

F.R.

IN THE HIGH COURT OF SIKKIM AT GANGTOK
(CIVIL JURISDICTION)

Matrimonial Appeal No. 2 of 2009

Smt. Gyanu Pradhan,
W/o Shri Ratna Kumari Pradhan,
West Point Senior Secondary School,
Tathangchen,
Gangtok,
East Sikkim. ... **APPELLANT.**

- Versus -

Shri Ratna Kumar Pradhan,
S/o Late K. N. Pradhan,
Permanent Resident of Kachari Lower Bazar,
P.O. & P.S. Rangpo,
East Sikkim. ... **RESPONDENT.**

For the Appellant : Ms. (Dr.) Doma T. Bhutia, Advocate.

For the Respondent : Mr. Karma T. Bhutia, Senior Advocate
with Ms. Bandana Pradhan, Advocate.

BEFORE : HON'BLE MR. JUSTICE BARIN GHOSH, CHIEF JUSTICE.
HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE.

Last Date of Hearing: 09.06.2010.

Date of Judgment: 16.06.2010.

J U D G M E N T

Ghosh, CJ.

By the judgment and order under appeal, Family Court,
Sikkim at Gangtok has allowed a petition filed by respondent under



Section 13(1)(i-a) of Hindu Marriage Act, 1955, and thereby has dissolved the marriage between respondent and appellant. Appellant contends that the judgment and order under appeal is not sustainable on the basis of evidence on record. She also contends that learned Family Court, while rendering the judgment and order under appeal, failed to appreciate facts and circumstances of the case, pleadings of the parties and evidence that was brought on record. She further contends that learned Court failed to take note of the fact, which stands established, that appellant wanted to reconcile with respondent. Appellant contends that the learned Judge, before rendering the judgment and order under appeal, for no just reason, refused to allow appellant to examine witnesses, who were well conversant with the facts and circumstances of the case. On the point of law, it was contended that placing reliance upon the judgment rendered by the Judicial Magistrate, First Class, East & North Sikkim in G. R. Case No.1 of 2004 by the Family Court was not permissible in terms of the provisions contained in Section 43 of Evidence Act.

2. Facts of the case, to which there appears to be no dispute, are that the parties hereto are Hindu by faith. On 7th March, 1997 marriage between appellant and respondent was solemnized and on 12th March, 1997, a girl child, named Shreya Pradhan, was born out of the wedlock. On 28th June, 2002, appellant submitted a written complaint against respondent with the Officer In-charge, Sadar Police Station, Gangtok, complaining about cruelties, mental and physical, meted out by respondent upon appellant and about demand of dowry since the very beginning of the marriage. In the complaint a request was made for taking necessary legal action as per law. On lodgment



of the complaint Sadar Police Station Case No. 61(6)02 dated 28th June, 2002 was registered under Section 498A of I.P.C. against respondent. In course of investigation respondent was arrested on 28th June, 2002 and was kept in custody for a period exceeding 48 hours. Inasmuch as respondent, a Government employee, was detained in custody for a period exceeding 48 hours, by an Order dated 2nd August, 2002 he was suspended with effect from the date of his detention, i.e. from 28th June, 2002, in terms of Rule 8(2) of the Sikkim Government Servants' (Discipline and Appeal) Rules, 1985. After respondent was arrested, he was admitted in hospital on 29th June, 2002 and was discharged therefrom on 8th July, 2002. In course of investigation, brothers and sisters of appellant, the neighbours and the maid servant of the household were questioned. On completion of investigation a charge sheet was filed against respondent under Section 498 A of I.P.C. The Court upon consideration of the charge sheet and materials on record and after hearing the parties framed charge under Section 498 A of I.P.C. When the case was tried before the Judicial Magistrate, First Class, East & North Sikkim at Gangtok, prosecution examined 10 witnesses including appellant and those, who were questioned in course of investigation. Respondent was examined under Section 313 of Cr.P.C., 1973 and his statement was duly recorded. No evidence was tendered in defence. After trial was concluded, by a judgment and order rendered on 30th June, 2006, the learned Magistrate held as follows: -

"In the end result, in view of the poor quality of the evidence put forward by the prosecution, absence of clear and cogent evidence against the accused and the highly doubtful version of the prosecution I find that the prosecution has miserably failed to prove the case against



the accused under Section 498 A IPC, 1860. I, accordingly, find accused R. K. Pradhan innocent.

Accordingly, R. K. Pradhan is acquitted of the charge under Section 498 A of IPC, 1860 by giving him the benefit of doubt."

3. On 17th May, 2007, respondent presented the petition under Section 13(1)(i-a) of Hindu Marriage Act, 1955, seeking dissolution of the marriage of respondent and appellant on the ground of cruelty in the interest of justice. Appellant contested the petition by filing a written objection. Before the Family Court, respondent deposed first and he was cross-examined by appellant. Thereafter she deposed and she was cross-examined by respondent. In his deposition, respondent wanted divorce on the grounds mentioned in paragraphs 12 and 13 of his petition. Appellant reiterated her contentions contained in her written objection while she deposed. After consideration of materials on record, learned Family Court passed the judgment and order under appeal.

4. Before the judgment and order under appeal was rendered, an application was filed by appellant to permit her to examine some people. In paragraph 2 thereof, she stated as follows:-

"That the persons named below know and aware of facts that the respondent was subject to cruelty by the petitioner as such she wants to examine the following persons before this Hon'ble Court as witness:-"

This application was filed after examination of appellant before the Family Court. By an Order dated 9th May, 2008 Family Court dismissed the said application of appellant after expressing an opinion that the application had been filed to delay the matter. Subsequent thereto on 7th June, 2008 parties were heard by Family Court, when it

was accepted by parties appearing that they are living apart for six years. Thereafter, the judgment and order under appeal was pronounced. In her written objection, appellant indeed had narrated cruelty allegedly meted out by respondent on her. However, cruelty cannot be a defence to a petition seeking dissolution of marriage on the ground of cruelty. Therefore, non-examination of those witnesses mentioned in the said application of appellant for proving cruelty meted out by respondent upon appellant did not, nor could prejudice appellant or the true and correct decision to be rendered on the petition of respondent.

5. In paragraphs 12 and 13 of the petition of respondent, following averments were made: -

"12. That after filing of charge sheet the G.R. case No. 1 of 2004 under Section 498A of the Indian Penal Code, 1860 was registered in the Court of Ld. Judicial Magistrate, East Sikkim against the petitioner. Even during the pendency of the aforesaid G.R. case the respondent without the knowledge and consent of the petitioner tried to separate daughter from him and sent her to Darjeeling on the pretext of education, though the petitioner and the respondent are working in Sikkim. The petitioner was not allowed to see his daughter, which compelled the petitioner to file an application for his appointment as guardian in the Family Court at Gangtok. Only with the intervention and the orders of the Family Court the petitioner was able to meet his daughter. (Certified copy of the application and order of the Family Court in Family Case No.48 of 2002 are annexed herewith and marked annexure "J" and "K"0 respectively.)

13. That since 28th June 2002 the petitioner has not been able to go to his own house at Development Area as the respondent has threatened the petitioner with other criminal cases and the respondent is capable to do so. The marriage of the petitioner with the respondent has irretrievably broken-down. The petitioner and the respondent are living separately since last five years. The petitioner faced the trial for four years with unbearable mental torture. The respondent tried her level best to secure the punishment of the petitioner by bringing her brothers, sisters and in laws and others as witnesses. Due to malicious prosecution the petitioner has faced not only the trial of the criminal case but also the criticism of the society. The false G.R. case No. 1 of 2004 lodged on the basis of the



false F.I.R. of the respondent took four years to come to an end and finally vide judgment dated 30.6.2006 in G.R. Case No.1 of 2004 was dismissed by the Ld. Judicial Magistrate. (Certified copy of the judgment dated the 30th June, 2006 is annexed herewith and marked as annexure "L")."

Those averments were dealt with by appellant in paragraphs 16 and 17 of her written objection. Averments contained therein are as follows: -


"16. That with reference to the contents of paragraph 12 of the petition, it is true that the case under Section 498 A of I.P.C. 1860 was registered in the court of the Ld. Judicial Magistrate, East Sikkim against the Petitioner. It is denied that the Respondent sent their daughter to Darjeeling to separate her from the petitioner. It is true that due to the constrained relationship between the Respondent and the Petitioner, the Respondent did not take his consent. But the real purpose of sending her to Darjeeling was for her education and upbringing and welfare, duly allowing her to be nurtured in the case of the Respondent's maternal family while the court case was going on between the Respondent and the Petitioner. It is denied that the petitioner was not allowed to see his daughter. The petitioner had requested the Hon'ble Family Court for his appointment as guardian of the daughter. The Hon'ble court was pleased to order on 16.12.03 that "It will be better if she (the daughter) continues to remain in the custody of the Respondent for the time being" and also that "till beginning of new academic sessions from 2004 both the parties are allowed to keep the child with him in town". It is submitted that the Petitioner has been meeting the daughter since then. Copy of the honorable court order is enclosed and marked as **ANNEXURE - R 2.**

17. That with reference to the statements contained in paragraph 13 of the said petition filed by the petitioner, in this regard it is submitted that the petitioner is not allowed to visit the house at Development Area, Gangtok by the Respondent is totally false. The Respondent is willing to visit the Petitioner but the Petitioner is not bothering about the Respondent. The parents of the Respondent have always tried to settle the matter amicably but the Petitioner is always taking the plea not to settle the matter and seeking divorce. In fact, the Respondent tried to settle the matter as such she wrote in the month of February, 2004 a letter to the President of the Newar Guthi, Darjeeling. And the same was replied by the President Newar Guthi, Darjeeling on 6th March, 2004. And also the brother of the Respondent wrote a letter to the brother of the Petitioner for the settlement, however no response was made. The Petitioner has intentions to break the marriage tie. The said copy of the letters are enclosed herewith and marked as **ANNEXURE 'R 3** and **ANNEXURE 'R 4'** respectively."

6. Thus, allegation that the daughter of the parties was sent away by appellant to Darjeeling without consent of respondent was accepted and similarly, filing of the criminal case and outcome thereof was also accepted. In paragraph 19 of the written objection appellant had averred that she did not request the State Government/Prosecution to go for further appeal, but at the same time, in paragraph 20 thereof, she averred that she is opposing dissolution of marriage between her and respondent since the same will not only affect the family life of appellant adversely, but will also affect the future of their minor daughter adversely.


7. Thus, the case of respondent before Family Court was that appellant inflicted cruelty upon him by initiating a malicious proceeding and when the same was pending, without his consent, she sent away their daughter to Darjeeling. The case of appellant was that she was cruelly treated by respondent which compelled her to lodge the complaint, that resulted in prosecution, which was dismissed for failure on the part of prosecution to prove the case. She did not make a request for going for appeal and if the marriage is dissolved, the same will affect her family life and also the future of their daughter. At the same time, she insisted that there had been cruelty on the part of respondent and she was able to prove the same once again by tendering appropriate evidence.

8. The said state of affair clearly brings the case within the pronouncement of the **Hon'ble Supreme Court** rendered in the case of **Shobha Rani v. Madhukar Reddi**, reported in **AIR 1988 SC 121**, where of course the case was converse, i.e. the wife initiated



proceeding under Section 498 A and lost and thereupon, filed a divorce case. Dealing with the matter, **Hon'ble Supreme Court** pronounced that the word "cruelty" has not been defined in the act. The same has been used in relation to human conduct or human behaviour in relation to or in respect of matrimonial duties and obligations, which adversely affect the other. It pronounced that if the conduct is physical, there will be no problem to determine the same, but if the same is mental, problem may arise. Hon'ble Supreme Court has pronounced that in such situation, enquiry must begin as to the nature of cruel treatment, then the impact of such treatment in the mind of the spouse resulting in reasonable apprehension that it would be harmful or injurious to live with the other. According to learned Counsel for respondent, if a divorce is not granted, having regard to the nature of conduct of appellant, even when she filed her written objection to the petition for divorce, there is every reason to apprehend that respondent will try in future to make out a fool proof case under Section 498 A of I.P.C. to cause irreparable harm to appellant.

9. We think even after getting an opportunity to forget the past, which has been proved to be unworthy, appellant has not forgotten the same. She insisted and is still insisting that the past projected by her is true and, given an opportunity, she can prove the same. She did not express any remorse in her written objection in relation to steps taken by her to punish respondent for such past conduct, and on the contrary, re-asserted the same in her written objection and accordingly, still feels that there had been cruel treatment by respondent on her. Such feeling supports the contention



of learned Counsel for appellant. It gives an impression that appellant has not yet been able to vindicate her grievances, which in turn gives rise to a reasonable apprehension. A similar case was considered by the **Hon'ble Supreme Court** in **G.V.N. Kameswara Rao v. G. Jabilli**, reported in **AIR 2002 SC 576**, where the Hon'ble Court observed that the mental cruelty thus faced by the husband is to be assessed having regard to his status in his life, educational background, the environment in which he lives. Lodgment of the complaint resulted in arrest of respondent, his suspension, he being a Government employee, and sitting in the box meant for accused persons in Court for 4 years. Consequently, respondent lost reputation and prestige in the society. Even after affecting respondent thus, appellant in her written objection reiterated what she had asserted in her complaint before police. We think, taking into account the whole gamut of the case, respondent had successfully made out a case of mental cruelty perpetrated on him by appellant and accordingly, there is no scope of interference. A similar view has been taken by a **Division Bench** of the **Bombay High Court** in their judgment rendered on 6th may, 2010 in Family Court Appeal No. 158 of 2008 (**Nagesh Dhanapp Chilkanti v. Sau. Manisha Nagesh Chilkanti**).

10. Section 43 of Evidence Act deals with judgments, orders and decrees other than those mentioned in Sections 40, 41 and 42 thereof. Section 42 of Evidence Act makes it clear that judgments, orders and decrees are relevant if they relate to matters of public nature relevant to the enquiry.




11. It is true that in terms of Section 42 of the Evidence Act, such judgments, orders and decrees are not conclusive proof of what they state but they are relevant, if they relate to matters of a public nature relevant to the enquiry. In the instant case, it was contended that a malicious prosecution was initiated to inflict mental cruelty upon respondent. The enquiry was, whether such a malicious proceeding was initiated? The judgment of the Magistrate, accordingly, became relevant to the enquiry. The judgment of the Magistrate having been rendered in a criminal proceeding related to matters of public nature.

12. We, accordingly, dismiss the appeal. There shall, however, be no order as to costs.



Judge
16.06.2010



Chief Justice
16.06.2010

pm/

**HIGH COURT OF SIKKIM
GANGTOK.
"DECREE IN APPEAL"
(Under Order 41 Rule 35 of C.P.C.)**

**Matrimonial Appeal No.02/2009 against the Judgment & Decree
dated 13/06/2008 of Judge , Family Court, Sikkim at Gangtok.**

Smt.Gyanu Pradhan
W/o Shri Ratna Kumar Pradhan,
West Point Senior Secondary School,
Tathangchen,
Gangtok-Sikkim.

.....Appellant.

Versus

Shri Ratna Kumar Pradhan,
S/o Late K.N.Pradhan,
Permanent Resident of Kachari Lower Bazar,
P.O. & P.S.
East Sikkim.

.....Respondent.


This matrimonial appeal coming up for hearing on 09/06/2010 before Mr. Justice Barin Ghosh, Hon'ble the Chief Justice, in presence of Ms.(Dr.)Doma T.Bhutia Advocate for the appellant and Mr.Karma T.Bhutia,Sr.Advocate with Ms.Bandana Pradhan,Advocate for the respondent, after hearing the arguments, Judgment delivered on 16/06/2010 dismissing the appeal. There is no order as to costs.

Costs of Appeal

<u>Appellant</u>	<u>Amount</u>	<u>Respondent</u>	<u>Amount</u>
1. Stamp fee for appeal	Rs. 50/-		---
2. Stamp fee for Affidavit	Rs. 10/-		---
3. Vakalatnama	Rs. 2/-		2
Total:	Rs. 62		2

Given under my hand and seal of the Court on this the 16th day of June, 2010 at Gangtok.

Prepared by :


16-6-2010
ADDL.REGISTRAR-CUM-SR.READER
HIGH COURT OF SIKKIM
GANGTOK


16/6/2010.
REGISTRAR GENERAL
HIGH COURT OF SIKKIM
GANGTOK.