

PETITIONER'S OWN FAULT — A GROUND FOR MATRIMONIAL RELIEF?

WHO SAYS “fault” does not pay in matrimonial litigation? It does at times and this is well substantiated, *inter alia*, by the recent Allahabad High Court judgment in *Poonam Gupta v. Ghanshyam Gupta*.¹ Legally speaking a spouse may seek matrimonial relief if he or she can establish a ground which entitles him or her to the relief. This right, however, is not absolute and there are conditions or grounds which would stand as a bar to the applicant getting the relief. One of the significant bars is that an applicant cannot take advantage of his or her own wrong. Section 23(1)(a) of the Hindu Marriage Act, 1955 (HMA) makes it very specific that before granting any decree, the court has to satisfy itself that the petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief. This duty is enjoined on the court irrespective of the fact whether the proceeding is defended or not. While other matrimonial law statutes are not as explicit, the doctrine of “clean hands” and “sincerity” is implied in the ground which provides that “there is no other legal ground why relief should not be granted”.²

This is the statutory position and the courts have, by and large, not been oblivious of this principle and have declined relief to erring applicants. But there have been disconcerting cases where even in the face of obvious and glaring faults of applicants – admitted even by the court itself – relief has been granted and *Poonam Gupta's* case is a vivid example of this.

A brief reference may first be made of cases where courts refused to give relief to applicants who were themselves in the wrong. In *K.R. Manjunath v. Veena*,³ a husband was having illicit relations with a neighbour and neglected his own family. The wife objected to this and quarrelled with him. The husband's petition for divorce on the ground of mental cruelty inflicted by the wife was rejected. The court held that the wife's conduct was a natural reaction of her husband's conduct and so he cannot be allowed to take advantage of his own wrong. In *Swapna Chakrawarti v. Viploy Chakrawarti*,⁴ a husband, in his petition for

1. AIR 2003 All 51.

2. See, s 34 (f) Special Marriage Act, 1954; s. 35(e) Parsi Marriage and Divorce Act, 1936; and s.14, Indian Divorce Act, 1869.

3. AIR 1999 Kant 64.

4. AIR 1999 MP 163.



divorce, failed to prove the charges of cruelty and desertion against his wife; it was rather found that he himself was guilty of living in adultery. The argument that since the marriage had irretrievably broken down, the alternate relief of judicial separation be given, was refused. According to the court, even if there was breakdown of the marriage, the same was occasioned and brought about by the husband himself and he could not be allowed to take advantage of his own wrong. In *Kanchan Sahu v. Premananda Sahu*,⁵ where a wife was compelled to leave the matrimonial house because of the husband's ill-treatment, the husband's petition for divorce was turned down, as, according to the court, giving him relief would amount to "giving premium to the husband for his wrongful act." *Kamladevi v. Shivakumarswamy*⁶ was a husband's petition for restitution or in the alternative, divorce, as the wife had deserted him. The trial court found that the wife was ill-treated and had reasonable ground for leaving and also that the husband was interested in some other woman and had illicit relations with her. On these grounds, it was held:

[T]he conditions of the case do not warrant restitution of conjugal rights but a divorce on the ground of cruelty and voluntary sexual intercourse with other person [by the husband], the circumstances which cannot make the parties to live in peace. Hence I allow the petition for divorce.

On appeal, however, the same was set aside. According to the Karnataka High Court:⁷

[T]he order made by the Court amounts to placing a premium on the misconduct of the husband... far from granting to the husband any relief on the basis of his own acts of omission and commission, the court ought to have deprecated the same and dismissed the petition with costs.

Coming to pronouncements which have given premium to the wrong doer, reference may be made to *Ashok Hurra v. Rupa Bipin Zaveri*⁸ which was a petition, originally by mutual consent but later the wife did not pursue and pending divorce proceedings, the husband remarried and yet got a divorce on his petition. The court admitted that:⁹

5. 1999 AIHC 68.

6. AIR 2003 Kant 36; see also, *inter alia*, *Malkiat Singh v. Shinderpal Kaur*, AIR 2003 P&H 283; *T Srinivasan v. T Varalakshmi*, AIR 1999 SC 595; *Sunita Rajendra Nikalje v. Rajendra Eknath*, AIR 1966 Bom 85; *Hirachand Srinivas Managaonkar v. Sunanda*, AIR 2001 SC 1285 and *Ram Chander v. Anguri Devi*, (2001) 2 Fem Juris CC 225 (P&H).

7. *Kamladevi*, *id* at 38.

8. AIR 1997 SC 1266.

9. *Id.* at 1273.



We have not lost sight of the fact that conduct of the husband is *blameworthy* in that he married a second time and got a child during the pendency of the proceedings but that fact cannot be blown out of proportion.

Likewise in *Pratima Biswal v. Amulay Kumar Biswal*,¹⁰ a husband who was the petitioner for divorce was living with another woman. He could not prove his allegations against the wife and yet the family court granted decree on the ground that it would not be practical for her to stay with him under a common roof. The wife had also filed a case of bigamy against him under section 494 of the IPC. On appeal, the high court agreed that there was no evidence to show that she had voluntarily abandoned the matrimonial home. However, in view of the fact that he was residing with another woman and a criminal case for bigamy was pending, the court found it “incompatible for the wife to continue to stay with him. The marriage has come to an irretrievable end and the relationship cannot be restored.”¹¹

And coming to the facts of *Poonam Gupta*,¹² another disconcerting case, a husband who filed a divorce petition alleging cruelty etc. obtained an *ex parte* decree and soon thereafter remarried and also had a child. The wife challenged the *ex parte* order before the division bench which was admitted and the case was remanded to the family court for expeditious disposal. It was held that even though cruelty on the part of the wife, as alleged by the husband, was not established, but considering the fact that both parties were levelling allegations and counter allegations against each other, it was not possible for them to live together. Thus a decree of divorce, subject to the husband paying Rs. 5 lakhs to the wife, was passed. On appeal against this by the wife, the high court made efforts for reconciliation and while the wife was prepared to go back, the husband *categorically refused*. The court dismissed her appeal. The following observations are pertinent:¹³

[S]ince there are allegations and counter allegations of misbehaviour, physical and mental torture by both the parties, we find that it would not be actually possible for the two to live together. Besides, *there is also the fact that during the pendency of the petition for divorce, the husband has remarried and has two children.*

10. AIR 2002 Ori 125.

11. *Id* at 127.

12. *Supra* note 1.

13. *Id* at 54 (emphasis added).



And further:¹⁴

Taking advantage of the *ex parte* decree he immediately remarried making a situation impossible for the wife to return and live together. In fact the circumstances indicate that the plaintiff husband was responsible in creating a situation in which the Court may not be left with any other alternative but to grant a decree of divorce as under no circumstances can the marriage now be retrieved.

What a level of helplessness of the courts—the petitioners using the factor of illicit relationships or illegal remarriages as a trump card to their advantage? While introduction of irretrievable breakdown as a ground for divorce in certain situations is still debatable and, in fact, may not be a bad idea, depending on the circumstances of the case, including conduct of the parties, but to hold that a person may be allowed to (mis) behave and bring about a situation of breakdown and then take advantage to wriggle out of a relationship which he/she does not wish to continue with, would be extremely unfair.

It is time that courts seriously reflect on this aspect and prevent the wrongdoer from gaining further advantage.

*Kusum**

14. *Id.* at 55.

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