

## Jai Bhagwan Vs Kamlesh

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** April 27, 2005

**Acts Referred:** Hindu Marriage Act, 1955 â€” Section 13, 23, 23(1)

**Citation:** (2005) 2 DMC 430 : (2005) 140 PLR 659 : (2005) 3 RCR(Civil) 224

**Hon'ble Judges:** Nirmal Yadav, J

**Bench:** Single Bench

**Advocate:** Sumeet Goel, for the Appellant; S.M. Tripathi, for the Respondent

**Final Decision:** Dismissed

### Judgement

Nirmal Yadav, J.

This is husband's appeal against the judgment and decree dated 27.4.2001 passed by the Additional District Judge,

Panipat, vide which his petition u/s 13 of the Hindu Marriage Act, 1955 (in short, "the Act") for dissolution of marriage by way of a decree of

divorce, has been dismissed.

2. In brief, the facts are that marriage between the parties was solemnised on 12.11.1992 according to the Hindu rites and ceremonies. A son,

namely, Ayush Kumar was born out of the wedlock. As per appellant-petitioner, respondent created bad environment in his family immediately

after the marriage and caused several problems for the family members. Respondent's parents also instigated her to live with them at the parental

house. Initially, respondent requested the appellant to allow her to complete B.A. course at Kurukshetra. She was granted permission by appellant

to complete her education. Respondent, therefore, lived at her parental house most of the time. After completion of her studies, respondent started

living at her matrimonial home, but she misbehaved with appellant and even used abusive language. She refused to perform matrimonial obligations.

It is further alleged that appellant came to know later on, that respondent was having illicit relations with other persons. She had always been

pressurising appellant to allow her to live at her parental house. When appellant did not permit her to visit her parental house, she tried to kill

herself. Thereafter, appellant allowed her to visit her parental house. Respondent left the matrimonial home on 20.3.1998 without informing

anyone. Appellant, therefore, filed a complaint in Police Station Samalkha vide Rapat No. 12 dated 25.3.1998. Respondent returned to her

matrimonial home four months thereafter, but she did not disclose her whereabouts during the said period. Appellant summoned respondent's

father and appraised him of the above incident. Thereafter, respondent left the matrimonial home with her father along with all valuable articles.

3. The respondent controverted the allegations made in the petition. According to her, appellant and his family members treated her with cruelty on

account of bringing insufficient dowry. A demand of scooter and a sum of Rupees one lakh was made by the appellant. Respondent's parents gave

Rs. 45,000/- in cash to appellant on 14.9.1995 at the time of inauguration of their flour mill. Appellant's family tried to liquidate the respondent on

19.3.1998 by setting her on fire, however, she was saved by the respectables of the locality. She was given beatings on 20.3.1998 and was turned

out of the matrimonial home along with her son. Appellant along with some other persons snatched her son forcibly and even she was lifted in a car

and taken to an unknown place where she was kept for eleven days. Ultimately, she was pushed out of the car on 28.7.1998. Even Panchayats

were convened on several occasions by the parents of respondent to resolve the matter, but all in vain.

4. Both the parties led their evidence. After considering the evidence and facts & circumstances of the case, the Additional District Judge framed

the following issues:-

1. Whether the respondent developed illicit relations with other persons and she did the acts of cruelty as alleged and the petitioner is entitled for a

decree of divorce? OPA

2. Whether the petition is not maintainable?

3. Relief.

5. The Additional District Judge upon considering the pleadings of the parties and evidence brought on record, observed that appellant-petitioner

has miserably failed to prove his allegations of adultery as well as cruelty levelled against the respondent. The respondent was subjected to cruelty

in the matrimonial home, but still she expressed her desire to reside with the appellant. On the other hand, the appellant did not express any desire

to keep the respondent with him.

6. Aggrieved by the impugned judgment and decree, the appellant-husband has filed the present appeal. During the pendency of the appeal, this

Court awarded Rs. 1,000/- per month as maintenance pendente lite and a sum of Rs. 3000/-, as litigation expenses to the respondent vide order

dated 10.4.2003. Several dates thereafter were given to the appellant for complying with the order dated 10.4.2003, but no payment was made

by the appellant-husband.

7. During the pendency of this appeal, the respondent-wife has filed Civil Miscellaneous Application No. 11925-CII of 2003 praying that appeal

of Jai Bhagwan, appellant be dismissed as he has failed to pay the maintenance pendente lite as well as litigation expenses granted by this Court

vide order dated 10.4.2003. It is pleaded that appellant is having sufficient means, but he is intentionally not complying with the orders passed by

this Court. Therefore, the Court should dismiss his appeal. In support, the learned counsel referred to certain judgments of this Court in Bani v.

Parkash Singh (1996) 114 PLR 554; Amrit Pal Kaur v. Roshan Lal 2003(3) R.C.R. 103; Asha Rani Vs. Yash Pal, ; Harpreet Kaur v. Parminder

Singh 1991 CCC 217 (P&H) and Hema v. Parthasarathy 2002(4) R.C.R. 419. The appellant appeared in person along with his counsel and

made statement in the Court that he was unable to pay the maintenance pendente lite and litigation expenses. Learned counsel for the respondent,

therefore, argued that appeal be dismissed for non payment of maintenance pendente lite and litigation expenses as the appellant cannot take

advantage of his own wrong of disobeying the directions issued by this Court. Learned Counsel for the respondent argued that the Supreme Court

in Hirachand Srinivas Managaonkar Vs. Sunanda, , has held that refusal to pay maintenance by the husband amounts to "wrong" committed within

the meaning of Section 23(1)(a) and the trial Court was held to be justified in declining to allow the prayer of the husband to get a decree of

divorce.

8. On the other hand, learned counsel for the appellant-husband could not controvert the aforesaid argument raised by the learned counsel for the

respondent-wife nor could he cite any law contrary thereto.

9. After hearing the learned counsel for the parties, I am of the view that ends of justice would be served if the application of the respondent-wife

for dismissal of the main appeal, is accepted. Admittedly, the appellant-husband has not paid even a single penny to the respondent-wife in

pursuance of the order of this Court awarding her maintenance pendente lite at the rate of Rs. 1,000/- per month and a sum of Rs. 3,000/- as

litigation expenses, rather the appellant-husband made a statement in the Court that he is unable to make the payment. The appellant-husband was

specifically asked to make the payment of arrears of maintenance pendente lite and litigation expenses, if he wanted to get the appeal considered

on merits, but he straightaway refused to do so. Therefore, I find force in the contention raised by the learned counsel for the respondent-wife that

non payment of maintenance pendente lite amounts to committing wrong u/s 23 of the Hindu Marriage Act and on this ground, the appeal filed by

the appellant deserves to be dismissed.

10. In view of the observations made hereinabove, the appeal stands dismissed.