

SUPREME COURT OF AZAD JAMMU & KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.

Raja Saeed Akram Khan, J.

Civil Appeal No.344 of 2014

(PLA filed on 11.9.2014)

Mst. Ranita Siddique d/o Muhammad Siddique r/o village
Mandhatar Patar Nar, Tehsil Fatehpur Thakyala, District Kotli.

.... APPELLANT

versus

Abdul Rehman s/o Yaqoob caste Domal, r/o village Khandhar,
Tehsil Fatehpur Thakyala, District Kotli.

..... RESPONDENT

(On appeal from the judgment of the Shariat Court,
dated 23.7.2014 in Civil Appeal No.55 of 2013]

FOR THE APPELLANT:

Mr. Abdus Salam Chaudhary,
advocate.

FOR THE RESPONDENT:

Nemo.

Date of hearing: 26.5.2016

JUDGMENT:

Mohammad Azam Khan, C.J.—The appellant filed a suit for dissolution of marriage and another for maintenance allowance Rs.44,000/- for the past and Rs.4000/- per month for future in the Family Court Fatehpur, Thakyalā. The respondent also filed a suit for restitution of conjugal rights. All the three suits were consolidated. After hearing the parties, the Family Court passed a decree for dissolution of marriage in favour of the appellant on the ground of *khula* on returning the dower amount of Rs.3,49,000/- to the respondent. The other two suits were dismissed. The appellant filed an appeal in the Shariat Court. A learned judge in the Shariat Court through the judgment and decree dated 23rd July 2014 dismissed the appeal to the extent of dissolution of marriage while partly accepted the appeal to the extent of maintenance allowance and granted the maintenance allowance to the tune of Rs.4000/- per month from the date of institution of the suit till the date of decision i.e. 14th June 2012, hence this appeal by leave of the court.

2. Mr. Abdul Salam Chaudhary, advocate, counsel for the appellant, submitted that the case suffers from misreading and non-reading of the record. The appellant proved snatching of

golden ornaments from the cogent and reliable evidence. The Court fell in error and ignored the evidence. The learned counsel submitted that maltreatment and torture is proved from the evidence, therefore, the appellant is entitled for a decree of dissolution of marriage on the ground of cruelty. The trial Court as well as the appellate Court failed to consider the evidence. He requested for acceptance of appeal and passing a decree on the ground of cruelty.

3. Ex-parte arguments have been heard. The appellant filed a suit for dissolution of marriage on the ground of cruelty, physical and mental torture, non-payment of maintenance allowance, non-payment of dower in shape of golden ornaments amounting to Rs.3,49,000/-, non-performance of conjugal rights and leveling the allegation of bad character. In the alternate she sought a decree on the ground of *khula*. She alleged in para 1 of the plaint that the marriage was solemnized against a dower in the form of golden ornaments valued Rs.3,49,000/-, which was paid and Rs.100,000/- which was deferred. In para 2 of the plaint, she alleged that the husband took back golden ornaments from her and despite her demand, he never gave the same back. She also alleged that the husband physically tortured her and ousted

her from the house after snatching the clothes. She further alleged that he has not paid maintenance allowance for the last one year.

4. The case of the appellant is that the trial Court as well as the first appellate Court committed misreading and non-reading of the record. The appellant proved that the golden ornaments were snatched by the husband, she was beaten and the husband tortured her, she is entitled for a decree of dissolution of marriage on the ground of cruelty, therefore, it is necessary to peruse the evidence. Subedar Ali Muhammad Khan, a witness of the plaintiff, stated that after the marriage, the plaintiff remained in the house of the defendant for a period of one month. During this period, the attitude of the defendant and his sisters towards the plaintiff was cruel. They used to fight with her. The defendant took back the ornaments and she was ousted from the house. Raja Riasat, another witness of the plaintiff, stated that the defendant has taken back the golden ornaments and when the plaintiff demanded the ornaments, he tortured her. He has never paid the maintenance allowance to her. Muhammad Siddique, father of the plaintiff, appeared as witness and stated that the defendant has taken back the golden ornaments. The defendant has attacked his house along with 8/10 persons. He stated that he made a

report at the police station, where the defendant admitted that he had taken the golden ornaments back and that he will return the same to the plaintiff. The plaintiff herself appeared as witness and stated that after *bud-phera* she went back to the house of her husband, who took back the ornaments on the pretext that there is some fault in the ornaments and he will get the ornaments checked by the jeweler/goldsmith. He has not given back the ornaments. When the plaintiff demanded the same, he started beating her. His mother and sisters also beat her and thereafter he ousted her from the house. A *punchayat* was convened and it was decided in the *punchayat* that the defendant promised that the defendant promised that he will return back the ornaments but he failed to do so. The witnesses of *punchayat* also stated that he will give back the ornaments. From perusal of the evidence, snatching of golden ornaments and cruelty are proved. The cruelty and cruel attitude came under consideration of this Court in the case reported as *Mst. Amreen v/s Muhammad Kabir* [2014 SCR 504], wherein at page 515, it was observed as under:-

“...The cruel attitude is not confined only to the extent of physical violence, it includes the mental torture, hateful attitude of husband or other inmates of the house and also includes other circumstances, in presence of which the wife is forced to abandon the house of her husband. The cruelty is defined in an

unreported case titled *Shamim Akhter vs. Arshad Mehmood* (Civil Appeal No.57 of 2010, decided on 21.02.2013), it was observed as under:-

“Under Clause (a) of ground (viii), if the husband treats the wife with cruelty, assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, then too the wife is entitled to have a decree of dissolution of marriage. The reading of aforesaid section reveals that marriage can be dissolved on all the grounds or any one of them if proved by the wife. Ground (viii) of Section 2 of the Act makes it abundantly clear that it is not necessary that there shall be physical ill-treatment rather the cruel conduct and cruel treatment is a valid ground for dissolution of marriage. The word ‘cruelty’ in Black’s Law Dictionary (Eighth Edition) is defined as under:-

‘**Cruelty.** The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage.’

‘*legal cruelty.* Cruelty that will justify granting a divorce to the injured party; specific, conduct by one spouse that endangers the life, person, or health of the other spouse, or creates a reasonable apprehension of bodily or mental harm.

mental cruelty. As a ground for divorce, one spouse’ course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical

health, or mental health of the other spouse.

Physical cruelty. As a ground for divorce, actual personal violence committed by one spouse against the other.’

The dictionary meaning of word ‘cruelty’ clearly shows that cruelty may be mental or physical. Cruelty by conduct of a spouse also justifies the grant of divorce. This Court in a case reported as *Syed Imtiaz Hussain Shah & another vs. Mst. Razia Begum & 3 others* [2011 SCR 233], observed as under:-

‘..... The argument advanced on behalf of the appellant that the factor of cruelty is not proved because none of the witnesses stated that he has witnessed any sign of injury caused by the appellant on the person of the respondent. Such an argument is itself indicative of the cruel mentality. For proof of cruelty, infliction of injury is not required by law. In matrimonial matters, the Courts have been treated false allegation against a wife to be a cruelty which results into mental torture and loss of mutual confidence.’

In another case reported as *Muhammad Shariful Islam Khan vs. Mst. Suraya Begum & others* [PLD 1963 Dhaka 947] it was observed in para 13 as under:-

‘13. The view of mine also finds support in the dissolution of Muslim Marriage Act (Act VIII of 1939). Many grounds for divorce by a suit by the wife have been

provided for in this Act. One of them is cruelty. Cruelty can be physical and mental. Mental Cruelty is the worst. The false allegation by the husband of a chased women as to chastity of a chased woman cuts to the heat. It is an evidence of the woman that the plaintiff and her father were arrested by the Police in criminal proceedings against her and the plaintiff was jeered at by the husband (defendant No.1).’

The trial Court has observed that cruelty is not proved. The plaintiff and her witnesses categorically stated in their Court statements that the husband habitually assaults and beats the plaintiff and made her life miserable by cruel conduct. The trial Court has misread the evidence. The cruelty of the husband/defendant is proved from the record.”

5. The appellant has sought a decree of dissolution of marriage on the ground of cruelty and non-payment of maintenance allowance. Section 2 of the Dissolution of Muslim Marriages Act, 1939, provides that a wife can apply for dissolution of marriage on any one of the grounds enumerated in the section. It is not necessary to prove all the grounds. In the case reported as *Shamim Akhtar v/s Arshad Mehmood* [2014 P.S.C. 531], this Court observed as under:-

“6. Section 2 of the Dissolution of Muslim Marriage Act, 1939, deals with the grounds of

dissolution of marriage. We deem it proper to reproduce the said section, which reads as under:-

‘2. Grounds for decree for dissolution of marriage:-A woman married under Muslim Law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:-

- (i) that the whereabouts of the husband have not been known for a period of four years;
- (ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;
- (iii) that the husband has been sentenced to imprisonment for a period of seven years or upward;
- (iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;
- (v) that the husband was impotent at the time of the marriage and continues to be so;
- (vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;
- (vii) that she, having been given in marriage by her father or other guardian before she attained the age of sixteen years;

repudiated the marriage before attaining the age of eighteen years:

Provided that the marriage has not been consummated;

- (viii) that the husband treats her with cruelty, that is to say,
 - (a) Habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
 - (b) associates with women of evil repute or leads an infamous life, or
 - (c) attempts to force her to lead an immoral life, or
 - (d) disposes of her property or prevents her exercising her legal rights over it, or
 - (e) obstructs her in the observance of her religious profession or practice, or
 - (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran;
- (ix) on any other ground which is recognized as valid for the dissolution of marriages under the Muslim law,

Provided that - -

- (a) no decree shall be passed on ground (iii) until the sentence has become final;
- (b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the

husband appears either in person or through an authorized agent within that period and satisfies the Court that he is prepared to perform his conjugal duties the Court shall set aside the said decree; and

- (c) before passing a decree on ground (v) the Court shall on application by the husband, make an order requiring the husband, to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.”

A bare reading of Section 2 reproduced hereinabove shows that a woman married under the Muslim Law is entitled to obtain a decree for dissolution of marriage on all the grounds or any one of the grounds laid down in the Section. Under ground (ii), if the husband has neglected or has failed to provide for her maintenance for a period of two years then wife is entitled to obtain a decree for dissolution of marriage and under ground (iv), if the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years then the wife is entitled to obtain a decree for dissolution of marriage. Under Clause (a) of ground (viii), if the husband treats the wife with cruelty, assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, then too the wife is entitled to have a decree of dissolution of marriage. The reading of aforesaid section reveals that marriage can be dissolved on all the grounds or any one of them

if proved by the wife.....”

6. The appellant proved the factum of cruelty. She was entitled to a decree for dissolution of marriage on the ground of cruelty. She has sought a decree for dissolution of marriage on the basis of *khula* in the alternate that if she fails to prove her case on the other grounds, then she is entitled to a decree of dissolution of marriage on the ground of *khula*. She proved her case of cruelty.

In view of the above, the appeal is accepted, the decree passed by the trial Court is amended and a decree of dissolution of marriage in favour of appellant is passed on the ground of cruelty. There will be no order as to the costs.

CHIEF JUSTICE

JUDGE

Mirpur
06-06-2016