

(1995) 03 P&H CK 0018

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 89-M of 1989 and Civil Miscellaneous No. 3936-CII of 1992

Prem Lata

APPELLANT

Vs

Murari Lal

RESPONDENT

Date of Decision: March 9, 1995**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 13(1)
- Penal Code, 1860 (IPC) - Section 498A, 506

Citation: (1996) 1 DMC 529 : (1996) 112 PLR 143**Hon'ble Judges:** Sarojnei Saksena, J**Bench:** Single Bench**Advocate:** M.L. Sarin and Vikas Suri, for the Appellant; Hemant Kumar, Lalit Gulati and Sanjay Chaudhary, for the Respondent

Judgement

Sarojnei Saksena, J.

Appellant wife has filed this appeal u/s 28 of the Hindu Marriage Act (in short the "Act").

2. In a nut-shell the facts of the case are that appellant's marriage was fixed with Suresh Chander son of Diwan Chand (PW-6). Three days before the date of marriage, negotiation broke down. Then immediately she was engaged with the respondent and they were joined in marital tie on 27.4.1982 at Bhiwani. Respondent-husband lives in Village Kayla. Appellant and respondent lived at Village Kayla for a very short while and consummated the marriage. No. issue was born out of this wedlock.

3. Respondent-petitioner husband's contention in the lower Court was that appellant's settled marriage with Suresh Chand broke down on account of dowry. On being approached, he and his father willingly agreed to perform his marriage with the appellant. On 27.4.1982 this marriage took place. They never demanded any dowry. Appellant-wife lived with him on 3 occasions only-for one day after marriage, for few days at another occasion and for one month lastly. In January, 1986 she left her matrimonial home and

thereafter never resumed co-habitation with him. He persuaded her to come back, took Panchayats also, but she declined. She is a born resident of Bhiwani. As she was not having amenities of city life in village Kayla, she could not adjust herself in the village life and thus left the matrimonial home for ever. Her mother lodged a complaint against him whereby he and his relations were summoned by the Police. They suffered humiliation, but finally her mother compromised the matter. She also sent a complaint in his office with a view to disgrace him in his school also, where he is a Teacher. She also filed a complaint under Sections 493-A and 506 IPC against him and his family members, which is still pending. In that case also, they were summoned in the Court and are still facing humiliation. When she was living with him, her behaviour was cruel towards him and his family members. Even her correct age was not given at the time of marriage. Thus she treated him with cruelty and has deserted him. On both these counts, he claimed divorce u/s 13 of the Act.

4. The appellant-wife contested the petition and denied all the allegations of cruelty and desertion. Conversely her plea is that immediately after the marriage, her husband and his relations started demanding dowry. She was always taunted and tortured for not bringing sufficient dowry. She denied that her mother and later on she has falsely implicated her husband and members of her in-laws' family humiliate them. As she was harassed by them for bringing less dowry and they were continuously demanding more dowry and ultimately she was turned out of the matrimonial home in her wearing apparel, under these compelling circumstances, she filed that complaint. She also alleged that on 24.8.1988 her husband came to her parental home and at the point of knife asked her to agree for divorce. She was also forced to sign blank papers, but she declined. Her father died on account of this sorry state of affairs that she was not rehabilitated by the respondent. Her jewellery and valuables were kept by her in-laws. She and her brothers were beaten by the respondent-husband. Her relations persuaded the respondent to rehabilitate her, but he always declined. Once on their persuasion, he allowed her to live with him, but within 15 days again he turned her out after beating her.

5. The respondent-husband filed replication and denied the pleas raised by the appellant-wife and reiterated the same pleas which he earlier raised in his petition.

6. Parties adduced evidence in support of their allegations. On appraisal of parties' evidence, Trial Court came to the conclusion that the respondent- husband has proved that the appellant-wife treated him with cruelty and that she has deserted him without any reasonable cause or excuse. Thus a decree of divorce was passed in his favour on 4.5.1989.

7. During the pendency of the appeal, respondent-husband filed a petition under Order 41, Rule 27 read with Section 151 C.P.C. for permission to lead additional evidence. In this petition, he averred that during the pendency of this appeal, respondent was prosecuted under Sections 363, 366 and 376 I.P.C. vide FIR dated 31.3.1991 which was lodged by Manohar Lal at the instance of the appellant and her brother. In that case he

has been acquitted. Thus she tried to get him prosecuted for these offences also. This act also amounts to cruelty. He intends to produce Manohar Lal as his witness. His services have been terminated because of the false complaint lodged against him by the appellant. Alongwith this petition, he submitted his affidavit, affidavit of Manohar Lal and a certified copy of the judgment delivered in Sessions Case No. 10 of 1991, State v. Marari Lal, wherein he has been acquitted by Additional Sessions Judge, Hissar on 24.9.1991.

8. First of all, arguments on this petition were heard. The respondent could not satisfy as to how the affidavit of Manohar Lal and judgment delivered in Sessions Case No. 10 of 1991 by Additional Sessions Judge, Hisar is going to help this Court in determining the points in controversy in this appeal. From a bare perusal of the aforesaid judgment, it is evident that in that Sessions trial the complainant Manohar Lal and his daughter prosecutrix Shakuntla were examined. They did not support the prosecution story and hence accused Murari Lal (respondent) was acquitted of the charges under Sections 363, 366 and 376 IPC. If in this judgment there would have been any reference to the statement of Manohar Lal that he lodged the report against Murari Lal as a representation was made to him by the appellant and her brother that they was his daughter in the company of Murari Lal the position would have been slightly different. After the judgment if Manohar Lal has given any affidavit in respondent's favour, that is not going to help him in any way in this appeal. Hence on this count, the Petition 3936-C-II-92) is hereby rejected.

9. The appellant's learned Counsel vehemently contended that the respondent husband raised three heads of cruelty. Firstly, a false complaint was sent to his school, secondly a complaint was lodged by her mother against the husband and lastly she lodged a complaint under Sections 498-A and 506 IPC against the respondent which is still pending. He pointed out that as far as the first ground of cruelty is concerned, from the respondent's evidence it is evident that it was an unsigned complaint. Shyam Sunder Madan (PW-5) brought a photo copy of that complaint and had to admit that this is unsigned. Thus according to him, this anonymous complaint cannot be attributed to the appellant. He further stressed that from the statements of respondent himself and that of Amar Nath (PW-4) it is evident that on 2.6.1988 Mani Devi, mother of the appellant lodged a complaint Ex. P-2 with the Police which admittedly ended in a compromise. Thus he contended that as the allegations made in the complaint Ex. P-2 were correct, therefore, the respondent and his relations had to enter into a compromise and thereafter they rehabilitated the appellant for about a month and again she was turned out of the matrimonial home. Her jewellery and belongings were taken away by the respondent and his family members. As she was harassed for, dowry and was finally turned out of the matrimonial home after being beaten, she rightly lodged a complaint under Sections 498-A/506 IPC against her husband and his relations. At this stage, it cannot be said that she has lodged a false complaint, because that criminal case is still pending. Hence it cannot be said that merely by lodging that complaint, she has treated her husband with cruelty. The complaint lodged by her mother can also not be attributed to her. Thus

according to him, all the limbs of alleged cruelty are not proved.

10. So far as the point of desertion is concerned, he contended that from the evidence adduced by the parties, it is evident that she was harassed for bringing less dowry, she was beaten and finally was turned out of the matrimonial home. Thrice she came to live with the respondent, but every time she was maltreated and was sent back to her parental home. In these circumstances, it cannot be said that she has deserted her husband, rather her husband created such circumstances for her that she took refuge in her parental home. Thus the respondent is guilty of constructive desertion. He cannot be allowed to take advantage of his own wrong and seek a decree of divorce on these facts.

11. The respondent's learned Counsel submitted that the appellant is a born resident of city Bhiwani. Her marriage was to be performed with Suresh Chand on 27.4.1982. The respondent has produced the marriage invitation card mark A which proves this fact. Suresh Chand (PW-6) has also proved this fact. This engagement was broken according to the respondent and Maman (PW-3) as dispute arose about the dowry, but according to Suresh Chand as another girl was shown to him at the time of settlement of marriage. But dowry appears to be a reasonable cause for the breaking of that engagement. Even the appellant has admitted this fact. Within a week of 27.4.1982 this engagement was broken. Three days before 27.4.1982 she was engaged with the respondent and on the already fixed date of marriage i.e. 27.4.1982 she was married to the respondent. He stressed that from these circumstances it is evident that the question of demand of dowry could not have been there even after the marriage. The appellant and her brother have admitted on oath that at the time of engagement as well as at the time of marriage of the parties, there was no demand of dowry. The respondent and his father were happy with the marriage. According to him, in this background the appellant's evidence cannot be believed that immediately after the marriage on her first visit to the matrimonial home, the respondent and his relations started demanding dowry and on that count she was beaten and was finally turned out of the matrimonial home. He submitted that the real cause of forsaking the matrimonial home is the difference between village life and city life. Since her birth she is accustomed to live with the amenities of city life, in village those facilities were not available to her. That was the cause of her unrest and thus being dissatisfied she left the matrimonial home on her own. The respondent tried to bring her back and took Panchayats also, but could succeed in bringing her twice. After living with him for few days and finally for a month, she left for her parental home.

12. He further argued that her mother lodged a false complaint Ex. P-2 with the Police against the respondent and his family members. They were called by the Police and were thus humiliated and finally her mother compromised the matter. She has also lodged a report under Sections 498-A/506 IPC against the respondent and his relations. That criminal case is still pending in the Court. She also sent an anonymous complaint against him to School Authorities to get him terminated and now his service is terminated. Thus from this proved behaviour of the appellant, the respondent has successfully proved that she has treated him with cruelty and has deserted him finally. According to him, the Trial

Court has rightly granted a decree of divorce on these grounds in respondent's favour.

13. Their Lordships of the Supreme Court have held in [V. Bhagat Vs. Mrs. D. Bhagat](#), that:

"the mental cruelty in Section 13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, education level of the parties, the society they move in the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively ... If it is a case of accusation and allegations, regard must also be had to the context in which they were made."

14. In [Shobha Rani Vs. Madhukar Reddi](#), it is held that the word cruelty has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct which is adversely affecting the other. According to [Paramjeet Vs. Ranjit Singh](#), false, defamatory, malicious, baseless and unproved allegations made against the spouse to superior officers or authority amount to cruelty. The appellant-wife was in the habit of levelling allegations one after the other against her husband which could not be proved. On these facts, it was held that the wife treated the husband with cruelty. In [Asha Rani Vs. Raj Kumar](#), a Division Bench of this Court has held that conduct of the appellant was of such a kind as would make it impossible for a husband to live with her. On the proved facts, Letters Patent Appeal was dismissed.

15. In this case so far as anonymous complaint sent to the office of the respondent is concerned, husband cannot take advantage of that because by no stretch of imagination it can be said that the appellant was in any way instrumental in sending that petition. About the difference in age also, no evidence is adduced by the respondent. But from the parties' evidence, it is duly proved that the mother of the appellant lodged the complaint Ex. P-2, it is evident that it must have been lodged at the instance of the appellant. Admittedly she has filed a complaint under Sections 493-A/506 I.P.C. against her husband and his relations. That criminal case is still pending, At this stage, it cannot be said that this complaint is lodged on the basis of false allegations and charges, but at the same time it is apparent that the respondent and his relations are facing this criminal prosecution and earlier also they were called in the Police Station in connection with report Ex. P-2. Thus one prosecution after the other has shattered the mental peace of the respondent. He has stated that in the School also, even his students asked him

questions about dowry just to let him down.

16. Admittedly the appellant resided in the matrimonial home only at 3 occasions. Immediately after the marriage she lived with him for a day, thereafter at another occasion for 20/25 days and lastly for about a month. According to the respondent she is not living with him since Jan., 1986 despite his many attempts to bring her back. Even he took Panchayats to bring her back, but she declined to come back.

17. This is also an admitted fact that earlier she was engaged to Suresh Chand (PW-6). About a week before 27.4.1982 this engagement broke down because of demand of dowry. Three days before 27.4.1982 she was married to the respondent. It was made clear to them that her earlier engagement is broken because of dowry. The appellant and her brother have admitted that the respondent and his father did not make any demand of dowry at the time of engagement and even at the time of marriage. In this background, it is not believable that immediately after marriage, they all started demanding dowry and taunting or harassing her on that count. Conversely the respondent's plea stands to reason that she is an educated lady and is accustomed to the amenities of city life. She could not adjust herself in village life. She always felt the paucity of amenities of city life and hence she left the matrimonial home. When she was married, she was only Matriculate. After leaving her matrimonial home, she has completed her Prabhakar. On 2.6.1988 her mother lodged the complaint Ex. P-2 wherein the allegations of demand of dowry and maltreatment are made, but it ended in a compromise. On 7.7.1988 the appellant lodged the report Ex. P-I under Sections 493-A/506 IPC. That criminal case is still pending against the respondent. Thus from the parties' evidence, it is evident that she has treated him with cruelty. By remaining at her parental home continuously since January, 1986 did her Prabhakar course and by lodging the complaint, Ex. P-I she has proved that she has totally broken the marital tie. She has repudiated the marriage and has no intention to come back to her matrimonial home. Attempts for reconciliation were made in the Trial Court as well as in the High Court, but failed because she has put certain conditions for her rejoining him. If those conditions would have been with regard to her husband or his parents only, that could have shown her bona fides, but her conditions are very exhaustive. Those conditions further show that she really does not want to rejoin the respondent. Thus, I find that the Trial Court has not fallen into any error in decreeing the respondent's petition for divorce.