

A CASE STUDY ON SAVITRI PANDEY VS PREM CHANDRA PANDEY

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ABSTRACT

“Being divorced is like being hit by a Mack truck. If you live through it, you start looking very careful to the right and to the left” –Jean Kerr

In today's world nobody could be trusted even the family members that we consider to be the most trustworthy could not be trusted. A marriage that is considered to be a realistic bond that is based on sanctity can also be bad sometimes, the relationship between two people can be carried on by both of the people only, it could not be carried on by only one person as in this case a wife alleges the husband with the false accusations and alleges cruelty and desertion on the husband.

The cruelty² has not been defined under anywhere in the Hindu marriage act but if any relation related to the matrimonial cases is there, it is contemplated as a type which creates a feeling of endangerment that will come into the petitioner's mind by living with the respondent. The acts which are dangerous to life, health or limb is considered as cruelty. As according to the act cruelty is something done for the purpose of ill-treatment done by one of the spouse to the other and the other spouse has manifested such bad feelings towards him or her and inflicting bodily injury or suffering apprehension of bodily injury or to have suffered mental health.

Later it was proved that the wife was herself putting wrongful protects on the husband and the decree of divorce was granted on the grounds of compromise. Also, the plea for filing a case is increased from 30 days to 90 days.

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²Cruelty - as a ground for Divorce” (April 8th, 2022, 11:30am) <http://www.legalservicesindia.com/article/1900/cruelty-as-a-ground-for-divorce.html>

FACTS OF THE CASE

- The solemnisation of marriage between the parties was done on 6. 5. 1987. The respondent was living with the appellant till 21 June 1987. As stated by the appellant the consummation between the parties never took place. The parties started living separately after 1987.
- As alleged by the Appellant more than Rs. 80,000 was spent on their ceremonies of marriage several ornaments and other valuables were also given along with the money according to the demands of the respondent. Further the demand of TV fridge and other ornaments with hard cash of Rs. 10,000 such were demanded by the respondent.
- In the first week of June the father of the appellant managed to fulfil their demands and paid Rs. 10,000 but after that he was unable to fulfil for the demands done by the respondent. As the further demands were not fulfilled by the appellants father so the family members and the respondent were alleged to be torturing the appellant. Thus the appellant being aggrieved by the behaviour and attitude of the respondent and his family members, filed a petition under section 13 of the Hindu marriage act. Therefore, the demand of dissolution of marriage by the decree of divorce and other grounds such as permanent alimony was demanded by the appellant.
- Later more things were stated before the court by the appellant that the respondent was having a lawful relation with the woman who was from Gaya, Bihar and he was further alleged to have marriage solemnised with her as well. All these false allegations were denied directly by the respondent.
- Further the matter was put forward before the family court, which led that there is no such issue to be framed with regard to the decision as alleged. Therefore, it was proved that the appellant has been deserted by the respondent so she is authorised to get divorce. As aggrieved by the decision of the case the case was moved to the High Court where it was held that no proof or the evidence was found of cruelty to the wife by her husband. Thus, the High Court depended on the judgement made by the family court and it was stated that no evidence was found for stating that the petitioner has been deserted.
- Whenever the petitioner is treated with quality it leads to the grounds for divorce according to section 13(1)(ia)³ of the Hindu marriage act. So, if there is absence of proof

and pleading then the decree of divorce could not be granted on the grounds of desertion.

ARGUMENTS ADVANCED ON BEHALF OF THE PETITIONER

- As alleged by the petitioner, the cruelty and desertion by her husband, the petitioner reached the court for the dissolution of her marriage by a decree of divorce.
- The petitioner also alleges that some of the demands were made by the respondent and his family members in the first months of their marriage, and when they were not able to fulfil the demands they started treating the petitioner with cruelty and also ill-treating her so she was not left with any option but to leave that house.
- The petitioner is entitled to get a decree of divorce under section 13 of the Hindu marriage act on the grounds of desertion as she lived with the respondent for a very short period of time and have not consummated the marriage also.
- Due to the behaviour of the respondent against the petitioner it alleged to have been that she has been deserted by the respondent so if they were living separately and have never consummated she should be entitled for a decree of divorce.
- As alleged by the petitioner, the respondent has been alleged to have illicit relations with a woman from Gaya, Bihar and also said to have solemnised the marriage with her.
- One of the main argument done by the petitioners behalf is that she is entitled to have relief under section 27⁴ of the Hindu marriage act as the parents of the petitioner also

³ has, after the solemnization of the marriage, treated the petitioner with cruelty

⁴ Disposal of property. —In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

spent a lump sum amount of money on the marriage of the respondent and the petitioner and also gave the ornaments and many things at the time of marriage so all of these is to be given back as a relief to the petitioner as all the things belonged to the petitioner.

ARGUMENTS ADVANCED ON BEHALF OF THE RESPONDENT

- As the allegations made by the petitioner for quality and decision by the respondent all of these are the false protects done by the petitioner so, the dissolution of marriage of both the parties could not be done on the grounds of desertion.
- The petitioner had alleged that demands were made by the respondent and his family members but no such thing happened and she has also alleged regarding the cruelty and ill treatment but there is nothing this sort of that has happened all these are the false pretexts and also the court did not find any evidence regarding the desertion and cruelty also.
- As said by the petitioner that she is entitled to divorce under desertion by the husband but it was her own self who was at fault as she left the home on her own and also she was taking advantage of her own wrongs by putting false pretexts on the respondent.
- The petitioner alleged that the behaviour of the respondent was such that she had to leave the home due to such behaviour but she was her self at fault all these things are the result of her taking advantage of her own wrongs committed by her.
- The respondent is being alleged to have illicit relations with a woman and said to have solemnised the marriage but all these things were denied by the respondent immediately.
- The petitioner asks for the relief under section 27⁵ of the Hindu marriage act but after the respondent had given the things granted by the court when she filed the case but she was not satisfied and wants more relief. As she is taking advantage of her own wrongs and alleging false accusations on the respondent so she is not entitled for more reliefs.

⁵ Disposal of property

PRINCIPLES OF LAWS ARGUED

- The grounds that are related to divorce could be laid down under section 13⁶,13(1)(ia)⁷of Hindu marriage act. Further section 27 and section 28 of the special marriage act also have grounds In the cases of solemnised marriages. In cases where the marriage had lost its sancity and the actual substances primer facie comes into the picture which leads to the breaking of marriage irretrievably.
- Section 13 of the Hindu marriage act, under this section the wife i. e, the appellatant filed a case for the dissolution of a marriage for the respondent through a decree of divorce and also prayed for the return of property with other relief and grant of permanent alimony.
- Further under section 27⁸ of the Hindu marriage act the order was passed and the plea for permanent alimony was also set aside in this case. One of the major principle of law argued was that whether the petitioner is giving entitlement to release under section 27 of the Hindu marriage act or not?
- Another principle argued was the petitioner being treated with quality which leads for the grounds of divorce under section 13(1)(ia)of the Hindu marriage act.
- Article 136⁹ of the Constitution of India which was founded on the findings of the fact by the court that they cannot be disturbed by the Supreme Court in exercise of any type of powers. The special powers still is vested with the Supreme Court to grant a decree in any matter as held in this case.
- Under Sec 23(1) ¹⁰of the Hindu marriage act it is contemplated that any person who is the petitioner in this case could not take the advantage of her own wrongs as for the disabilityof the release. As no party or person is permitted to take the grounds of destroying any family as it is the basic unit of the society.

⁶ DIvorce

⁷ has, after the solemnization of the marriage, treated the petitioner with cruelty

⁸ Disposal of property

⁹ Special leave to appeal by the Supreme Court

¹⁰ Decree in proceedings

- Section 13(B)¹¹ of the Hindu marriage act is taken in grounds of divorce by mutual consent in this case the court took the consideration of many cases and the relief was granted on the essence of compromise.
- Article 142¹² was also argued as it is said that the appellant was taking advantage of her own wrongs as according to the case the marriage could not be dead therefore, invoking the jurisdiction of the Supreme Court under Constitution of India for the marriage to be disclosed for doing the complete justice in any matter.
- Another major argument was done in this case for extending the period of limitation for filing the appeal under section 28(4)¹³ which leads to the frustration of marriages by the spouses that are unscrupulous and litigant.

OBITUR DICTUM OF THE COURT

Whenever, The petitioner is treated with cruelty it leads to the grounds for divorce according to section 13(1)(ia) of the Hindu marriage act. As The cruelty¹⁴ has not been defined under anywhere in the Hindu marriage act but if any relation related to the matrimonial cases is there, it is contemplated as a type which creates a feeling of endangerment that will come into the petitioners mind by living with the respondent. The acts which are dangerous to life ,health or limb is considered as cruelty. As according to the act cruelty is something done for the purpose of ill-treatment done by one of the spouse to the other and the other spouse has manifested such bad feelings towards him or her and inflicting bodily injury or suffering apprehension of bodily injury or to have suffered mental health. Thus, if there is absence of proof and pleadings then the decree of divorce could not be granted on the grounds of desertion.

¹¹ Divorce by mutual consent

¹² Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc.

¹³ Every appeal under this section shall be preferred within a ⁶⁰ [period of ninety days] from the date of the decree or order.]

¹⁴ Cruelty - as a ground for Divorce” (April 8th, 2022, 11:30am) <http://www.legalservicesindia.com/article/1900/cruelty-as-a-ground-for-divorce.html>

[legalservicesindia.com/article/1900/cruelty-as-a-ground-for-divorce.html](http://www.legalservicesindia.com/article/1900/cruelty-as-a-ground-for-divorce.html)

A marriage that is completely broken down there is no point to continue that type of marriage there should be a uniform law that should be followed in the complete reform of law of marriage which should be applicable to all the costs or religion. It was suggested if someone is unhappy he or she can get a way out there is a uniform code to be followed either for divorce or for marriage. The dissolution of marriage between the parties cannot only be done on the grounds of one of the parties but if both are agreeing on the dissolution nothing could be done to keep the marriage alive therefore, there are many cases where it is found that the marriage cannot be kept alive because of the omission and commission of the parties there could be nothing done for keeping that marriage alive.

RATIO DECIDENDI OF THE COURT

A marriage done between the parties could not be dissolved due to the averments done by one of the spouse, that if the marriage between them is broken down, there could not be any useful purpose that could be kept to keep such type of marriage. In the wisdom of the legislature the court has observed the dissolution of marriage could not be done on such averments. If The marriage has already been dead due to omissions and commissions by the parties, nothing could be done to keep that type of marriage alive. The court also held in V Bhagat V. Mrs. D Bhagat(AIR 1994 SC 710)¹⁵ that the marriage that is irretrievably broken down could not be considered as a ground in itself to dissolve any marriage.

If some things are kept in mind that is the geographical conditions, distance, the time and also the financial position of the parties all the requirements are needed for filling a regular appeal and it can be seen that the period of 30 days is inadequate and insufficient for filing the appeal. So, a period of 90 days is prescribed for filing the appeal against any decree and judgement under the act and if any solemnisation of marriage is done under this purview the marriage would be considered as void.

¹⁵ “Case Summary: V. Bhagat vs. D. Bhagat” (April 7, 2022, 10:45am)
<https://lawlex.org/lex-bulletin/case-summary-v-bhagat-vs-d-bhagat/24878>

As said by the court in Bipinchandra Jaisinghbhai Shah V. Prabhavati (AIR 1957 SC 176)¹⁶ it was held that if one of the spouses abandoned by the other in a state of passions that are temporary, like in disgust and in anger without the intention of permanently ceasing to cohabit, it will not lead to desertion. It was further stated that if the decision is to be proved it should be done after keeping in mind the two conditions, i. e., 1) the factum of separation should be their. 2) the intention that the cohabitation should be ended permanently. There are also similar to elements that should be essential for the deserted spouse as it is concerned: 1) There should be absence of consent. 2) there should also be a conduct that should be giving a reasonable cause for a spouse for leaving a matrimonial house so that the necessary intention is said. Also, burden of proving divorce is with the petitioner.

JURIPUDENTIAL VALUE OF THE JUDGEMENT

- A marriage that is completely broken down there is no point to continue that type of marriage there should be a uniform law that should be followed in the complete reform of law of marriage which should be applicable to all the costs or religion.
- It was suggested if someone is unhappy he or she can get a way out there is a uniform code to be followed either for divorce or for marriage.
- The dissolution of marriage between the parties cannot only be done on the grounds of one of the parties but if both are agreeing on the dissolution nothing could be done to keep the marriage alive therefore, there are many cases where it is found that the marriage cannot be kept alive because of the omission and commission of the parties there could be nothing done for keeping that marriage alive under section 28 (4) of The Hindu marriage act which states about the frustration of marriages by the litigant spouses.
- It was held that there was nothing regard to the decision was to be framed as according to the family court it was said that there was no such evidences that could prove the allegations therefore, it was held that the respondent had deserted the petitioner so the petitioner should be given entitlement for a decree of divorce. It was also stated by the

¹⁶ “ Bipin Chander Jaisinghbhai Shah V. Prabhawati”(April 7,2022,1:05pm)
<https://india.lawi.asia/bipin-chander-jaisinghbhai-shah-v-prabhawati/>

division bench of the High Court that no evidence was found that the wife was treated with cruelty. So, they were of the view that there is no evidence that shows that the petitioner was deserted.

- In the absence of pleadings and proof no decree of divorce can be granted for the grounds of desertion. Thus, the learned counsel said that even in the absence of some specific issues, the evidence was led by the parties which was sufficient for the family court to return the verdict of desertion having to be proved. Later, it was also stated that the wife was taking advantage of own wrongs.
- If some things are kept in mind that is the geographical conditions, distance, the time and also the financial position of the parties all the requirements are needed for filing a regular appeal and it can be seen that the period of 30 days is inadequate and insufficient for filing the appeal. So, a period of 90 days is prescribed for filing the appeal against any decree and judgement under the act and if any solemnisation of marriage is done under this purview the marriage would be considered as void.

APPLICATION OF LAW IN CONTEMPORARY TIMES

If a person wants to sit there was under the Hindu marriage act on the grounds of desertion. "DESERTION"¹⁷ would mean intentional abandonment and forsaking of the one spouse by the other without the consent of the other and also without any type of reasonable cause. If said in some other words it can be said to be a repudiation that is a real big obligation for a marriage. Desertion, in actual sense means that a person is actually withdrawing from the matrimonial obligations which means that one party is refusing to cohabit with the other party. Also, it can be said that if the decision to be proved it should be done by taking into mind the science city of marriage which legalises the relation of sexual relationship between the opposite sexes in the society for the procreation of children. If the desertion is to take place, it

¹⁷ "Desertion As A Ground For Divorce"(April 8th,2022,2;50pm)
<https://blog.ipleaders.in/desertion-ground-divorce/>

cannot take place only through a single circumstance but to complete desertion, a series of certain circumstances has to take place.

As said by the court in *Bipinchandra Jaisinghbhai Shah V. Prabhavati* (AIR 1957 SC 176) it was held that if one of the spouses abandoned by the other in a state of passions that are temporary, like in disgust and in anger without the intention of permanently ceasing to cohabit, it will not lead to desertion. It was further stated that if the decision is to be proved it should be done after keeping in mind the two conditions, i. e., 1) the factum of separation should be their. 2) the intention that the cohabitation should be ended permanently. There are also similar to elements that should be essential for the deserted spouse as it is concerned: 1) There should be absence of consent. 2) there should also be a conduct that should be giving a reasonable cause for a spouse for leaving a matrimonial house so that the necessary intention is said. Also, burden of proving divorce is with the petitioner.

Some things to be kept in mind that is the geographical conditions, distance, time and also the financial position all these requirements are needed for filing a regular appeal and it can be seen that the period of 30 days is inadequate and insufficient for filing the appeal. So, a period of 90 days is prescribed for filing the appeal against any decree and judgement. Under the act, and if any solemnisation of marriage is done under the act under this purview the marriage would be considered as void it was held in this case that the time of appeal should be increased.