



DISCIPLINING MATRIMONIAL MISCONDUCT

I

AT LAST the veil is being lifted. The Supreme Court in a recent order¹ of far reaching consequence has held that the insulting and disparaging remarks of a husband towards his wife can constitute defamation entitling the wife to compensatory damages.

II

A newly married woman continually exposed to mudslinging and character assassination from her husband not only sought divorce but also filed a complaint under section 498-A and alleged that the conduct of the husband amounted to defamation under section 500 of the Indian Penal Code 1860.

The High Court found the husband guilty of the offence under section 498-A of the Indian Penal Code 1860 and ordered him to pay a fine of Rs. 30,000/- or in default to undergo simple imprisonment. Reversing the subordinate court order the High Court also found the husband guilty of defamation and sentenced him to two months simple imprisonment and a fine of rupees six thousand.

The husband appealed to the Supreme Court against the defamation conviction. The court to put an end to the allegations and counter allegations between the parties; to ensure economic rehabilitation of the wife and to compensate the wife for the "mental agony, strain and stress she had undergone" advised the parties to arrive at a settlement and has pronounced an order which harmoniously blends pragmatism and equity.

III

Vide the order, the husband acquiesced in the conviction and order under section 498-A Indian Penal Code and agreed to deposit the amount of rupees thirty thousand which in accordance with the High Court order the wife was entitled to withdraw. The wife agreed not to pursue her criminal complaint against wrongful search of her house.

On the husband paying rupees one lakh, the appeals against the defamation conviction have been compounded by and between the parties with the stipulation that the fine already paid will not be refunded but be paid to the wife. In addition the husband was required to file an unqualified apology in the court for the mental stress and strain caused to the wife on

1. *Mukund Martand Chitnis v. Madhuri Chitnis*, 1991 Supp (2) S.C.C. 359.



account of various defamatory allegations made against her. The brother of the husband consented to file an undertaking that the husband will not take any proceedings civil or criminal against the wife for any averment or statements made by her in any of the proceedings filed till this date. On the failure of the husband to fulfil any of the conditions the High Court order will come into operation making the husband liable to imprisonment.

With the payment of rupees one lakh the order granting the wife maintenance at the rate of rupees five hundred per month stands terminated with no future liability. The alimony amount has been capitalised in order to ensure that no possibility of bitterness remains in future and the relations between the parties are finally snapped.

IV

Though the defamation conviction has been compounded in the case before it the Supreme Court has unequivocally opined that the demands of civil and responsible conduct are not waived because of marriage. Communication which crosses the limits of decent discourse² is liable to criminal sanctions. Howsoever important the institution of marriage may be to society it is not meant to protect and provide cover to criminal misconduct. The Supreme Court in upholding the High Court order accepts that 'words wound' and misconduct does not have to reach the dregs of physical violence before courts will act.

The order records the battle of a woman who fought back and won. The redressal obtained by her did not just vindicate her dignity but left her free to start her life anew after the misfortune of a bad marriage. Herein of special significance is the order of capitalised maintenance.

V

The sensitivity to the plight and the uncompromising attitude to the vindication of the weaker matrimonial partner's rights displayed in the order is a welcome development in matrimonial jurisprudence which should discipline matrimonial misconduct.

Such a result is desired by the court when it states:

(T)his should prove to be an eye opener to those who believe that they can get away by casting aspersions on a woman to serve their ends and to silence her.³

To achieve this end it was necessary that the decision was highly publicised by being released to the legal correspondents of the court. At least it should

2. The husband made allegations against the chastity of the wife.

3. *Supra* note 1 at 362.



have been circulated as a reportable judgment of the court which would ensure its publication in the law reports.

However the decision is not even a non-reportable judgment but just an order in the case which was quietly filed away in the registry of the court from where it may have never seen the light of the day but for some diligent and imaginative reporting.⁵ Pursuits of justice have to be systematic exercises and cannot depend upon such fortuitous events.⁶ It is hoped the quiet beginning made in this order will with loud efforts be carried further.

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4. Even non reportable judgments are at least reported by some law reports such as *Unreported Judgments* and *Supreme Court Cases*.

5. This find has to be credited to the efforts of Usha Ramanathan, Reporter, *Supreme Court Cases*.

6. This requires that mechanisms should be devised for the reporting of all Supreme Court decisions.

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