

CASE NO.: Appeal (crl.) 1059 of 2003

PETITIONER: **Deb Narayan Halder** Vs. RESPONDENT: **Smt. Anushree Halder**

DATE OF JUDGMENT: 26/08/2003

BENCH: N. SANTOSH HEGDE & B. P. SINGH.

JUDGMENT: JUDGMENT

(Arising out of Special Leave Petition (Crl.) No.4047 of 2002)

B.P. SINGH, J.

Leave granted.

The appellant herein is the husband of the respondent. He has preferred this appeal against the judgment and order of the High Court of Judicature at Calcutta in CRR No. 973 of 2001 dated 26.11.2001 whereby the High Court while allowing the Revision Petition preferred by the respondent directed the appellant to pay a sum of Rs.1500/- per month by way of maintenance to the respondent and also to pay costs of Rs.2000/-. While doing so it set aside the order of the Judicial Magistrate, First Class, Sealdah dated 15.12.2000 passed on the application filed by the respondent under Section 125 Cr. P.C., in so far as the learned Magistrate refused the prayer of the respondent for grant of maintenance to her. The learned Magistrate, however, had directed the appellant to pay a sum of Rs.1500/- per month for the maintenance of his son who was residing with the respondent.

It is not in dispute that the appellant and the respondent got married on 24th February, 1985. A son was born to them on 14th January, 1987. They continued to live together for many years at different places around the city of Calcutta. On 11th March, 1997, the respondent left her matrimonial home along with her son and came to reside with her parents in Calcutta. According to her, she was tortured over the years by the appellant and ultimately on 11th March, 1997, the appellant forced her to leave her matrimonial home and threatened her with dire consequences if she did not do so. For fear of her life and the life of her son she was compelled to leave the matrimonial home on that day. Only 4 days later, on 15th March, 1997, she filed an application under Section 125 Cr.P.C. claiming maintenance for herself and her son.

In her application the respondent alleged that within 15 days of the marriage the appellant started torturing her both mentally and physically on account of the fact that the appellant was not satisfied with the meagre dowry brought by her and also on account of the fact that her appearance appeared to the appellant to be ugly. According to the respondent, the appellant is quarrelsome by nature and he had the habit of causing annoyance and disturbances to her for petty reasons. He did not give her the respect due to a wife and treated her like a maid servant. She tolerated the cruel treatment meted out to her for many years but ultimately when she was threatened on 11th March, 1997 by her husband, she had no option but to leave her matrimonial home out of fear. She was thereafter forced to live with her parents. She further stated that her husband was a bank employee drawing a salary of about eight to ten thousand rupees per month while she had no source of income. She, therefore,

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claimed a sum of Rs.1500 each by way of maintenance for herself and for her son, and also claimed costs.

In reply, the appellant stated that he had not demanded any dowry at the time of marriage nor was any dowry given. Some gifts were no doubt given to him as well as his wife which were in the custody of his wife. He did not torture her nor did he ever misbehave with her for the reason that she had brought a meagre dowry or that she was not good looking or for any other reason. However, since May, 1996 his mother-in-law as well as his wife started insisting that he should shift his residence to Calcutta. They picked up a quarrel with him on this issue and in the process they even abused him. The brother of the respondent and some others who had come to his house assaulted him, which compelled the appellant to lodge a report with the police. After lodging of the report the behaviour of his wife and mother-in-law became worse, so much so that the respondent had mixed some poisonous substance in his drinking water after consuming which the appellant fell ill. He had lodged a General Diary Entry No.207/97 at the local police station. He denied the allegations made in the application and stated that on 11th February, 1997, the respondent had gone away with her mother along with her son and came back only on 16th February, 1997. They were still insisting on the appellant shifting to Calcutta and on his refusal to do so he was assaulted for which he had lodged a complaint at the local police station. On 11th March, 1997, the respondent with her son left on her own after their son completed his school examination on that day. She left the home without his consent and during his absence. She did so on her own without any justifiable cause and only to compel him to shift his residence to Calcutta. He was still willing to live with her.

Before the learned Magistrate the respondent examined three witnesses namely, herself PW-1, her mother as PW-2 and a bank employee PW-3. On the other hand, apart from examining himself as OP W-1, the appellant examined eight other witnesses to prove that he had never treated the respondent with cruelty, and also to prove the complaints lodged with the police and some letters.

The learned Magistrate after examining the evidence on record came to record the following findings :-

1. There is no evidence to prove that the appellant ever demanded dowry from the parents of the respondent before marriage or even after marriage. Even PW-1 did not state that he had ever demanded dowry but only stated that he was not happy with the gifts given. Even her mother, PW-2 had to admit that the appellant never demanded dowry but added that he expected dowry. The case, therefore, set up by the respondent that on account of meagre dowry the respondent was being harassed was not true. There was not an iota of evidence of the fact that the appellant had at any stage even after his marriage demanded any specific article which was not given to him as a result of which he had started torturing his wife. No letter was produced to prove that the respondent ever wrote to anyone in the course of twelve years complaining about the ill treatment given by the appellant.

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2. Though in the complaint the respondent alleged that the appellant started torturing her within 15 days of their marriage, according to PW-2, the mother of the respondent, she came to know about the ill treatment of his daughter 5 to 6 years after the marriage. On the other hand in her complaint to the police Ex. 1, PW –1 stated that she told her parents about her being tortured by the appellant 8 years after the marriage. All this shows that the allegations made by the respondent about her ill treatment at the hands of the appellant was not true.

3. Though the evidence disclosed that the parties lived at different places around Calcutta during the period of twelve years after marriage, no witness was examined by the respondent to prove that she had been subjected to torture and cruelty at the hands of the appellant.

4. As regards the second reason namely, the ugly appearance of the respondent, though such an allegation was made in the complaint, in the course of her deposition the respondent did not utter one word in support of the said allegation. Even in the police report lodged by her, there is no allegation that she was being ill treated because of her ugly appearance.

5. There is no evidence to suggest that in view of their strained relationship any effort was made by the parents or other relatives to settle their dispute and to effect a conciliation. It appeared that the father had no say in the matter, and he was not even examined as a witness to support the case of the respondent.

6. Though the respondent asserted that she had made several complaints to the police regarding her ill treatment by the appellant no such report was proved. The only report proved, Ex. 1 was lodged after the respondent had left the matrimonial home.

7. Even the testimony of the respondent proves that they regularly visited hill stations and other places of interest on holiday trips, sometimes accompanied by the relatives of the respondent. She also admitted that the respondent while talking to others used to give credit to the respondent for the good performance of their son in his studies. She also admitted that she completed her B.A. after marriage while living with the appellant. These facts disclosed a normal marital relationship and the allegations of torture and harassment did not appear to be true.

In view of these findings the learned Magistrate came to conclusion that the respondent had left her matrimonial home on her own and that she was not compelled by the appellant to leave her matrimonial home, nor had he threatened the respondent with dire consequences if she did not leave his house. There was no ground for the respondent to apprehend that if she lived with the appellant her life would be in danger and that she will be subjected to torture or cruelty. In sum and substance she had no justifiable reason to desert the appellant. The fact that the application for grant of maintenance was filed within four days of her leaving her matrimonial home

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without any effort for reconciliation, was also significant. The learned Magistrate therefore held that the respondent having left her matrimonial home without any justifiable ground was not entitled to the grant of maintenance. However, since her son was residing with her, the appellant was liable to pay maintenance for his son. He, therefore, ordered that the appellant shall pay a sum of rupees 1500 per month by way of maintenance to his son.

Aggrieved by the order of the learned Magistrate the respondent preferred a Revision Petition before the High Court of Calcutta. A learned Judge of the High Court by his order dated 26th November, 2001 allowed the Revision Petition and directed the appellant to pay a sum of Rs.1500/-per month to the respondent also for her maintenance from the date of filing of the maintenance case and also awarded costs. The judgment and order of the High Court leaves much to be desired. The sole virtue of the judgment appears to be its brevity. The learned Judge allowed the Revision Application and set aside the order of the learned Magistrate without even noticing the findings recorded by the Magistrate, nor is there any discussion in the judgment of the evidence on record. The only relevant observation in the judgment is the following :-

" I have perused the evidence of P.W.1 (the Petitioner herself) and the evidence of PW 2, her Mother and I find that the Petitioner could prove her case quite properly. It transpires from the said evidence that the Petitioner had sufficient reason for staying away from her matrimonial home as she was subjected to torture and neglect. On the contrary, the evidence of the Opposite Party was a feeble attempt to ward off the allegations made against him and were not quite convincing. The evidence of O.P.W. No. 2 who went to make payment pursuant to the directions of O.P.W. No. 1 does not also appear to be quite convincing. The evidence of O.P.W. No. 3 in whose house the Opposite Party has been residing was the Father of his friend further appears to have been tuned to suit the case of the Opposite Party. So, also the evidence of Opposite Party No. 4.

Accordingly, I am of the view that the finding of the learned Magistrate refusing the prayer of the Petitioner for maintenance cannot stand and she is entitled to an order of maintenance as otherwise she has been able to prove her case and the finding of the learned Magistrate that she "has left the house of O.P. without any just ground and has not been succeeded to establish the apprehension of danger to her life she is not entitled to get maintenance from the O.P." cannot be accepted."

The appellant has impugned the aforesaid judgment of the High Court before us. We had summoned the parties to explore the possibility of a conciliation but counsel for

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the parties informed us that the respondent was not willing to live with the appellant.

Learned counsel for the appellant submitted before us, and with justification, that the judgment and order of the High Court does not disclose application of mind to the evidence on record, or to the findings recorded by the Trial Court, which were sought to be set aside by the impugned judgment and order. The finding of the High Court is as vague as it can be and it is not possible to cull out the reasons which persuaded the learned Judge to set aside the findings recorded by the Trial Court. We have earlier quoted the relevant part of the judgment which justifies the criticism of the learned counsel. It is well settled that the Appellate or Revisional Court while setting aside the findings recorded by the Court below must notice those findings, and if the Appellate or Revisional Court comes to the conclusion that the findings recorded by the Trial Court are untenable, record its reasons for coming to the said conclusion. Where the findings are findings of fact it must discuss the evidence on record which justify the reversal of the findings recorded by the Court below. This is particularly so when findings recorded by the Trial Court are sought to be set aside by an Appellate or Revisional Court. One cannot take exception to a judgment merely on the ground of its brevity, but if the judgment appears to be cryptic and conclusions are reached without even referring to the evidence on record or noticing the findings of the Trial Court, the party aggrieved is entitled to ask for setting aside of such a judgment. In normal course we would have remanded the matter to the High Court for a fresh consideration of the evidence on record, but having regard to the nature of the dispute, we do not consider it necessary to prolong the proceeding any further, particularly when the evidence has been placed before us, and with the assistance of counsel appearing for the parties we have gone through the evidence on record. We, therefore, proceed to consider the evidence on record and dispose of the matter finally.

The respondent was examined as PW-1. In her deposition, she stated that within 15 to 20 days of the marriage the appellant started ill treating her without any reason and even went to the extent of slapping and kicking her. This was because the articles gifted to them were not to his liking and he needed more. He used to quarrel with her for petty reasons and assaulted her on many occasions even though he did not arrange for her food and clothing. Many a times he drove her away from his house after assaulting her and she used to come to her father's house for shelter. However, her parents used to persuade her to go back to the appellant. All this her husband did because of greed. She referred to the police reports that she lodged, but they were not produced before the Court. She admitted that the appellant had taken an agency of Unit Trust of India in her name and for that purpose he had a joint account with her in the bank.

We may only notice at this stage that there is not even a whisper by the respondent about the second ground mentioned in the application namely that the appellant disliked her on account of her ugly appearance. She has referred to a few incidents which resulted in her lodging reports before the police and her treatment in a hospital,

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but no evidence was produced to prove such facts nor have the particulars been mentioned by her. She, however, admitted that she passed her B.A. after her marriage while she was living with her husband. She also admitted that she and her husband often went to different places such as Shimla, Nainital, Kousani etc. every two years. Some photographs were shown to her from which it appeared that on some occasions her elder sister and brother-in-law accompanied them. She also admitted in the course of her cross-examination that her husband used to praise her before others and give her credit for the good performance of her son in studies. He used to say that their son performed well because of the care bestowed by her. She also admitted that she attended Yoga classes while at Dum Dum. She also admitted that when she was taking the B.A. examination her husband used to accompany her to the examination center. She stated in her deposition that she was often assaulted and was made to leave the matrimonial home and had to seek shelter in the house of her parents but she has not stated when she first informed her parents about such behaviour of the appellant. There is only some indication in the complaint Ex. 1 lodged by her after she left her matrimonial home wherein she had stated that she had told her parents about the behaviour of the appellant about eight years after her marriage. According to PW-2, her mother, the respondent had told her about such facts some 5 to 6 years after marriage. No letter written by the respondent to anyone has been produced to prove that she had ever complained to anyone about her ill treatment. In substance there is no evidence of contemporaneous nature to substantiate the allegations regarding ill treatment of the respondent. The only complaint which has been brought on record is the General Diary Entry Ex. 1 recorded on 12th March, 1997, that is, after she left her matrimonial home.

PW-2, the mother of the respondent deposed in support of the application. She also stated that her son-in-law, namely the appellant, was not satisfied with the items gifted at the time of marriage since these were not to his liking and that is why he tortured her daughter who had told her about such incidents. She, however, admitted that it was only 5 or 6 years after the marriage that she came to know that her daughter was being tortured. It appears rather surprising that if such occurrences took place at regular intervals, and started within 15 days of the marriage, the mother of the respondent would have come to know about it 5 or 6 years after the marriage. However, in the General Diary Entry got recorded by PW-1 she had stated that she told her mother about such occurrences eight years after their marriage. There is nothing in the evidence of PW-2 to support the case that the appellant ever demanded dowry. On the other hand PW-2 admitted that the appellant never demanded any dowry even after marriage, but added that though he never made any demand it was in his mind. From the evidence on record it appears that the gifts given at the time of marriage were the usual gifts which are given on such occasions such as bed, almirah, dressing table, watch, tape recorder and ornaments for the bride. There is no evidence whatsoever on record to suggest that before the marriage, at the stage of negotiations, any demand was made or any particular amount or thing was asked for by the appellant.

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On the other hand the appellant has examined himself as OPW –1 and denied all the allegations made against him. He asserted that he had never demanded any dowry at the time of marriage or thereafter. In fact his relatives and friends knew that he was in principle against the dowry system. There was, therefore, no question of his torturing his wife for not bringing sufficient dowry or for not being happy with the gifts brought by her. He asserted that he took good care of his wife and even after marriage he permitted her to continue her studies and she obtained her B.A. degree after marriage. He had a joint account with her which she could operate and he had secured an agency of Unit Trust of India for her so that it could keep her engaged. On the contrary, he stated that it was in the year 1996 that some untoward incident took place and that was because his mother-in-law as well as the respondent insisted that he should shift his residence to Calcutta. About such incident he lodged a report at the police station. He further stated that on 11.2.1997 the parents of respondent had come to his house and asked him to live in their house or to take a rented house near their house in Calcutta. After some argument they went away. Again on 16th February, 1997, they came and threatened him that they will take away their daughter and grandson. An incident took place on that day also, details of which have been disclosed by him. He also stated, as was stated by PW-1, that after marriage they frequently visited many places of interest to them. On the first marriage anniversary he gifted a Guitar to his wife. In the year 1986 they went together to Varanasi, Lucknow, Allahabad. In 1988 they went to Shillong, Guahati, Kamrup etc. and in 1990 they went to Nainital, in 1993 to Panchmarhi, Patni, Jabalpur etc. They had gone to Shimla, Kulu, Manali in 1995. Some photographs were produced which were taken when he and his wife had visited such places. The appellant also examined witnesses to prove that he and his wife enjoyed cordial relationship and this fact was known to relatives and family friends. He examined witnesses to prove that while they were together there was no disturbance in their family life and their relationship was cordial. The witnesses also support his case that even after the respondent left his house he had sent his friends to her with money for her necessary expenses. OPW-2, is a family friend. He deposed that he had attended the function when the appellant and respondent got married. He also stated that he did not find any disturbance in their family life but he came to know about it in mid 1997. He had once gone to pay cash to the respondent but the respondent did not accept it. OPW-3, is a landlady of the appellant. According to her the appellant took care of his wife and son and did not torture her even though the respondent was not very obedient.

Surprisingly, to this witness a suggestion was made by the cross –examining counsel that the appellant was in love with her daughter-in-law and that is why he used to go to her house. This was of course stoutly denied by OPW-3. This fact has been noticed by the learned Magistrate but counsel for the respondent in the course of his argument before the Magistrate did not pursue this line any further and stated that the respondent had no grievance about the character of the appellant. We are surprised that counsel for the respondent put such a question to the witness when such was not the complaint in the application under Section 125 Cr. P.C. nor had the respondent as PW-1 or her mother as PW-2 stated anything to the effect that the appellant had an

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affair with any other lady. Without there being any basis in the pleadings, or even in the evidence examined by the applicant, the learned Magistrate should not have permitted such a question to be put to the witness, particularly when it reflected not only on the character of the appellant but also on another lady who was not a party to the proceeding. In our view, learned Magistrate was remiss in permitting such a question to be put to the witness and in recording the answer given by the witness. He should not have permitted such matters to go on record. This however, discloses the attitude of the respondent and the extent to which she could go to malign the appellant and tarnish his image.

OPW-4, is a childhood friend of the appellant and was present when the negotiation for the marriage took place. According to him, there was no demand for dowry or any particular article. After the marriage he used to visit the house of the appellant and he found that their relationship was very good. He had also gone two times to the house of the respondent after she left her matrimonial home at the behest of the appellant to give some money to her but she did not accept it. OPW –6 stated that he was known to the parties and he had once gone to the house of the father of the respondent to hand over a letter and some cash and books etc., but the respondent did not accept them. This witness also stated that money orders were sent by the appellant to the respondent.

From the evidence on record we are satisfied that the findings recorded by the learned Magistrate were fully justified as they were based on the evidence on record and appear to us to be reasonable. In her application the respondent had given two reasons for her ill treatment by the appellant namely his greed for dowry and that she was not good looking. So far the second reason is concerned, in the course of her deposition, the respondent has not said a word about it. So far as the first reason is concerned, on a careful scrutiny of the evidence on record, we have also come to the conclusion that no dowry was ever demanded either before the marriage or after the marriage. Even PW-2, the mother of the respondent had to admit that the appellant had never demanded any dowry or gift. Of course she added that all this was in his mind. We are, therefore, satisfied that the Trial Court properly appreciated the evidence on record while recording the finding that there was never any demand for dowry by the appellant. There was, therefore, no reason for him to ill-treat his wife for this reason. We, therefore, find that both the reasons given in the application for her ill treatment are non-existent.

We have also perused the evidence on record with a view to ascertain whether for any other reason the respondent was ill treated by the appellant. We have found from the evidence on record that the behaviour of the appellant has been throughout normal. It is admitted by the parties that they frequently went during vacations to visit different places. On some occasions they were even accompanied by the relatives of the respondent. The appellant permitted the respondent to continue her studies even after her marriage and that is how she secured her B.A. degree after marriage. He also arranged an agency of the UTI to keep her engaged and also opened a joint account in

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a bank which she could operate. All these facts go to indicate that for several years after their marriage they enjoyed normal marital relationship. In fact, there is evidence to show that the appellant used to praise his wife in the presence of others by complimenting her and giving her credit for the good performance of their son in his studies. This even the respondent has admitted in the course of her deposition. Apart from these we find it difficult to believe that if the appellant started torturing the respondent within 15 days of the marriage, the respondent would not have reported this matter at least to her mother. According to her mother, she came to know about her ill treatment 5 to 6 years after marriage. According to the respondent in her complaint Ex. 1 she had mentioned about such happenings to her mother about eight years after her marriage. While there is reference to reports lodged by the respondent to the police regarding torture by the appellant, not one such report has been brought on record which may have been lodged before the respondent left her matrimonial home. Even relevant particulars are not disclosed. The only police report brought on record is one lodged after the respondent left her matrimonial home. We do not attach much importance to this report. There is no contemporaneous document in the form of letters which may have been written by the respondent to her friends or relatives mentioning about her being subjected to torture or harassment by the appellant. The respondent being an educated lady, it is difficult to believe that she would not have written letters to her friends and relatives during the twelve years that she lived with the appellant as husband and wife. Apart from her mother, the respondent has produced no evidence of prove that she was tortured and harassed by the appellant. **The learned Magistrate also noticed that though they lived at different places around Calcutta during the period of twelve years after their marriage, not one witness was examined by the respondent to prove that the appellant treated the respondent with cruelty.** On the other hand, some witnesses have been examined by the appellant to prove that they lived a normal life and there was no question of the respondent being tortured by the appellant for any reason whatsoever. Even the other facts which we have found support the case of the appellant that he had not treated the respondent with cruelty for any reason whatsoever. Learned counsel for the respondent laid great emphasis on the observation of the Magistrate that the appellant being a bank employee leaving for his work in the morning and returning late in the evening hardly had any time to ill treat the respondent. No doubt, there is such an observation in the order of the Magistrate, but that is not the basis of his findings. Too much emphasis on such a stray observation in the order is not justified.

We therefore hold that the High Court was not justified in setting aside the findings recorded by the learned Judicial Magistrate. We have reached this conclusion after appreciating the evidence on record since there is no discussion of the evidence in the judgment of the High Court. Counsel for the respondent posed before us a question as a part of his submission as to why the respondent should leave her matrimonial home without any reason. **In cases where there is a dispute between husband and wife it is very difficult to unravel the true reason for the dispute. After separation when the relationship turns sour, all sorts of allegations and counter allegations are made against each other.** Evidence of contemporaneous nature therefore plays an

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important role in such cases as it may reveals the thinking and attitude of the parties towards each other at the relevant time. Such evidence is usually found in the form of letters written by the parties to each other or to their friends and relatives or recorded in any other document of contemporaneous nature. If really the respondent was subjected to cruelty and harassment in the manner alleged by her, we have no doubt she would have written about such treatment to her friends and relatives with whom she may have corresponded. The reports allegedly made by her to the police may have thrown some light on this aspect of the matter. Such evidence is completely absent in this case.

It appears to us that the parties lived happily for many years after the marriage till about the year 1996, whereafter there was some misunderstanding which ultimately resulted in their separation. Why this happened, it is difficult to fathom, but the evidence on record does not convince us that the respondent was subjected to torture and harassment by the appellant, and certainly not for the reasons alleged by her. The Court is not permitted to conjecture and surmise. It must base its findings on the evidence produced before it by the parties. The enquiry by the Court is restricted to the evidence on record and the case pleaded by the parties. It is not permissible to the Court to conjecture and surmise and make out a third case not pleaded by the parties only to answer the query such as the one posed to us.

In the result this appeal is allowed and the impugned judgment and order of the High Court is set aside.

During the pendency of the proceeding before this Court it was contended by the respondent that the appellant had not paid the amount which was payable by way of maintenance to the son. We had directed the appellant to pay up the arrears of maintenance and according to the appellant the amount has been paid. The respondent, however, has raised some dispute about the amount payable and according to her some amount is still due. We do not wish to express any opinion on this dispute and leave it to the parties to take appropriate proceeding before the appropriate forum, if so advised.

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