Appellant sold the car and illegally demanded an Indica car by issuing a wrong notice to the Respondent. The Appellant and his family members were very cruel towards the Respondent, intending to break the marriage. The Appellant wanted to commit to a second marriage by taking a divorce under frivolous conditions for the existing marriage. This caused the Respondent to file a case before the Family Court, along with a maintenance suit. The Family Court ordering the Appellant to restrain from performing second marriage annoyed him and his family members and threatened the Respondent with dire consequences. For her safety, the Respondent filed a complaint at the police station, where an amicable settlement was arrived between the parties. The Respondent was coerced to submit that the allegations against the Respondent were false.

## **ISSUES IDENTIFIED BY THE COURT**

1. Whether the behaviour of the defendant is so cruel to the plaintiff that he cannot live with the defendant?
2. Whether the defendant has deserted the plaintiff without any reasonable ground?
3. Whether the Plaintiff and his family members are harassing the defendant over the demand for dowry?
4. Whether the Plaintiff and his family members inflicted so much cruelty on the defendant that it is not possible to live together?
5. Whether the Respondent is entitled to maintenance for herself and her child?

## LAWS APPLIED BY THE COURT

The Allahabad High Court referred to, examined, and analysed Section 13 of the Hindu Marriage Act, 1955 along with its provisions and clauses, which provides for divorce under various grounds. The case filed was for divorce alleging cruelty and desertion.

### ANALYSIS BY THE COURT AND DECISION TAKEN

The Court, after considering all the evidence produced by both parties, dismissed the appeal by the appellant and thus, upheld the decision of the Family Court, which ordered for providing maintenance of Rs. 7000, which is, Rs. 3500 each to the mother and the child, per month. It was held by the Court that the evidence provided by the Appellant to support his case was based on surmises and assumptions, and thus, could not be considered supporting evidence, and the reliance on such evidence could not be satisfied by the Appellant on the Court. The Court held that there were only allegations of cruelty by the Respondent on the Appellant and his family members, but the evidence displayed could not substantially support the allegations. The Court held that the Respondent placed satisfactory evidence to support the evidence of cruelty inflicted by the Appellant and his family members. The proof of police complaint and other documentary and oral evidence was placed before the Court to support the case. This led to the Court being satisfied with the evidence supplied by the Respondent, thus dismissing the appeal.

The Court examined whether the conditions for 'cruelty' as per Section 13 of the Act were satisfied by the Appellant when he was allegedly inflicting the same on the Respondent, or vice versa, as it is alleged by both parties about the same. The Court observed that the Appellant has failed miserably to provide satisfactory evidence and proof to establish cruelty being inflicted by the Respondent. The Respondent alleged that she was treated harshly by the Appellant and his family and was left with no option but forced to file criminal and civil suits against the Appellant to protect herself from further harassment and consequences. The Appellant did not take sufficient steps to bring the Respondent back to the house if he intended to do the same. There is also no application for Restitution of Conjugal Rights filed by the Appellant under Section 9 of the Act. The Court held that the Appellant failed to prove the factum of mental cruelty. And with regards to physical cruelty, the Appellant failed to provide any evidence and facts that prove the same, thus it was left un-interfered and ultimately dismissed by the Court.

It was submitted by the Appellant that the relationship between him and the Respondent had been strained so much, along with the fact that they stayed separately for so long, that it is virtually

impossible for the parties to live jointly and has reached an irrevocable point. The Court rejected this argument and observed that the party at fault cannot file a suit for divorce due to the irretrievable breakdown of the marriage. The Court relied on the judgements of *Vishnu Dutt Sharma v. Manju Sharma*<sup>1</sup>, *Ram Babu Babeley v. Smt. Sandhya*<sup>2</sup>, and *Dr. Tara Charan Agarwal v. Smt. Veena Agarwal*<sup>3</sup>.

In *Ram Babu Babeley v. Smt. Sandhya*, the Court observed that ‘The irretrievable breakdown of marriage is not a ground for divorce by itself. But while scrutinizing the evidence on record to determine whether the grounds on which divorce is sought are made out, this circumstance can be taken into consideration.’ It further referred to *Savitri Pandey v. Prem Chand Pandey*<sup>4</sup> and *V. Bhagat v. Mrs. D. Bhagat*<sup>5</sup>, where the Supreme Court took a similar holding. ‘No divorce can be granted on the ground of irretrievable breakdown of marriage if the party seeking divorce on this ground is himself, or herself, at fault for the above breakdown.’

The Court also observed that a decree of divorce can be granted that marriage was irretrievably broken down where the relationship between the parties is practically dead and cannot live together<sup>6</sup>, and in cases where the conduct of one party was so painful for the other party that it is not expected to live with the offending party<sup>7</sup>.

In *Dr. Tara Charan (Supra)*, the Court opined that the appellant cannot take advantage of their fault.

A clear reading of Section 13 of the Act does not provide for an ‘irretrievable breakdown of marriage’ as a ground for divorce, although other grounds like cruelty, adultery, desertion, etc. The Court cannot decide to add the above grounds as a new ground for divorce, which results in amending the Act, a function of the legislature. The Supreme Court, however, recommended the amendment to Section 13 of the Act in *Naveen Kohli v. Neelu Kohli*<sup>8</sup>.

Thus, on the above observations and lack of substance in the Appellant’s arguments, the Court dismissed the Appeal. The Appellant approached the Supreme Court, challenging the dismissal of the suit by the High Court. But the suit was barred by limitation i.e., the time period for filing the suit was completed, and the suit was dismissed.

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<sup>1</sup> *Vishnu Dutt Sharma v. Manju Sharma* 2009 (7) SCC 5.

<sup>2</sup> *Ram Babu Babeley v. Smt. Sandhya* 2006 (1) AWC 183.

<sup>3</sup> *Dr. Tara Charan Agarwal v. Smt. Veena Agarwal* 2911 ADJ 118.

<sup>4</sup> *Savitri Pandey v. Prem Chand Pandey* (2002) 2 SCC 73.

<sup>5</sup> *V Bhagat v. Mrs. D Bhagat* AIR 1994 SC 710.

<sup>6</sup> *Chandra Kala Trivedi Vs. Dr. S.P. Trivedi* 1993 (4) SCC 232.

<sup>7</sup> *Romesh Chander Vs. Savitri* 1995 (2) SCC 7.

<sup>8</sup> *Naveen Kohli vs. Neelu Kohli*: AIR 2006 SC 675.

## CRITICAL ANALYSIS OF THE JUDGEMENT

Marriage, especially in Indian society, is a unique special event in a person's life. The institution of marriage holds great significance in India. It is a sacrament, a social obligation, and its essence is upheld by both, the family, and the society. Just like how marriage is placed on a higher pedestal, the concept of divorce is also considered important, but not in the same essence. It is a taboo, that is, divorce signifies the break of a significant bond committed by two people towards each other. When a person is divorced, theoretically it does not make much difference, except in the category of marital status. But socially, society views it as a change in the perception towards the divorced person. The person is socially excluded, intentionally or unintentionally, by society. The status imposed upon them makes them feel 'socially' uncomfortable. To avoid this, there is every possible attempt, effort, and endeavour to preserve the sanctity of marriage, so that two lives can live happily together. But there are circumstances where the people in a marriage are not happy together, due to the behaviour of either party on another, due to interference of external parties, etc. This affects the aggrieved party mentally, physically, emotionally, financially, and socially. And in Indian society, it is viewed, and assumed, that the aggrieved party is the wife, due to the predominant culture of patriarchy invisibly ruling in our actions, traditions, and mindsets. Just because the wife must 'preserve the sanctity' of her marriage, it does not restrict her ability to avail remedy in significantly disturbing or 'marriage-affecting' circumstances, like cruelty, desertion, adultery, bigamy, etc. The Hindu Marriage Act, 1955 gives relief under various grounds for a claim for divorce, but this is to be seen as the last option by the party, where there is no turning back and the situation is glaringly disturbing that it is impossible to sustain the marriage. Thus, Section 13 must be exercised with caution and only when significant grounds along with satisfactory evidence are available.

The Court has rightly decided in the above case, holding that an 'irretrievable breakdown of marriage' is not a ground for divorce. Divorce may be filed on grounds mentioned in the Act, but a new ground cannot be claimed by the party, nor can the Court insert a new ground in the legislation. The ground of 'cruelty' under Section 13(1)(ia) of the Act includes many acts, which may be mental, physical, or of any nature. These acts must be considered together and not separately. A single act of violence, when considered with other minor acts, can constitute cruelty. In this case, the proof of the Appellant kicking the Respondent out of the house without clothes, although a single act of violence or humiliation, if considered with the previous and subsequent minor acts inflicted on her, can be strong proof for proving cruelty.

The ground of mental cruelty, as considered valid by the Court, can be a valid ground for divorce, as rightly decided in this case. When the conduct of the spouse shows instances of ill-treatment, and abusive language and uses language which demoralises the spouse, causing mental agony and stress,

it is proved to be mental cruelty. It can be seen from the facts, and it is also proved in the Respondent's case that the Appellant and his family members had used abusive language towards her, without any reason, but intending to break the marriage and unhappiness of the existing marriage. Thus, the Court has rightly upheld another component for proving mental cruelty as a ground for divorce.

While considering the factor of cruelty, it is to be seen by the Court whether the facts, along with the evidence submitted, tilt towards favouring which side of the cruelty it is being alleged. In *Mohini Chawla v. Subhash Chander Chawla*<sup>9</sup>, the Punjab & Haryana High Court held that a spouse repeatedly, without any justification and deliberately, refused conjugal relations and sexual intercourse, though the other spouse had the intention of motherly instinct and readiness of bearing a child, amounts to mental cruelty. In the present case, the Respondent was willing to cohabit with the Appellant but was repeatedly denied for unknown and deliberate reasons, which resulted in even more infliction of cruelty and abuse by the Appellant and the family members on the Respondent.

There were also instances of demand for dowry by the Appellant and his family members on the Respondent, that is, through a demand for a Tata Indica car. The said demand was met before the marriage was held. But it was alleged that the Appellant and family members had illegally sold the car and were unlawfully demanding another car from the Respondent. The Supreme Court, in the landmark and significant judgement of *Shoba Rani v. Madhukar Reddi*<sup>10</sup>, held that demand for dowry – by parents of the husband in support of the husband – can amount to cruelty within the ambit of the expression 'treated.' In the present case, the facts clearly satisfy the conditions and holding by the Court in the mentioned case.

There is also the ground for desertion as contended by the Appellant for the suit for divorce. Desertion can be of two types: actual desertion, where the spouse, without any justification, actively deserts the other spouse from the matrimonial house, and constructive desertion, where there is no obvious and complete abandonment of the spouse, there is expulsive conduct regarding the same. This can be seen in the present case, where the Respondent was willing to come back from her parents' house to the matrimonial house, i.e., the Appellant's house, but was repeatedly denied and was thus, forced to take her back, and subjecting her to more cruelty. To satisfy the rule of desertion, it is enough that the abandonment was without reasonable cause, which can be seen through the repeated refusal by the Appellant to allow the Respondent to come back, and without consent. It is a total repudiation of the obligations of marriage.

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<sup>9</sup> Mohini Chawla v. Subhash Chander Chawla, AIR 2009 P&H 33.

<sup>10</sup> Shoba Rani v. Madhukar Reddi, AIR 1988 SC 121.

In the present case, it can be observed that the wife was driven out of the Appellant's home, without clothes, as a part of their infliction of cruelty upon her. In similar cases of *Butti v. Gulab Chand*<sup>11</sup> and *Surjit Kaur v. Tirash Singh*<sup>12</sup>, the Courts held that, when the wife was forced to leave the matrimonial home due to mistreatment, the man cannot claim that the wife had deserted him, nor can he claim cruelty and irretrievable breakdown of marriage as grounds of divorce. Thus, the Court, in the present case, rightly upheld the Family Court order which dismissed the suit for divorce and ordered payment of maintenance to the Respondent and her child.

## CONCLUSION

The Allahabad High Court, in the case of *Satendra Kumar Gupta v. Kanchan Gupta* (2015 (112) ALR 382), held that an irretrievable breakdown of marriage is not a valid ground for divorce and that there are other suitable grounds provided under Section 13 of the Hindu Marriage Act, 1955, thus upholding the order of the Family Court, directing the Appellant to pay maintenance of Rs. 3500 each to the mother and son per month and dismissed the petition for divorce filed under Section 13.

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<sup>11</sup> *Butti v. Gulab Chand*, AIR 2002 MP 123.

<sup>12</sup> *Surjit Kaur v. Tirash Singh*, (1979) PLR 732.