

(1985) 09 P&H CK 0021

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 152-M of 1984

Smt. Asha Rani

APPELLANT

Vs

Gurchain Lal

RESPONDENT

Date of Decision: Sept. 12, 1985

Acts Referred:

- Hindu Marriage Act, 1955 - Section 9

Hon'ble Judges: S.S. Sodhi, J

Bench: Single Bench

Advocate: Ved Parkash Sharma, for the Appellant; M.L. Sarin, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Sodhi, J.

The appeal here is by the wife seeking to challenge the decree for divorce granted to the husband on the ground of desertion.

2. The parties Asha Rani and Gurchain Lal were married in September, 1974. They lived together as husband and wife for some time but no child was born to them. Now since June 1979, they have been living apart.

3. It was the allegation of the husband, denied by the wife, that she had deserted him. The husband's plea being that she had left his house without cause or his consent. The wife, on the other hand, pleaded that she had been forced to live apart on account of the unpleasant atmosphere created in the house by her husband and his parents. It was further her case that her husband wanted her to study and join service, but as she could not study, he started misbehaving and compelling her to bring money, from her parents which she could not do as they were poor. It was on that account that she was turned out of the house.

4. The record shows that earlier too there had been litigation between the parties. On July 29, 1982 a petition u/s 9 of the Hindu Marriage Act, 1956, for restitution of

conjugal rights had been filed by the husband. This was dismissed as withdrawn on October 26, 1983, but before this date, on August 27, 1983 a petition for divorce, by mutual consent, was filed by the parties which was dismissed as withdrawn on September 1, 1983. It was the case of the husband that during the pendency of the petition u/s 9 of the Hindu Marriage Act, 1956, the wife had agreed to accept Rs. 10,000/- and to join him in seeking divorce by mutual consent. A sum of Rs. 10,000/- was then deposited by him with P.W-2 Harbhajan Singh, Sarpanch, of the wife's village and the petition was then filed. Later, however, she demanded more money and when this was not paid, she did not appear in Court and the joint petition had to be withdrawn.

5. The version of the wife, on the other hand, was that there had been no compromise between the parties in terms of which she had agreed to accept Rs. 10,000/- and to file an application for divorce by mutual consent. As regards her signatures, on the petition for mutual consent, her plea was that if her signatures there were proved, then they were obtained by misrepresentation by the husband's people.

6. A reading of the evidence on the record would show that despite the fact that the parties had been living apart since June, 1979, there is no mention of any Panchayat being sent by the wife to the husband to have him take her back. There is also no evidence of any complaint either to any Panchayat or police that she had been turned out of the house by her husband or his parents. All that the counsel for the appellant referred to here was evidence to show that a claim for maintenance had been preferred by the wife to the Army authorities in pursuance of which she was ordered to be paid some maintenance by her husband. This does not, however, denote any attempt at reconciliation.

7. Further, it is pertinent to note that it was the husband who had filed the petition for restitution of conjugal rights. This petition, the wife chose to contest, but as mentioned earlier, this was dismissed as withdrawn.

8. As regards the matter relating to the petition for divorce by mutual consent, admittedly, this bears the signatures of both the wife and the husband. Asha Rani sought to explain her signatures thereby deposing that she had signed 2 or 3 blank papers at the instance of Harbhajan Singh, Sarpanch. She stated in this behalf that he had come to her during the pendency of the petition for restitution of conjugal rights filed against her, by her husband. On his assurance that whatever he would do, would be for her welfare, she had signed these papers. Later, however, he suggested that she should grant a divorce to her husband by taking money from him, but she refused. This Harbhajan Singh, Sarpanch, was examined as witness by the husband and he admitted that for the purpose of the settlement between the husband and the wife, Rs. 10,000/- had been deposited with him by the husband. It is pertinent to note that no suggestion was made to him, as per the version of Asha Rani of her signatures being obtained by him on any blank papers. This explanation

of Asha Rani is clearly an afterthought.

9. Taking an over-all view of the circumstances of the case, in the context of the evidence on record, there can be no manner of doubt that all the necessary ingredients of desertion on the part of the wife stand established. In other words, desertion stands writ large. The decree for divorce granted on this ground thus warrants no interference in appeal.

10. This appeal is accordingly hereby dismissed. In the circumstances, however, there will be no order as to costs.