

(1991) 07 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 82-M of 1987

Ram Saran

APPELLANT

Vs

Santosh

RESPONDENT

Date of Decision: July 24, 1991

Acts Referred:

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

Citation: (1992) 1 DMC 334

Hon'ble Judges: M.S. Liberhan, J

Bench: Single Bench

Advocate: R.S. Mittal, Randeep Surjewala and R.K. Sharma, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

M.S. Liberhan, J.

This appeal arises out of an order dismissing the petition of the appellant for divorce.

2. The appellant was married to the respondent on 19.4.1988. At the same time the sister of the respondent was married to the younger brother of the appellant on the same date. The appellant sought divorce on the ground of cruelty and desertion. It was averred that the respondent is short tempered and her behaviour towards the family members is objectionable. She abuses, breaks utensils etc. It was further averred that the respondent claimed that she wanted to marry one Rajbir of Village Pillod and she was married to the appellant against her wish.

3. Admittedly, the respondent was taken by her father on 31.5.1984 from the house of the appellant and since then they have never lived together. The appellant has averred that they wanted to bring her to matrimonial home and went to her village, but proceedings u/s 107/151 Cr. P.C. were launched against the appellant alongwith his brother and brother-in-law. They were beaten by the Police at the instance of the

respondent.

4. The respondent refuted the averments made by the appellant and put forth her version of living separately by stating that after six months of the marriage the appellant and other family members started demanding dowry of Rs. 10,000/- and in the eventuality of her father having not met their demand, she was given beating and was turned out of the house.

5. The learned District Judge rejected the oral evidence led by the appellant on the ground that the witnesses are the relations of the appellant, as well as AW6 was further disbelieved on the ground of his having denied the execution of Exhibit R-4, alleged to have been executed in the Panchayat of 52 villages.

6. Oral evidence with respect to declaration by respondent of her intention of marrying Rajbir was not believed as the version of declaration of the respondent's desire to marry Rajbir was not mentioned in any of the earlier complaints. The learned Court below further believed the statement of respondent's father and respondent with respect to beating given to the respondent by simply relying on the statement of Hem Raj, RW 9 and because of pendency of proceedings u/s 107/151 Cr. P.C. at the instance of father of respondent. The learned District Judge further relied upon Exhibit R-4 in which the Gram Panchayat of 52 villages returned a finding that the appellant is at fault as he has been treating the respondent with cruelty. The learned District Judge dis-believed the statement of the sister of the respondent on the assumption that she is inimically disposed of towards the respondent and wants to kill her. The learned Counsel for the appellant contends that the learned District Judge has failed to appreciate the totality of the circumstances. The finding of the learned District Judge is based on the assumption that mere relationship is sufficient to dis-believe the oral evidence led by the appellant.

7. I have been taken through the evidence as well as the judgment and pleadings of the parties.

8. I find force in the contention of the learned Counsel for the appellant that mere relationship of a witness with a party is not by itself sufficient to condemn a witness as a liar or to reject his statement on the face of it. It is axiomatic that a man can lie and not the circumstances. A-3 is a complaint by respondent's father dated 3.2.1984, wherein it was alleged that both the sisters, Santosh and Krishana are being maltreated and dowry is being demanded. The averment made stands belied from the very fact that one sister is living happy married life with the brother of the appellant in the same house. Rather she has come forward in the witness box to controvert the allegations made by her sister and supported the version given by the appellant. Be that as it is, even the version with respect to demand of dowry has not been proved by the respondent by any cogent evidence. Rather the respondent has stated in her statement that demand of dowry was made but she never talked

to anybody with respect to this demand. Otherwise also, it cannot be accepted that dowry is demanded from one sister and not from the other particularly when the father accepts that no dowry has been paid as alleged to have been demanded. The learned District Judge has patently failed into error in relying on Ex. R-4 by taking it to be a compromise before the Panchayat between the parties. The reading of Exhibit R-4 which is dated 31.3.1986 shows that it was a finding by a committee constituted by the Panchayat. It is an opinion which is neither an opinion of an expert nor otherwise relevant to the issue. The Courts should be slow to rely upon opinion evidence of an extra judicial body. Admittedly, the proceedings u/s 107/151 Cr. P.C. were initiated on 6.7.1985. If the parties had compromised, there was no idea for continuing the judicial proceedings, Exhibit R-4 may be a piece of evidence, being an opinion of a third person with respect to the facts in dispute. The statement of respondent cannot be relied upon as she can go to an extent of denying her statement before the judicial officer in proceedings u/s 107/151 Cr. P.C. as well as her father's denial of execution of A-1, which the respondent admits to have been executed in proceedings u/s 107/151 Cr. P.C. where she unwittingly accepted the truth.

9. In view of the observations made above, it will be reasonable to hold that no demand of dowry was made. When there was no demand of dowry the very basis for the alleged cause of beating no more survives. There is no allegation that the allegation was ill tempered. No inference can be drawn with respect to maltreatment. Apart from this, it is the case of a broken marriage. Parties have never lived together since 1984. The respondent has been called again and again by this Court in an attempt to effect a compromise between the parties but she had refused to appear in this Court as also before the Lok Adalat. It would be reasonable to infer that she does not want to live in the matrimonial home of her husband. The burden of proving that she was living separately for a sufficient cause was on her. Living separate is not disputed. She having failed to discharge the onus, it would be reasonable to return a finding in favour of the appellant that she has deserted her matrimonial home without there being any sufficient cause.

10. For the reasons recorded above, the appeal is accepted, the judgment and decree of the trial Court is set aside and the decree of divorce is granted.