(2006) 07 P&H CK 0224

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Gurjeet Singh		APPELLANT
	Vs	
Amarjit Kaur		RESPONDENT

Date of Decision: July 4, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 406, 498A

Citation: (2007) 146 PLR 673 : (2007) 2 RCR(Civil) 36

Hon'ble Judges: Uma Nath Singh, J; S.D. Anand, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

S.D. Anand, J.

The present appeal is directed against the judgment dated 20.12.2005 vide which the learned Trial Judge non-suited him on a divorce plea, which he had preferred against the respondent-wife on the allegations which may be indicated as under:

2. The parties were married on 31.12.2000 at Village Biwipur, Tehsil Kharar, Distt. Ropar as per an Anand Karaj Ceremony. The appellant is a serving defence personnel and he used to be mostly away from the matrimonial house "which give chances to the respondent for searching of greener pastures." The averment in the context was the respondent is a lady of easy virtue. The respondent misbehaved with the appellant and members of the family from the very first day of the marriage. She crossed "the limits of her cruelty" when she got a false F.I.R. (No. 49 dated 9.4.2002, under Sections 406/498A I.P.C.) registered against the appellant and members of his family. In short, the appellant pleaded for the grant of a decree of divorce on the plea that the respondent treated him and members of his family with cruelty from the very first date of the marriage and her acts of cruelty culminated in lodging of the F.I.R. aforesaid by her on 9.4.2002. The other plea put forward was regarding adulterous character of the respondent. It was further alleged in the

petition that the respondent deserted the appellant without any sufficient cause and started putting up at her parental house.

3. The respondent denied the attributed plea on point of the cruelty and adulterous character. She did, however, concede having lodged the indicated F.I.R. because the appellant and his members of the family were inflicting dowry-related torture upon her.

4. The trial proceeded on the following issues:

(i) Whether the respondent has treated the petitioner with cruelty? OPP

(i-a) Whether the respondent is leading an adulterous life? OPP

(ii) Relief.

Issue No. 1-A was framed by learned trial Judge on 7.9.2005.

5. The learned trial Judge recorded findings adverse to the appellant-husband under both the issues and negatived the plea of divorce.

6. We have heard the learned Counsel for the parties and perused the record. (For facility of reference, the learned Counsel for the parties made photo copies/carbon copies of the pleadings and the evidence record at the trial available to the Court).

7. The learned Counsel for the appellant, while assailing the finding recorded by the learned trial Judge under Issue No. 1, argued that there could be no better example of an act of cruelty than the lodging of a false F.I.R. by a daughter-in-law against her husband and members of her in laws'' family.

8. The plea was resisted by the learned Counsel for the respondent by arguing that there is nothing at all objectionable in the lodging of the impugned F.I.R. as the respondent had been impelled to resort to that course of action on account of dowry-related torture inflicted upon her by the appellant and members of his parental family.

9. It may be noticed, at the very outset, that the onus to prove cruelty was upon the appellant. As evident from the perusal of the petition itself, the tenor of frame thereof is suggestive of the fact that the respondent committed acts of cruelty viz-a-viz the appellant and members of the parental family from the very beginning of the marriage. However, the petition is conspicuously silent on point of the particulars of date and timing at which the respondent had committed the various acts of cruelty in the context. The learned trial Judge had appropriately noticed in the course of judgment that the appellant has not mentioned any specific instance of cruelty nor has he indicated the time and place where those acts had been allegedly committed. It is illogical for the appellant to plead that the lodging of FIR aforesaid by the respondent on 9.4.2002 amounted to the culmination of the acts of cruelty on the part of the respondent, particularly because no other specific act of

cruelty has been pleaded.

10. It would be relevant to point out that the respondent has been able to prove that she had been subjected to dowry related torture. In so far as the appellant is concerned, he made a categorical averment in the petition that it was a simple marriage, as no gifts or dowry articles were given. The respondent categorically averred in the reply that sufficient articles of dowry were given at the time of marriage. She denied that the marriage between the parties was solemnized in a simple manner. The cat would be out of bag if we peruse the testimony of PW-2 Puran Singh, a village-mate of the appellant. Though he had averred in the affidavit Ex.PA-2A that the marriage was solemnized in simple manner and that no gifts/dowry articles were given, he had to concede in the cross-examination that a gold bangle and a wrist was given to the appellant and that "the dowry articles were taken through a tractor trolley to the house of the appellant." It is obvious enough that if the marriage was a simple affair, as averred by the appellant, there would have been no occasion for the carriage of the dowry articles in the tractor-trolley. Obviously, number and nature of the dowry articles was large enough which had to be transported in a tractor trolley.

11. The present is, even otherwise, a case in which the petition is woefully deficit on point of particulars of cruelty. We have, thus, no hesitation in affirming the finding recorded by the learned trial Judge on Issue No. 1.

12. The learned Counsel for the appellant, then, argued that the finding recorded by the learned trial Judge under Issue No. 1-A deserves invalidation in view of the fact that the respondent had been leading an adulterous life and that allegation is borne out by the fact that a child was born to the respondent on 27.10.2002 when the conception had taken place during the period he had no access to her. In support of that averment, the learned Counsel invited our attention to Ex.P-6 and P-7 which purport to document the leave period availed of by the appellant. It was argued that a perusal thereof would indicate that the respondent had been on duty during the period the child was conceived. It was further argued that the refusal by the Trial Court to rely upon these arguments deserves invalidation.

13. The plea was resisted by the learned Counsel for the respondent who argued that the onus was upon the appellant only to have examined an official from the Army Officer to make a record based statement in the matter of the leave availed by the appellant. The production of that official and record only, the learned Counsel proceeded to argue, could have legally proved Ex.P-6 and P-7, which are otherwise proved to have been merely tendered into evidence at the trial.

14. The plea on behalf of the appellant deserves to be negatived. Even at the cost of repetition, it may be recalled that the appellant is a serving Army Personnel. As PW-1, he conceded in the course of cross-examination, that "I do not know the name of the record which is maintained by the Army Authorities from the beginning

till the retirement of army personnel.... I do not know whether the record containing the details of leave period, place of posting, temporary duty, birth and death etc. is known as T.O. Part -II orders. Our record is maintained in our office situated in the area of State Assam. It is correct that record of our unit is moved where the unit is shifted.... It is correct that Head Clerk of our unit put his initial on the record of our unit. It is correct that a tern-porary out pass is given to the soldier for their temporary outing.... I do not know if the L.R.C. plus movement record is issued. It is correct that I remained on leave in my house for 15 days during my stay at Ferozepur." It would be pertinent to point out here that the father of the appellant (PW-5 Kaka Singh) also conceded in the cross-examination that "It is correct that a service record is prepared for the military man which is known as T.O. Part 2 order. I remained posted at different stations during my service. The entire particulars regarding the family and leaves taken by the army man and his posting etc. is mentioned in the abovesaid record." That statement assumes added importance particularly in view of the fact that PW-5 Kaka Singh is also an ex- army personnel.

15. As would be evident from a perusal of the above quoted testimony of none-else or other than the appellant himself, he has not been able to prove that he had no access to the respondent during the relevant period. It was incumbent upon him to summon relevant official who could make a record based statement about the various postings, the appellant had and also the period of leave which he had availed of at different points of time. The mere fact that PW-5 i.e father of the appellant claimed to have received Ex. P-6 and Ex.P-7 from the Army authorities is not sufficient to hold that these documents stand formally proved. The mere tendering of these documents into evidence was obviously not enough for the legal reception thereof. The fact of its averred receipt in an army envelope (Ex.P-2) is also inconsequential because PW-5 Kaka Singh conceded that such like envelopes are available free of cost to the army personnel.

16. There is force in the plea on behalf of the respondent that the averments made by the appellant regarding her adulterous character are misconceived and, by themselves, constitute an act of cruelty. As already noticed in an earlier part of this judgment, the appellant has not been able to prove his non-access to the respondent during the period of second child was conceived. No. D.N.A. test was got conducted to determine the legitimacy. The child was born during the subsistence of the marriage. There is a non-rebuttable presumption in the circumstances of the case that the respondent had given birth to second child from the loins of the appellant.

17. In so far as the oral evidence adduced by the appellant is concerned, it does not deserve any credence. In the cross-examination, PW-2 Puran Singh conceded that " I do not know what has been written in my affidavit Ex. PW-2A. I did not come to know regarding the fact of illicit relation of respondent with any some other person. This fact was neither disclosed by the parents of the appellant nor the co-villagers."

18. PW-3 Balbir Singh, a close relation of the appellant, conceded that it is the co-villagers who had informed him that the character of the respondent was not good. He did not name those co-villagers from whom he derived that information. His testimony in the context cannot, thus, be considered to be substantive in character, PW-4 Gulab Singh also did not indicate any precise source from which he derived information about the alleged adulterous conduct of the respondent.

19. PW-5 Kaka Singh, who is the father of the appellant has also not indicated any act or cruelty on the part of the respondent nor has he given any idea about the persons with whom the respondent allegedly had adulterous contact.

20. The reliance placed by the learned Counsel for the appellant upon Ashok Kumar Vs. Smt. Vijay Laxmi, ; Rama Kanta v. Mohinder Laxmidas Bhandula (1995) 111 P.L.R. 30 and Rajan Vasant Revankar Vs. Mrs. Shobha Rajan Revankar, is thoroughly misconceived. Insofar as Ashok Kumar''s case (supra) is concerned, it had been found as a fact in that case that the wife had made false allegation that her husband attempted to set her ablaze by dousing her in kerosene oil. In the present case, there is nothing at all to suggest that the dowry-related allegations levelled by the respondent are false, Rama Kama''s case (supra) was also based upon entirely different facts. In that case the wife was proved to have held out threats to commit suicide and she had also attempted suicide. Besides it, she was proved to have been disrespectful towards her in -laws and her behaviour at the matrimonial house had been proved to be far from cordial. In Rajan Vasant Revankar''s case (supra) also, the facts were entirely different. In that case, the wife was proved to have levelled wild, reckless and scandalous allegations against her mother-in-law, two sisters in-law and brothers-in-law and the allegations were repeated in a subsequent letter. The wife had averred (showered?) abuses upon her in-laws relations in filthy words. All sorts of illicit relations had been attributed to them and they had been compared with prostitutes. They were further described as women who are capable of pocketing any number of men by showing them their white skin and flesh. The finding recorded by the trial Judge under issue No. 1-A shall stand affirmed.
21. No other point was argued.

22. The present is, thus, a case in which the appellant did not at all indicate the period w.e.f. which the date respondent had deserted him. No specific acts of cruelty were indicated in the appeal, except the fact of respondent having lodged an F.I.R. which is not proved on record have contained allegations suffering from the vice of falsity. If the wife levels false allegations against her husband and members of in-laws family, it would certainly constitute an act of cruelty. At the same time, the mere fact of lodging of F.I.R. would not ipso facto indicate an act of cruelty on the part of the wife, particularly when truthfulness or falsity of the allegations contained in the F.I.R. has not yet been adjudicated upon and there is evidence available on the file to prove that the wife had been subjected to dowry related torture.

23. The trial Court had duly noticed and discussed all these facts, along with the relevant pleas raised before it. The line of reasoning adopted by the learned trial Court is reliable to the material obtaining on the record and is in order.

24. It can, thus, be safely culled upon from the above discussion that the appellant has not been able to prove any case for invalidation of the finding recorded by the learned trial Judge negativing the divorce plea applied for by the appellant. The appeal shall stand dismissed. In the peculiar circumstances of the case, which have been noticed in the judgment, the dismissal of the appeal is ordered with costs of Rs. 10,000/-which amount shall be payable to the respondent-wife.