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(2004) 12 P&H CK 0014

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 274-M of 2004 (O and M)

Rajesh Kumar Madaan	APPELLANT
Vs	
Mrs. Mamta alias Veena	RESPONDENT

Date of Decision: Dec. 4, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 151
- Hindu Marriage Act, 1955 - Section 13, 13B, 28, 9

Citation: (2005) 2 CivCC 433 : (2005) 2 DMC 101 : (2005) 140 PLR 196

Hon'ble Judges: V.M. Jain, J; S.S. Saron, J

Bench: Division Bench

Advocate: Kul Bhushan Sharma, for the Appellant;

Final Decision: Dismissed

Judgement

S.S. Saron, J.
There is a delay of 13 days in re-filing the appeal. For the reasons stated in the application and after hearing the learned counsel for the appellant, we find sufficient grounds to condone the delay in re-filing the appeal. Civil miscellaneous application seeking condonation of delay in re-filing the appeal is accordingly allowed.

2. This appeal u/s 28 of the Hindu Marriage Act, 1955 ("Act" for short) has been filed against the judgment and decree dated 10.9.2004 passed by the learned Additional District Judge, Faridabad whereby the petition of the appellant-husband for seeking divorce from the respondent-wife has been dismissed.

3. The marriage between the parties was solemnised at Faridabad in accordance with Hindu rites and ceremonies on 19.8.1996. From the marriage, the parties had a female child. The appellant-husband on 19.5.1999 filed a petition u/s 13 of the Act seeking dissolution of the marriage between the parties by a decree of divorce on the ground of

cruelty and desertion. The learned Additional District Judge, Faridabad after considering the evidence and material on record, as already noticed, dismissed the petition. It was observed that the appellant had failed to prove that the respondent had treated him with cruelty. Besides, there was no desertion on her part. The said order of the Additional District Judge, as already noticed, is assailed in this appeal.

4. Learned counsel for the appellant has contended that the learned Additional District Judge has gravely erred in dismissing the petition of the appellant for dissolution of the marriage between the parties by way of decree of divorce. It is further contended that the parties to the marriage are admittedly living separately since 9.2.1997 and that the respondent had deserted the appellant without any reasonable and sufficient cause on 9.2.1997 on which date she left her matrimonial home with all her belongings. Besides, it is contended that the learned Additional District Judge has not adverted to the compromise (Ex.P-6) in pursuance of which it is established that the marriage between the parties is a broken marriage and that is why by virtue of the compromise divorce between the parties on payment of Rs. 4,50,000/- by the appellant to the respondent was agreed to be settled in the Panchayat which was also signed by the parties. In fact, in furtherance to the compromise (Ex.P-6), it is contended that Rs. 50,000/- was paid on the day the compromise was reduced into writing and Rs. 4 lacs was agreed to be paid in Court and out o the same Rs. 2,50,000/- was to be deposited in the name of female child of the parties and Rs. 2 lacs was to be given to the respondent. Besides, the filing of petition u/s 9 of the Act by the appellant for restitution of conjugal rights was a bona fide act on his part and it is the respondent who did not join his company.

5. We have given our thoughtful consideration to the contentions of the learned counsel appearing for the appellant. During the course of hearing, learned counsel for the appellant laid emphasis on the fact that the respondent had lodged a complaint on the basis of which case F.I.R. No. 385 dated 15.6.1999 was registered and that this by itself is a ground which proves that the appellant and his family members were subjected to cruelty by the respondent and on this account alone the appellant was entitled to a decree for divorce. Besides, the proceedings u/s 107 and 151 of the Code of Criminal Procedure were initiated against the appellant at the behest of the respondent.

6. It is appropriate to note that the appellant had earlier filed a petition u/s 9 of the Act which was withdrawn by him on 20.3.1999 by stating that he had no differences with his wife and both could live together. The present petition, as already noticed, was filed on 19.5.1999. In the circumstances, the cruelty which has been alleged against the respondent is in respect of the period earlier to 20.3.1999 and by making this statement the acts of cruelty even if any stand condoned. In respect of the statement made by the appellant that he would take his wife it has been noticed by the learned Additional District Judge that the respondent had deposed that after stepping down from the stairs of the Court Room, the appellant refused to take her along with him until and unless his demands of Rs. 1 lac and a motorcycle were fulfilled. It was further observed that the respondent kept sitting and requesting the appellant to take her with him but he did not

agree. On the next day, the respondent moved an application in the Court intimating therein that the appellant had not taken her along with him. From this, it is evident that the appellant is taking benefit of his own wrong and that the respondent had been willing to reside with him. Therefore, in the circumstances, it is not a case from which it can be said that the respondent has treated the appellant with cruelty or that she has deserted him.

7. In order to claim a matrimonial relief of divorce on the ground of cruelty, it is to be shown that the petitioner has been treated with cruelty which has been held by the Courts rather difficult to define. In order to establish cruelty, conduct of the respondent has to be shown to be of such a character so as to cause danger to his life, limb or health whether physical or mental or to give rise to a reasonable apprehension of such a danger to the petitioning spouse. This has to be seen in the facts and circumstances of each case and is to be assessed keeping in mind the social status of the parties, their customs and traditions and their educational level and environment in which they live. The mental cruelty is to be of such a nature which inflicts upon the petitioning spouse such mental pain and suffering as would make it not possible for that party to live with the other. The situation is to be such that the wronged party cannot reasonably be asked to put up with the conduct and continue to live with the other party. Therefore, the cruelty whether mental or physical entitle the petitioning spouse to a decree or divorce if it is of the nature as has been laid down. In the case in hand, no such circumstances have been shown that the appellant has been subjected to cruelty of such a nature so as to cause danger to the life, limb or health (physical or mental) or has given rise to a reasonable apprehension of such danger to the appellant. As already noticed, the appellant made a statement in Court on 23.9.1999 in proceedings u/s 9 of the Act that he would take the respondent with him from the Court premises but he refused to do so. In any case, the earlier acts of cruelty stand condoned. Subsequent thereto is the registration of the F.I.R. No. 385 dated 15.6.1999 which by itself is stated to be a ground for dissolution of the marriage. The said FIR was registered after the filing of the present petition on 19.5.1999. Except for a bald assertion during the course of arguments that the registration of the F.I.R. by itself amounts to cruelty, nothing has been shown by the learned counsel for the appellant as to how mere registration of the F.I.R. would amount to cruelty. Nothing has even been shown with respect to the proceedings initiated u/s 107 and 151 of the Code of Criminal Procedure. In other words it is not shown as to how the mere initiation of criminal proceedings in pursuance of the same have caused mental or physical cruelty to the appellant. It is not even shown as to whether these were false. Besides, it has not even been shown that the appellant has suffered emotionally inducing fear in respect of the matrimonial relationship or that the behaviour or behavioural pattern of the other spouse is of such a nature that an inference can be drawn that the appellant has been subjected to mental cruelty. In the circumstances, the learned trial Court has rightly held cruelty to be not made out.

8. Even desertion in the facts and circumstances has also not been established. In order to obtain the matrimonial relief on the ground of desertion two essential considerations

are required to be shown that is factum deserdendi and animus deserdendi that is the factum of separation and the intention to bring the cohabitation permanently to an end. Even if it is taken that factum of separation to be proved, the element of animus deserdendi is not there, inasmuch as, it has come on record that after the appellant had made a statement in proceedings u/s 9 of the Act that he was willing to take the respondent, the respondent appeared in the Court on the next day and submitted an application that the appellant had not taken her. Therefore, in the circumstances, there is no intention between the parties to bring cohabitation permanently to an end.

9. Insofar as the compromise Ex.PX is concerned, we are of the view that the marriage between the parties to the petition in the case in hand can only be dissolved by a decree of divorce by the Court and not in any proceedings before the Panchayat and the respondent cannot be said to be bound by the compromise unless of course she herself consents to the same and gives her consent in proceedings seeking divorce before the matrimonial Court which may be by way of a petition for dissolution of the marriage by mutual consent in terms of Section 13B of the Act. However, the compromise even, if any, cannot be enforced by the appellant to seek dissolution of the marriage.

10. For the foregoing reasons, there is no merit in this appeal and the same is accordingly dismissed.