

(2014) 07 P&H CK 0855

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. M-296 of 2012

Jasvir Kaur

APPELLANT

Vs

Harjinder Singh

RESPONDENT

Date of Decision: July 11, 2014

Acts Referred:

- Hindu Marriage Act, 1955 - Section 24

Citation: AIR 2014 P&H 187

Hon'ble Judges: S.S. Saron, J; Navita Singh, J

Bench: Division Bench

Advocate: Anil Kumar Garg, Advocate for the Appellant

Judgement

Navita Singh, J.

Learned counsel for the appellant has been heard. Respondent was proceeded against ex parte vide order dated 24.1.2014. The present appeal has been filed against the judgment and decree dated 20.08.2012 passed by District Judge, Fatehgarh Sahib, vide which the petition filed by Jasvir Kaur-appellant-wife was dismissed.

2. The case of the appellant, in the petition filed by her, was that the marriage between the parties took place on 19.11.1997 at village Bilaspur, District Fatehgarh Sahib by Anand Karaj Ceremony and one female child was born out of the wedlock. After the marriage, the respondent and his family members started maltreating the appellant and demanded various dowry articles including a motor-cycle. They started creating dispute over trivial matters and even beat the appellant. The respondent was a drug addict and used to consume some capsules and under intoxication, he used to subject the appellant to physical torture. The appellant tried to persuade the respondent to treat her properly but all her entreaties fell on deaf ears. The parties were residing separately for more than two years before the date of presentation of the petition and the respondent had deserted the appellant

without any reasonable cause.

3. The respondent, admitting the marriage and the birth of the child, took a defence, denying the allegations on the ground that she had based her case on falsehood. There was no demand of dowry nor the appellant was ever physically or mentally tortured on account of dowry or for any other reason. Whatever she had stated was a bundle of lies. It was pleaded that rather the appellant was a careless woman and did not perform the marital obligations. She used to leave matrimonial home without information to the respondent or any other family member and did not take proper care of the daughter even. It was denied that the respondent was addicted to any kind of intoxicating stuff. It was admitted that the parties were residing separately for the period stated by the appellant but it was not admitted that the respondent had deserted the appellant. She had left the matrimonial home on her own and it was she who had actually deserted the appellant. The respondent along with his mother and some relatives including Gurbax Singh and Kuldeep Singh visited the parental home of the appellant for requesting her to return to the matrimonial home but the efforts proved fruitless.

4. The following issues were settled by the court below:--

"1. Whether the respondent had treated the petitioner (now appellant) with cruelty?
OPP

2. Whether the respondent has deserted the petitioner (now appellant) continuously for a period of two years immediately preceding of filing of this petition, without any reasonable cause and excuse? OPP

3. Relief."

5. It may be pointed out, at the outset, that it is mentioned in paras 7 and 11 of the impugned judgment that the defence of the respondent was struck off vide order dated 4.5.2012 because he had not paid anything towards the maintenance fixed by the trial Court under Section 24 of the Hindu Marriage Act (Act for short). It is mentioned that the application filed under Section 24 of the Act was allowed and maintenance to the tune of Rs. 3500/- per month was granted to the appellant and her daughter apart from litigation expenses from the date of filing the application i.e. 5.5.2011. A warning was issued to the respondent vide order dated 19.4.2012 that in case the maintenance was not paid by him, his defence would be struck off. He did not comply with the order and his defence was struck off on 4.5.2012. However, a perusal of the record shows that the case was not even fixed for 4.5.2012, what to talk of the defence of the respondent having been struck off on that date. A perusal of the entire order-sheet of the court below shows that there was no order at any place regarding striking off the defence of the respondent. Furthermore, it is mentioned in para 7 of the judgment that maintenance was granted at Rs. 3500/- per month together with litigation expenses of Rs. 10,000/- whereas the order on the application under Section 24 of the Act passed by District

Judge, Fatehgarh Sahib on 8.5.2010 shows that maintenance and litigation expenses were quantified at Rs. 1000/- per month and Rs. 5000/- respectively. Thus, it is clear that the defence of the respondent was not struck off at any time during the proceeding.

6. There is another mistake in the order of the trial Court in para 11 of the judgment where it is mentioned that the respondent appeared as his own witness as RW1. The daughter of the parties Jaspreet Kaur appeared as RW2 and after the examination of the said two witnesses, the defence of the respondent was struck off vide order dated 4.5.2012. This is again a mistake because the statement of the respondent was recorded on 22.5.2012 and that of Jaspreet Kaur on 8.6.2012, therefore, there is no question of striking off the defence on 4.5.2012 "after" the statement of two witnesses were recorded. In any case, it has already been noticed above that there is no such order passed on 4.5.2012.

7. Regarding merits of the case, learned counsel for the appellant argued that the appellant had proved that she was treated with cruelty and that she had always been tortured for not bringing adequate dowry and there was no demand of motor-cycle. She further stated in her evidence that the respondent used to take some capsules and drugs and under the influence of drugs, he used to subject her to physical and mental torture. The father of the appellant appeared as PW2 and supported the version of his daughter. However, on the other hand, besides the respondent himself, Jaspreet Kaur, daughter of the parties, appeared as RW2, who was 13 years of age at the time of her testimony and stated that her father never maltreated her mother. The trial Court held that the case of the appellant received fatal blow when Jaspreet Kaur, daughter of the parties, deposed against her mother. It was observed that as a child she was the most natural witness. Heavy reliance was placed on her testimony by the court below and it was also held that father of the appellant appearing as PW2 had only halfheartedly stated that his son-in-law did not keep good health and was addicted to intoxicants. The court had put specific question to the appellant whether she was willing to live with the respondent, to which she replied in the negative.

8. So far as the statement of Jaspreet Kaur is concerned, it appears that undue weightage was given by the trial Court to her evidence. There is ample possibility rather probability that the child had been poisoned against her mother by the respondent and his family and was under their influence. Any particular date of desertion is not given but it is pleaded by the appellant in her petition that the parties were living separately for more than two years preceding the date of petition. The petition was filed on 17.9.2009. This would mean that the parties were living separately at least since August/September 2007. Jaspreet Kaur was examined in the court on 8.6.2012 when she gave her age just as 13 years. In 2007, she must be somewhere around 8 years old. It is very difficult for the child to remember the details of the matrimonial discord between her parents and to say that her mother

had left at the instance of her (appellant's) mother. She was brought as a witness in court and deposed that her father had never beaten her mother and never demanded dowry. It is not understandable as to how a child of tender age could depose whether her father treated her mother with cruelty or not specially with regard to matters which could be in the knowledge of elders only. The trial Court erred in basing its judgment on the evidence of Jaspreet Kaur alone.

9. Bringing Jaspreet Kaur, daughter of the parties, in the witness box after tutoring her and using her in an effort to convince the court about the cruelty allegedly purported by the appellant on the respondent, rather reflects on the deprecable conduct of the respondent who did not even spare his child and used her as a tool. He succeeded in his malicious motive insomuch as the court below was taken in and practically granted the decree of divorce only on the basis of statement of Jaspreet Kaur. It is seen that though it was for the appellant, who was the petitioner, to prove her case, yet onus becomes immaterial after parties have led their evidence, and so, the evidence of the respondent would be equally important. He had categorically mentioned in his written statement that his mother along with other relatives including Gurbax Singh and Kuldeep Singh had visited the parental house of the appellant for requesting her to return to the matrimonial home but to no avail. However, none of those witnesses was examined and when it was suggested to the appellant in her cross-examination that her mother-in-law along with said two persons went to the house of the appellant for bringing her back, she categorically replied in the negative.

10. It has already been observed above that the trial Court had put a specific question to the appellant as to whether she was willing to live with the respondent, to which she replied in negative and the reason given by her was that her husband was drug addict and was doing nothing and, therefore, she did not want to live with him. The court held that the actual reason for separation of the parties was the illness of the respondent and not on account of any cruelty on the part of the respondent. This conclusion by the trial Court is quite far-fetched because since the appellant is seeking divorce, she would naturally have said that she did not want to live with her husband. If the husband is addicted to drugs and is not earning anything, this itself is cruelty to the wife. Sukhdev Singh father of the appellant cannot be said to be an interested witness because he being the father was well conversant with the facts of the case and it is quite natural that the daughter would narrate her woes to her parents.

11. Regarding desertion, the trial Court erred in holding that the appellant was not deserted by the respondent. There is no need to give any particular date of desertion in each case. It was sufficient that the appellant had stated that she had been living separately from the respondent for more than two years before presenting the petition because she had been treated with cruelty. Even if the wife was compelled to leave the matrimonial home due to the conduct of her husband

and family, it would amount to desertion by the husband. No cross-examination was conducted on the appellant on this point. It was not even suggested to her that the parties were not living separately for the period stated by her and/or that the separation has not taken place due to cruelty by the respondent. Rather period of separation was admitted but desertion was denied.

12. Sukhdev Singh, PW2 has also stated that his daughter was being treated cruelly in the matrimonial home but there was nothing in his cross-examination on that count. Even in the cross-examination, the witness maintained his stand that his son-in-law i.e. respondent was addicted to intoxicants and consumed Proxiron capsules. Nothing was put to the appellant and her father that the former had not been deserted by the respondent.

13. This appeal was heard ex parte against the respondent, who had refused to accept" notice sent by this Court. It is, thus, clear that he is not bothered about the result of the appeal. He did not say before the trial Court that he was willing to keep the appellant as his" wife nor he appeared before this Court to contest the appeal. It seems that he has contested the petition before the trial Court just for the sake of harassing the appellant and without any intention to rehabilitate her. If he intended to live with his wife, he would have come forward to contest the appeal as well. In view of the detailed discussion made above, judgment and decree passed by the trial Court are reversed. The appeal is allowed and the marriage between the parties is dissolved by a decree of divorce. Decree sheet be drawn up accordingly.