

(2013) 05 P&H CK 0209

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. M-74 of 2007

Harbir Singh

APPELLANT

Vs

Smt. Raminder Kaur

RESPONDENT

Date of Decision: May 23, 2013

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13, 23
- Penal Code, 1860 (IPC) - Section 406, 498A

Citation: AIR 2013 P&H 145 : (2013) 171 PLR 642

Hon'ble Judges: Rekha Mittal, J; Rajive Bhalla, J

Bench: Division Bench

Advocate: J.S. Chahal, for the Appellant; Kanwaljit Singh and Tarun Jaitly, for the Respondent

Final Decision: Dismissed

Judgement

Rekha Mittal, J.

The present appeal lays challenge to the judgment and decree dated 12-9-2006 passed by the Additional District Judge (Ad hoc), Amritsar whereby the petition filed by Harbir Singh appellant for dissolution of marriage of the parties by a decree of divorce u/s 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as "HMA"), has been dismissed. The marriage of the parties was performed on 9-12-1990 according to Sikh rites and rituals at Amritsar. Two male children namely, Harkanwaldeep Singh and Shabaj Singh were born on 3-9-1991 and 16-1-1996, respectively, out of this wedlock. As per averments of the appellant, the conduct and behaviour of the respondent was not good towards him. She used to taunt and humiliate him on trifles. The respondent had been proclaiming that she has no respect for the appellant. The respondent is arrogant, rude and used to mix up with other male members which was to the disliking of the appellant. On 3-9-2001, the respondent was caught talking to an unknown person on telephone about sex. When the appellant objected, she took up a quarrel and left the matrimonial home

leaving the minor children with the appellant. The respondent has no intention to live with the appellant and their children and is guilty of deserting the appellant without any sufficient cause. The behaviour and conduct of the respondent has caused mental as well as physical cruelty to the appellant. She has filed a criminal complaint under Sections 406 and 498-A, IPC by levelling false and baseless allegations against the appellant and Sukhwinder Kaur, his sister. He has sought decree of divorce on the grounds of cruelty and desertion.

2. In the reply, the respondent controverted the allegations raised by the appellant and in turn, set up a plea that she was being harassed and subject to cruelty and beatings for bringing insufficient dowry. She always remained ready and willing to live with the appellant. She did not leave the matrimonial home voluntarily as she was turned out by the appellant.

3. The controversy between the parties led to framing of following issues by the trial Court:--

1. Whether the respondent has treated the petitioner with cruelty? OPP

2. Whether the respondent has deserted the petitioner without any sufficient cause? OPP

3. Relief.

4. The trial Court permitted the parties to lead evidence in support of their respective claims. The appellant appeared in the witness box and examined Bachan Singh, PW-2, Gurdial Singh PW-3, Sukhbir Kaur PW-4 and Harkanwaldeep Singh PW-5. The respondent, in rebuttal, examined Jail Singh RW-1 and Charanjit Singh RW-2, besides herself.

5. After hearing counsel for the parties and perusing the records, the learned trial Court recorded findings against the appellant and resultantly, the petition was dismissed.

6. Feeling aggrieved against the order passed by the learned trial Court, the present appeal has been preferred by Harbir Singh, appellant.

7. Counsel for the appellant submits that the trial Court committed a grave error as it failed to correctly appreciate that the respondent is guilty of subjecting the appellant to cruelty and left the matrimonial home in September, 2001 with an intention to put an end to marital ties. The respondent never made any effort for resumption of co-habitation which is sufficient to establish her intention that she is no longer interested in this matrimony. The appellant has led sufficient evidence on record to establish his plea that the respondent is guilty of cruelty and desertion to become eligible to relief of divorce. The plea of appellant that the respondent had been talking to one Rajwinder Singh, a stranger to the family, finds corroboration from the testimony of Harkanwaldeep Singh PW-5, son of the parties. It is argued

with vehemence that no child would depose against his/her mother if he/she has no grievance to express. The respondent while leaving the house gave in writing that she is interested to get divorce from her husband, therefore, the appellant is entitled to get a decree of divorce on the ground of desertion.

8. Counsel for the respondent, on the contrary, argues that no fault can be found with the findings recorded by the learned trial Court which are based upon a detailed consideration of the pleadings, evidence adduced as well as judgments cited by the appellant in support of his plea. It is further argued that as the appellant failed to lead any tangible evidence on record, which can validly constitute a ground for divorce, the learned trial Court has rightly rejected the plea of the appellant that respondent is guilty of either cruelty or deserting her husband.

9. We have heard counsel for the parties and perused the records.

10. Before we proceed to adjudicate the merits of this case, it is appropriate to recapitulate the legal position as to what constitutes cruelty to become a ground for divorce. The term "cruelty" has not been defined under the HMA, may be for the reason that no comprehensive definition of cruelty is possible which can take in its veil all acts and conduct which can constitute cruelty, sufficient to get relief of divorce. However, there is no dispute that cruelty includes mental and physical cruelty.

11. A perusal of the allegations set out by the appellant would reveal that the appellant has levelled general and vague allegations against his wife with regard to her conduct during her stay of more than 10 years in the matrimonial home. Such like uncertain and vague allegations, in our considered opinion, cannot become a ground for divorce. The appellant has raised a plea that on 3-9-2001, the respondent was found talking to an unknown person regarding sex. During the course of evidence, name of the unknown person was introduced by the appellant. If the appellant knew the name of this person on 3-9-2001 itself, there was no reason for him to conceal this fact while filing the petition, after about three years. The respondent is admittedly working as a nurse in a hospital at Amritsar. As per the requirements of her profession, she may have to deal with men folk in regard to their treatment for various ailments. The appellant has failed to lead any cogent and convincing evidence to substantiate his plea that the respondent is guilty of such a conduct which can constitute cruelty to form basis for a decree of divorce. We do not find any error or infirmity in the findings recorded by the learned trial Court rejecting the claim of the appellant that the respondent is guilty of conduct of the type which has rendered it difficult for the complaining spouse to live with her.

12. The appellant has also prayed for grant of divorce on the plea that the respondent has left the matrimonial home with an intention to put an end to their marital ties rendering herself guilty for deserting him without any reasonable cause. To prove desertion, the appellant has to establish (i) separate living of the parties for

two years before the filing of the petition; and (ii) animus deserendi. The appellant has placed reliance upon a writing Ex. PX to establish his claim. The respondent, during her examination as a witness before the trial Court admitted her signatures on the writing Mark "A" later Ex. PX. The document Ex. PX, is a small writing running into two lines and its translation in English from Punjab script reads as follows:--

I am taking divorce from my husband Harbir Singh according to my wish.

Raminder Kaur
d/o S. Balwant Singh
VPO Hayat Nagar
District Gurdaspur.

13. As per the plea of the appellant, the respondent left this hand written note with him when she left the matrimonial home on 3-9-2001. It has come on record that on 3-9-2001 there was quarrel between the parties which led to the respondent leaving the matrimonial home. If the respondent in a fit of rage has given in writing to her husband that she intends to take divorce, the same is not sufficient to constitute her intent to seek divorce from her husband. In a petition for divorce is not the result of collusion, undue influence or fraud. The writing Ex. PX in no circumstances can constitute estoppel against the respondent to contest the claim of the appellant much less can it be treated as a consent of the respondent to get a decree of divorce from her husband. The appellant cannot take advantage of writing Ex. PX to prove his case. This apart, the appellant filed the petition for divorce in January, 2004. There is nothing on record to suggest that the appellant made any effort to bring the respondent back to the matrimonial home. As per the settled law, a party approaching the Court for a matrimonial relief cannot be allowed to take advantage of his/her own wrong, in view of the provisions of Section 23 of the HMA. The appellant in para 8 of the petition has clearly pleaded that it has become impossible for him to live in the company of the respondent any more who has given him cause of action to file the petition for divorce. On the country, the respondent in her pleadings as well as during course of evidence has asserted that she is always ready and willing to live with her husband. The appellant and the respondent appeared before this Court on 9-5-2013. During interaction with the parties, the respondent was candid enough to state that she is ready to resume cohabitation with her husband and is not willing to part ways. However, the appellant refused to accept the proposal given by the wife. Keeping in view the conduct of the parties during proceedings before the trial Court as well as in the appeal, the pleadings and the evidence on record, we find it difficult to accept the contention of the appellant that the respondent is guilty of deserting the appellant with an intention to snap marital ties. We find no error in the findings recorded by the learned trial Court that the respondent is neither guilty of cruelty nor of desertion. In view of what has been discussed hereinabove, there is no merit in this appeal and the same is accordingly dismissed. No order as to costs.