

(2005) 09 P&H CK 0042

High Court Of Punjab And Haryana At Chandigarh**Case No:** Letters Patent Appeal No. 484 of 2002 in First Appeal from Order No. 102-M of 1993

Surinder Mohan Chopra

APPELLANT

Vs

Smt. Nirmala Chopra

RESPONDENT

Date of Decision: Sept. 28, 2005**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 13 , 13(1)

Citation: (2006) 143 PLR 820 : (2006) 3 RCR(Civil) 473**Hon'ble Judges:** Viney Mittal, J; H.S. Bedi, J**Bench:** Division Bench**Advocate:** S.S. Antal and S.S. Dinarpur, for the Appellant; Ravi Kant Sharma, for the Respondent**Final Decision:** Allowed

Judgement

Viney Mittal, J.

The husband is the appellant who has approached this Court through the present Letters Patent Appeal challenging the judgment dated July 27, 2001 passed by the learned Single Judge. Learned Single Judge through the impugned judgment had allowed the first appeal filed by the respondent-wife and, consequently, set aside the decree of divorce granted by the learned trial Court.

2. The appellant-husband had filed a petition u/s 13 of the Hindu Marriage Act for dissolution of marriage between the parties. The marriage between the parties was solemnised on April 30, 1974. The dissolution of marriage was sought by the husband on account of cruelty of the respondent-wife towards the husband. It was claimed by the husband that the behaviour of the respondent-wife was cruel towards the husband and she also was levelling false allegations of his illicit relation with some other woman. The husband also claimed that the wife had withdrawn herself from the matrimonial home without any sufficient cause and, as such, had

deserted him.

3. In the written statement filed by the wife, she denied the allegations of cruelty. However, she maintained that it was the husband who was giving beating to her and, as such, was cruel towards her. However, the respondent-wife pleaded that the husband was carrying on love affairs with a young college girl of M.D.S.D. College Ambala City, named Suneeta, daughter of Rishi Ram Gupta who used to live just opposite their house. It was further alleged by the wife that in the first week of July, 1988, she was able to lay her hands on some letters written by Suneeta to the husband, Surinder Mohan Chopra. She further alleged that she had asked the husband to mend his ways and not to carry on love affair with the said girl but the husband told her that he was neck deep in emotional relations with the said girl and even wanted to marry her and even the husband tried to put pressure upon her to give consent to the aforesaid marriage. Upon the refusal of the wife, she alleged, that she was beaten and turned out of her matrimonial home.

4. A replication was filed by the husband controverting all the pleas raised by the wife.

5. The learned trial Court on appreciation of the entire evidence available on the record held that the wife had levelled false and frivolous allegations against the husband with regard to his alleged relationship with aforesaid Suneeta. Accordingly, it was held that the wife had acted with cruelty against the husband. It was further held by the learned trial Court that the wife had withdrawn from the society of the husband without any reasonable excuse. On the basis of the aforesaid findings, the learned trial Court dissolved the marriage between the parties.

6. The wife filed the first appeal before this Court. Learned Single Judge has allowed the appeal filed by the wife and, consequently, the divorce petition filed by the husband has been dismissed. The husband has now filed the present Letters Patent Appeal.

7. We have heard the learned Counsel for the parties and have also gone through the record of the case.

8. Learned counsel for the appellant has vehemently argued that the respondent-wife had levelled false, frivolous and scandalous allegations against the husband, which itself amounted to cruelty. Our specific attention has been drawn to the averments made in para 4 of the written statement filed by the respondent-wife where allegations with regard to an affair between the husband and one Suneeta have been levelled. Our attention has also been drawn to the statement of RW I-Smt. Nirmal, the wife, wherein she had further stated that the husband was having illicit relation with Suneeta. On the basis of the aforesaid allegations, it has been argued by the learned Counsel that since the said allegations were not proved by the respondent-wife by leading any evidence and, therefore, it could be taken that the said allegations were not only false and frivolous but apparently were scandalous

also. Accordingly, learned Counsel has argued that the levelling of such false and scandalous allegations against the character of the husband itself amounted to a cruelty and, therefore, the learned trial Court had rightly granted a decree of divorce in favour of the husband. Learned counsel has also contended that the husband-wife had withdrawn from the matrimonial home without any justification and reasonable excuse and, therefore, was guilty of desertion.

9. On the other hand, learned Counsel for the respondent has argued that the allegations in the written statement or the statement of the wife were not sufficient to hold that the wife was guilty of cruelty. It has further been argued that merely because the wife had not been able to prove the aforesaid allegations, it could not be held that the said allegations were false. Learned counsel for the respondent has supported the judgment of the learned Single Judge.

10. We have duly considered the rival contentions of the learned Counsel for the parties and have also gone through the record of the case.

11. In para 4 of the divorce petition, the husband had pleaded that the parties had lived as husband and wife upto August 25, 1986 but during the stay of the wife with the husband, her behaviour was found to be cruel and rude towards the husband. The wife used to insult and abuse the husband in presence of the neighbours and friends and also used to level false allegations of illicit relations with another woman. In reply to the aforesaid pleadings, the respondent-wife levelled allegations that the husband was carrying on a love affair with a young college girl of M.D.S.D. College, Ambala City, namely Suneeta who used to live just opposite their house. She further went on to say that in the first week of July, 1988, she was able to lay her hands on some letters written by said Suneeta and when she asked the husband to mend his ways he retaliated by saying that he was neck deep in emotional relations with the said woman and even wanted to marry her. Even in her statement she has persisted with the said charge. Besides the allegations in the written statement and her oral statement, no other material has been brought on record by the respondent-wife to prove the said allegations. It is, thus, clear that the said allegations remained totally unsubstantiated and not proved. The learned Single Judge has also noticed the aforesaid fact but has observed that merely because the wife was not able to prove the version of her husband having affairs unequivocally does not lead to an inference that the allegations amount to cruelty. With respect to the learned Single Judge we cannot subscribe to the aforesaid observations of the learned Single Judge. In our considered view once serious allegations with regard to the character of the husband have been levelled by the wife, and the aforesaid allegations have remained unsubstantiated this act of the wife would itself amount to cruelty against the husband.

12. We may notice with advantage certain observations made by the Hon"ble Supreme Court of India in the case of Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate 2003(2) RCR 813 (Civil) :

7. The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce u/s 13(1)(i-a) of the Act. The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife viewed in the contest of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.

13. In the light of the law laid down by the Apex Court, we have no hesitation in holding that the false allegations levelled by the wife actually amounted to cruelty providing of justifiable ground to the husband to seek the dissolution of the marriage.

14. It is also apparent from the findings recorded by the learned trial court that the wife was living with her parents and separately from her husband since August 25, 1986. She had tried to justify the aforesaid separate living on account of the conduct of the husband in having an affair with said Suneeta. Since the aforesaid allegations have been found to be unsubstantiated, therefore, obviously the wife could not be having any justification to live separately. Her separate living without any justifiable cause actually amounts to abandonment of marriage and desertion.

15. For the aforesaid reasons, we allow the present appeal and set aside the judgment of the learned Single Judge. Consequently, the judgment of the learned trial Court is restored. The marriage between the parties, as ordered by the learned trial Court, shall stand dissolved.