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C.A.No. 6662 OF 2000
ITEM No.301

Court No. 7

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Part-heard:
Civil Appeal No.6662/2000

LOVELEEN KUMAR

Appellant (s)

VERSUS

SHARDA LOVELEEN KUMAR MERCK

Respondent (s)

Date : 19/04/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL
HON'BLE MR. JUSTICE G.P. MATHUR

For Appellant (s) Mr.R.S.Hegde,Adv.
Mr. P.P. Singh,Adv.

For Respondent (s) Mr.Santosh Paul,Adv.
Mr. M.J.Paul,Adv.
Mr.Ranjan Kumar,Adv.
Mr.Sandeep Chhabra,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is allotted but without any order as to costs.

(USHA BHARDWAJ)
P.S. TO REGISTRAR

(MADHU SAXENA)
COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6662 OF 2003

Loveleen Kumar

...Appellant

vs.

Sharda Loveleen Kumar Merck

...Respondent

O R D E R

The appellant and the respondent were married in 1965. It appears that soon after the marriage disputes arose between the parties with regard to the ownership of the flat in which both of them were residing. In 1983, a criminal complaint was lodged by the respondent-wife against the appellant before the police in which it was alleged that the appellant was having an adulterous relationship with another lady whom he wished to marry and that, therefore, the appellant with his mistress had been coming to the house frequently late in the night and forcing the respondent to give him in writing that she had no objection to his second marriage. On the respondent's refusal to do so, it was alleged that he beat her brutally and threatened that he would ruin her life. It was also alleged that the appellant-husband had siphoned off all the monies from their Joint Account and that he had also

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forcibly taken all the respondent's ornaments and threatened that he would take away all other articles and furniture from the house. According to the complaint both the appellant and the lady were "badly harassing" the respondent and "threatening that they will kill her" and that the respondent apprehended danger to her life.

In 1995, the appellant filed a petition for divorce under the provisions of Section 13 of the Hindu Marriage Act, 1955 on the ground of cruelty and desertion.

According to the appellant he had been residing separately from the respondent after the filing of the complaint because she refused to let him into the flat when he attempted to enter it. A written statement was filed by the respondent in which she said that the appellant was not a person of good character and that she had learnt that the appellant had a mistress who was named and so she had to file a police complaint. According to the written statement since the date of the filing of the complaint the appellant was not staying in the flat "out of grudge". The allegations in the complaint were reiterated in paragraph 6 of the written statement with the additional reservation of the respondent's right to file a case against the respondent for bigamy. Therefore, the fact that the parties were living separately since 1983 appears to have been admitted. The only difference

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lay in the reason for such separate residence.

In the oral evidence given in the course of the trial, the appellant said, inter alia, that the respondent had filed a criminal complaint in the Police Station and made false allegations against him. There does not appear to be any cross examination on the appellant's assertion that the complaint filed by the respondent was false. The respondent in her evidence took a stand which was completely contrary to the one taken by her in her written statement. Therefore, she did not make any allegation whatsoever either regarding the alleged mistress of the appellant nor regarding any threat by the appellant to her or indeed that he used to threaten or abuse her or was a person of bad character although she referred to the police complaint in her evidence and said that the contents of it were correct. She went on to say that after the appellant apologized they started living together and that they continued to reside together in the flat even till the date on which the respondent gave evidence namely in 1997. She said in cross examination that since the date of the marriage their married life was "so so".

When the contradictions between her oral evidence and the statements contained in the written

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statement on the question of her husband's residence were pointed out to her in cross examination, she was unable to explain the same.

While the divorce proceedings were pending the appellant had also instituted a suit against the respondent in connection with the ownership of the flat in which they had both resided after the marriage. That suit is still pending.

The Trial Court after an assessment of the evidence, inter alia, came to the conclusion that the respondent's evidence was not credible because of the contradictory stands taken by her.

It was also found that the allegations made in the police complaint by the respondent were "void" and that such void allegations without proving the same amounted to cruelty. It was found that given the falsity of the allegations against the appellant he was entitled to a decree of divorce on the ground of cruelty under Section 13(1) (i)(a) of the Act. In addition, the Trial Court also held that in the circumstances of the case, it could not be said that the appellant had deserted his wife but on the other hand that he had left the matrimonial residence because of the allegations made by the respondent against him. It was found that the appellant had proved the ground of

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constructive desertion by the respondent. The decree for divorce was accordingly granted and alimony was granted to the respondent at the rate of Rs.1500/- per month.

The Division Bench took a different view in the appeal preferred by the respondent. It was of the opinion that the Trial Court could not have proceeded on the basis of bare allegations in the written statement without affording an opportunity to either side to establish its correctness or otherwise. It is unnecessary to consider the other grounds on which the Division Bench allowed the appeal as we are of the view that the High Court erred in coming to this particular conclusion.

The principle has been recognized in the decision in V. Bhagat vs. D. Bhagat 1994 (1) SCC 337 that heinous allegations in the written statement can amount to mental cruelty within the meaning of Section 13(1)(i)(a) of the Act. The allegation, however, would have to be unfounded in order to constitute such cruelty. This Court in V. Bhagat's case (supra) found that the allegations were in fact not proved. In the present case as the respondent had asserted that the appellant had a mistress as recorded in the police complaint and reiterated the allegations in her written statement it was for her to establish the truth of such assertion. She did

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not attempt to do so but repeated the allegation in the grounds of appeal before the Division Bench. The opportunity to establish the allegation was afforded in the trial of the divorce proceedings itself where it would

have been a relevant issue of fact given the nature of issues to be determined. The respondent did not avail of that opportunity. The Division Bench clearly erred in saying that the parties did not have an opportunity of establishing the truth or otherwise of the allegations made in the written statement. The question of the petition for divorce itself being improperly delayed did not arise in view of the persistence with which the respondent alleged her husband's infidelity.

Keeping in view the principles enunciated in V. Bhagat's case (supra) we set aside the decision of the High Court and confirm the decision of the Trial Court.

The appeal is allowed but without any order as to costs.

.....J.

(RUMA PAL)

.....J.

(G.P. MATHUR)

New Delhi,

Dated : 19.4.2004