
Neena Malhotra Vs Ashok Malhotra

F.A.O. No. 210-M of 1998

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 9, 2006

Acts Referred:

Dowry Prohibition Act, 1961 " Section 3, 4#Evidence Act, 1872 " Section 145, 43#Penal Code, 1860 (IPC) " Section 406, 498A

Citation: (2008) 2 DMC 94 : (2007) 148 PLR 736 : (2007) 1 RCR(Civil) 613

Hon'ble Judges: S.N. Aggarwal, J

Bench: Single Bench

Advocate: Sunder Singh, for the Appellant; A.D.S. Sukhija, for the Respondent

Final Decision: Dismissed

Judgement

S.N. Aggarwal, J.

Neena Malhotra appellant was a divorcee. Thereafter she married Ashok Malhotra respondent who was also a

divorcee and had a son from his first wife. The marriage of the appellant with the respondent took place on 7.10.1989. Out of this wedlock, a

child was born on 13.7.1990 and the road of married life between the parties became rough. On 15.7.1991, the appellant left the house of the

respondent and on 28.9.1991, the appellant got a case registered against the respondent, his sister, sister's husband and mother of the respondent

for offences punishable under Sections 406 498-A IPC read with Sections 3/4 of the Dowry Act at FIR No. 267 in Police Station East,

Chandigarh. The respondent filed divorce petition against the appellant on 5.4.1995 on the ground of cruelty and desertion.

2. The respondent and his relatives were acquitted in the criminal case by the Court of Shri Tejwinder Singh, Judicial Magistrate Ist Class,

Chandigarh vide judgment dated 10.7.1996 which had become final.

3. The case of the respondent in the divorce petition was that the appellant did not respect the respondent and his mother. She did not perform her

house hold duties. She resorted to abuses for him and his mother. She got violent. She even levelled allegations of sexual relationship between the

respondent and his mother interse. This conduct, attitude and behaviour of the appellant could not be tolerated and, therefore, the respondent and

his wife (appellant) started living separately in a rented house No. 1692, Sector 33, Chandigarh. They lived there for barely 2-1/2 months when

the appellant left her house on 15.7.1991. A false case was also got registered by the appellant against the respondent, his sister, his brother-in-

law and mother for offences punishable under Sections 406 498-A IPC read with 3/4 Dowry Act. In the said case, false allegations were levelled

about the sexual relations of the respondent with his mother by which the respondent and his family was defamed and they were unable to show

their faces in the neighbourhood. The statement of the appellant was recorded in the Court of Shri A.K. Jain, learned Judicial Magistrate,

Chandigarh on 16.2.1995 in which she repeated the allegations that the respondent was having sexual relations with his mother. These allegations

also caused acute mental agony to the respondent which amounted to cruelty. She also deserted the respondent with effect from 15.7.1991 when

she left his house. Hence the divorce petition.

4. The appellant filed written statement. She denied if she was rude or insulting towards the respondent, his mother or his any other relative. It was

also denied that she was of quarrelsome nature or if she got violent towards the respondent, his mother and his other relatives or if she had ever

abused them. Rather, the appellant was being troubled by the respondent mentally and physically on dowry demand. After her marriage, she used

to look after the house hold work. She used to hand over her salary to the respondent. She had tried to adjust to the cruel behaviour of the

respondent, his mother and relatives. The appellant was shifted to a tenanted house against her will. In the said house, she was even beaten and

tortured physically and mentally. The respondent used to come late. No attention was paid to the appellant or her minor son and she was turned

out of the house. She had not taken the dowry articles which were got recovered by the police later on from the house of the respondent. She

admitted having lodged a complaint with the police and alleged that the factual position given in the complaint to the police was correct. It was

denied if she was guilty of cruelty towards the respondent. She also admitted having made a correct statement in the criminal case before the

Magistrate which had to be taken into account, keeping in view the circumstances in which she was placed by the respondent and his family

members. Hence, dismissal of divorce petition was prayed.

5. The learned trial Court framed the issues.

6. In support of his case, the respondent examined Pawan Kumar, Ahlmad from the Court of Shri Tejwinder Singh, Judicial Magistrate,

Chandigarh as PW-1 and he himself appeared as PW-2. Certain documents were also proved and the evidence was closed. On the other hand,

Neena Malhotra appellant appeared as RW-1. In support of her case, she also examined Harbhushan Gulati as RW-2 and Mrs. Sarla Duggal as

RW-3 and the evidence was closed.

7. On the basis of this evidence, the learned trial Court held that desertion was proved as the appellant had left his house on 15.7.1991. It was also

held that by making false allegations against the respondent of having sexual relations with his mother, the appellant has committed cruelty towards

the respondent. Accordingly, the petition for divorce was accepted by the learned Additional District Judge, Chandigarh vide judgment and decree

dated 9.11.1998 and the marriage between the parties was declared as dissolved.

8. Hence, the present appeal.

9. The main submission of learned Counsel for the appellant was that there was no evidence if the appellant had made any allegation regarding the

respondent having sexual relations with his mother. There is only the statement of the respondent which is uncorroborated. Neither the sister of the

respondent nor the husband of the sister have been examined to prove if the appellant had made these allegations.

10. The mother was also not examined.

11. It was further submitted that the learned trial Court has relied upon the judgment dated 10.7.1996 passed by the learned Judicial Magistrate Ist

Class, Chandigarh in the criminal case got registered by the appellant on 28.9.1991 for offences punishable under Sections 406 498-A IPC

against the respondent and his relatives. Reference was made to numerous judgments in support of the proposition that the judgment of a Criminal

Court is not relevant for determining the rights in a civil case. The judgments of the Courts of criminal jurisdiction are only relevant u/s 43 of the

Indian Evidence Act for two purposes i.e. that a case has been registered and that the accused of that case has been either acquitted or convicted.

The facts determined in the criminal case are neither relevant in the determination of civil rights nor those findings can be made basis for

determination of rights in civil cases.

12. The learned Counsel for the respondent did not dispute the legal proposition that the judgment in a criminal case cannot be made basis for

passing a judgment in a civil case but, it was submitted that the learned trial Court while passing the impugned judgment dated 9.11.1998 has not

placed reliance on the judgment dated 10.7.1996 passed by the Court of Judicial Magistrate Ist Class, Chandigarh in the criminal matter.

Therefore, the judgments relied upon by the learned Counsel for the appellant do not advance her case.

13. It was submitted by the learned Counsel for the respondent that u/s 145 of the Indian Evidence Act, a party can be confronted with his or her

previous statement made in a court of law and that has been done in the present case. In the first instance, the statement of the appellant was

recorded on 23.7.1997 in this case and she denied the suggestion of having stated before the police and before the trial Magistrate that the

respondent was having illicit relations with his mother. The case was adjourned at the request of counsel for the respondent. He got copies of the

complaint and of statement made by the appellant before the Magistrate in the criminal case. These were put to the appellant when she re-

appeared in the witness-box. She admitted in the cross-examination that the complaint Exhibit PC consisting of five pages was written by her with

her own hand writing and it carried her signatures. She also admitted that in her statement Ex.PA, it was specifically stated by her that her husband

(respondent) used to leave her bed room silently at mid night and used to come back to her bed room at 5 or 6 AM. She has further stated that

whenever she got up at mid night, she had found that the respondent was in the bed room of his mother and the door was bolted from inside. She

also admitted that Exhibit PA was the correct copy of her statement which was recorded in the Court in the criminal case. She further admitted in

her cross-examination that in her statement Exhibit PA, she had got recorded that her mother in law had told her that her son Ashok (respondent)

was her husband (mother's husband). Exhibit PC is the copy of the complaint which she had lodged with the police. She admitted in para No. 5 of

her written statement the correctness of the allegations made in the complaint. The respondent, therefore, is not running away either from the

allegations made by her in original complaint copy of which is proved as Exhibit PC nor she is running from the allegations made by her in her

statement recorded by the Judicial Magistrate 1st Class, Chandigarh copy of which was proved as Exhibit PA.

14. As discussed above, the appellant has admitted having levelled allegations that the respondent used to leave her bed room at mid night and

used to enter the bed room of her mother and they used to bolt the door from inside and the respondent used to come to her bed room in the

morning at about 5 or 6 AM. These allegations are nothing short of making allegations against the respondent for having sexual relations with his

mother. Even in her complaint copy of which has been proved as Exhibit PC, the contents of which she has alleged to be correct, she has

specifically stated that the respondent had told her that he had given Mangal Suttar (which is a marital symbol to a wife) to his own mother.

Although she is quoting her husband having stated so to her, but repeating those facts amounts to making allegations to that effect. Even in her

statement before the Magistrate copy of which is proved as Exhibit PA, she has stated that her mother in law used to tell her that Ashok

(respondent) was her husband (mother in law's husband) and that he (respondent) had given gold chain (Mangal Suttar) to her to wear the same.

She further deposed that she was restrained by her mother in law not to tell this fact to any other person. Making of these allegations by the

appellant against her husband and her mother in law cause extreme mental pain which amounts to cruelty of extreme degree.

15. When the appellant herself has admitted the correctness of her statement copy of which is Exhibit PA and the contents of complaint copy of

which is Exhibit PC which contain such allegations no further evidence was required by the respondent to prove that the appellant had made these

allegations against the respondent and his mother. Even otherwise, read with these documents, the statement of the respondent alone who

appeared as PW-2 was sufficient to hold that the appellant had made all these allegations against the respondent for having illicit relations with his

mother.

16. Raising of such allegations by the appellant against the respondent was cruelty of the highest degree. The appellant while making those

allegations has thrown dirt on the pious relationship of a mother and a son. She made these allegations for petty personal gains in the family life and

in belittling the husband at the cost of larger social interests. She appears to be a short sighted woman and she forgot that not only she committed

cruelty towards her husband but she was spoiling the clean water of the society and the pious relationship of a son and a mother. The Hon"ble

Supreme Court was pleased to observe in the judgment reported as A. Jayachandra v. Aneel Kaur AIR 2005 163 as under:

The evidence as led and which is practically undisputed is that the respondent had asked the husband to do certain things which cannot be termed

to be a simple advice for proper behaviour. For example in her evidence, respondent clearly accepted that she had said five things to be followed

by him. Surprisingly, most of them related to ladies working in the hospital. Though respondent tried to show that they were simple and harmless

advice, yet on a bare reading thereof, it is clear that there were clear manifestations of her suspecting the husband"s fidelity, character and

reputation. By way of illustration, it may be indicated that the first so called advice was not to ask certain female staff members to come and work

on off-duty hours when nobody else was available in the hospital. Second was not to work behind the closed doors with certain members of the

staff. Contrary to what she had stated about having full faith in her husband the so called advices were nothing but casting doubt on the reputation,

character and fidelity of her husband. Constant nagging on those aspects, certainly amounted to cause indelible mental agony and amounts to

cruelty. The respondent was not an ordinary woman. She was a doctor in the hospital and knew the importance of the nature of duty and the

necessity of members of the staff working even during off hours and the working conditions. There was another instance which was specifically

dealt with by the trial Court. Same related to the alleged extra marital relationship of the appellant with another married lady who was the wife of

his friend. Though the respondent tried to explain that she was not responsible for making any such aspersions, the inevitable conclusion is to the

contrary.

17. In the present case also, it was submitted by the learned Counsel for the appellant that she has only quoted what the respondent was telling her

that he had given Mangal Suttar to his mother. Similarly, she was quoting her mother in law that the respondent was the husband of his mother.

Actually, by quoting the respondent and his mother, she was making direct allegations against the respondent and his mother of having illicit

relations particularly when she has levelled the allegations that her husband used to leave her bed room at night time and used to come back at

about 5 or 6 AM. She further stated that whenever she got up at mid night, she noticed her husband to be in the bed room of her mother in law

and the door of the room of her mother in law was bolted from inside. These allegations are totally suggestive of the fact that the respondent was

having illicit relations with his mother. Therefore, the principle of law laid down by the Hon"ble Supreme Court in A. Jayachandra is clearly

applicable to this case. The appellant appears to be a woman who has no control over her tongue. Therefore, it is clearly proved that she has

caused acute mental agony to the respondent by making false, unfounded and immoral allegations against the respondent which amounts to cruelty

of highest degree.

18. In view of the discussion held above, the impugned judgment and decree dated 9.11.1998 are upheld.

19. There is no merit in the present appeal and the same is dismissed.