

Darshan Kumar Vs. Manju Rani

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Court : Punjab and Haryana

Decided On : Mar-05-1991

Reported in : II(1991)DMC414

Judge : A.L. Bahri, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13 and 23; Evidence Act - Sections 145

Appeal No. : F.A.O. No. 144-M of 1987

Appellant : Darshan Kumar

Respondent : Manju Rani

Advocate for Def. : J.C. Nagpal and; Sanjiv Dharwal, Advs.

Advocate for Pet/Ap. : R.S. Cheema and; Rajiv Trikha, Advs.

Disposition : Appeal dismissed

Judgement :

A.L. Bahri, J.

1. Darshan Kumar, the husband, filed a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage against his wife, Manju Rani which was dismissed by the District Judge, Kurukshetra, on June 15, 1987. Darshan Kumar

has come up in appeal.

2. The marriage between the parties was solemnised on June 5, 1979, at Karnal. After the marriage they lived at village Siwan, District Kurukshetra. Two children were born out of the wedlock. Unfortunately both of them died. The spouses separated and the husband filed a petition for divorce on the ground of cruelty in 1984 which was dismissed on December 18, 1985 by Additional District Judge, Kurukshetra. An appeal was filed in the High Court which was dismissed by the Division Bench at the motion hearing observing that on the facts stated in the written statement filed by Manju Rani in that case the husband could file a fresh petition for divorce. This order was passed by the High Court on March 6, 1986. Darshan Kumar filed the present petition on May 27, 1986 for dissolution of marriage on the ground of cruelty in view of the facts stated by Manju Rani in the written statement filed in the previous case. Those facts which constitute cruelty were stated to be as under:

- '(i) That the petitioner wants to get rid of the respondent because he wants to re-marry another girl,
- (ii) That he demanded additional dowry as he was not satisfied with the dowry already carried by her;
- (iii) That her parents-in-law and Jeth tried to strangulate her, dump her body in a gunny bag; remove it in a taxi and dispose it off;
- (iv) That he has been writing threatening letters; and (v) That he fabricated services record by erasing his date of birth.'

3. The petition was contested by Manju Rani, inter alia, on the grounds that the present petition was barred by the principle of res judicata. The allegations of cruelty were denied. The ground of desertion taken were also disputed. On the pleadings of the parties the following issues were framed:

- (1) Whether the respondent has, after the solemnisation of the marriage, treated the petitioner with the cruelty ?

(2) Whether the respondent has deserted the petitioner for a continuous period of not less than 2 years immediately preceding the presentation of the petition ?

(3) Whether the previous litigation between the parties is res judicata 1

(4) Relief.

The trial Court held that the husband had failed to establish that the wife had treated him with cruelty under issue No. 1. The judgment in the previous case was held to be not operating as res judicata under issue No. 3. Thus in view of the finding on issue No. 1, the petition was dismissed.

4. The contention of learned Counsel for the appellant, Shri R.S. Cheema, Advocate, is that the allegations levelled against the appellant by the respondent in the written statement filed in the previous case per se amounted to cruelty as they were false. This according to the counsel for the appellant amounted to mental cruelty. The allegations against the character of the appellant caused damage to his reputation as he was branded as a forger. The allegation against his shady character also amounted to cruelty.

5. On the other hand it has been argued by Shri J.C. Nagpal, Counsel for the respondent, that in the petition it was not pleaded by Darshan Kumar that the allegations levelled by the respondent in the written statement (as reproduced above) in the previous case were not false and no evidence in this respect was produced by him. Furthermore the aforesaid allegations were made in anger and were the result of outburst in view of false allegations of adultery levelled by the husband against his wife in the previous petition filed. This allegation was held to be not proved in the previous case. Thus the appellant in these circumstances is not entitled to the relief of divorce.

6. Legal cruelty as contemplated under Section 13 of the Hindu Marriage Act is of two types; physical and mental. Present is not a case of physical cruelty but as per allegations of the parties it would be a case of mental cruelty. It would be useful to reproduce the following passage from the judgment of the Supreme Court in *Shobtia Rani v. Madhukar Reddi*, A.I.R. 1988 Supreme Court 121 :

'There has been a marked change in the life around us. In matrimonial duties and responsibilities in particular, there is a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. The Judges and lawyers, therefore, should not import their own notions of life. Judges may not go in parallel with them. There may be generation gap between the Judges and the parties. It would be better if the Judges keep aside their customs and manners. It would be also better if Judges less depend upon precedents'.

Some cases have been cited during arguments by counsel for the parties, particularly relating to allegations made in the written statement in the previous cases on the basis of which it was argued that the same amounted to cruelty or not. Such a question primarily is to be decided on the facts and circumstances of each case pending upon the allegations levelled and proof thereof. Furthermore even when they are proved, its impact is also to be considered to come to a conclusion whether such allegations in fact amounted to legal cruelty. Sodi, J. in *Jatinder Kumar v. Chander Kanta* 1986(2) HLR 115, held that the husband could succeed only if he could establish that the allegation made in the written statement by his wife that husband was a drunkard, was proved to be false, to constitute legal cruelty. Rajendra Nath Mittal, J. in *Dr. Pardeep Kumar v. Smt. Sunita Rampal*, 1986(1) HLR 267, held that cruelty is a serious charge and it has to be proved. In that case as there was failure on the part of the husband to depose that he suffered any injury on account of the allegations, the legal cruelty was held not proved. Similar view was taken by the Delhi High Court in *Smt. Pushpa Rani v. Krishan Lal*, ALR 1982 Delhi 107. This decision of the Delhi High Court was relied upon by this Court in several judgments. One of such cases is *Rajbala v. Gajender Singh* 1989(1) HLR 443, decided by J. V. Gupta, J. (now Chief Justice). That was a case where false charge of adultery was made by the wife in retaliation to false charges made by husband against her and the husband had not stated that those

false charges made by his wife caused him mental anguish. It was held that no cruelty was established and he was not entitled to a decree of divorce or even to the decree of judicial 'separation. The Kerala High Court in Gangadharan v. T.K. Thankam, AIR 1988 Kerala 244, held that solitary instance of emotional outburst or violent behaviour will not constitute cruelty. Cruelty should be of such a nature as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent that it would be impossible for them to live together without mental agony, torture or distrust to secure divorce. In Rajkumar Pal v. Vimla Rani Kumar 1986(1) HLR 588, Madhya Pradesh High Court held that the cruelty was not established merely on the part of the wife to make a complaint against her husband in the office which was result of anger regarding illicit relations made. She apologised for her behaviour and was willing to live with the husband. It was held that she was not guilty of desertion and her act did not constitute cruelty. The Division Bench of this Court in Kiran Mandal v. Smt. Mohini Mandal (1989-I) PLR 553, on which reliance has been placed by the Counsel for the appellant, held that cruelty was not confined to physical violence but includes mental torture caused by one spouse to the other. A reasonable man's reaction to the conduct of the offending spouse is the test of unending 'accusation and imputations can cause more pain and misery than physical beating.

7. Keeping in view the ratio of the decisions aforesaid, the evidence produced in the present case needs to be considered. In the present petition filed under Section 13 of the Act, in paragraph 7 the aforesaid five points were mentioned which were stated by the wife in her written Statement filed in the previous case in order to constitute cruelty, it was not specifically pleaded by the husband that the aforesaid allegations were incorrect or false. After quoting a passage from the judgment of a High Court in the previous case it was pleaded that the aforesaid acts and allegations levelled against him caused mental cruelty. The wife was preparing a case for his criminal prosecution and his family members. Thus, she deserted him. In the written statement filed by Manju Rani it was admitted that the previous written statement was filed, which was based on true facts. Now coming to the evidence, PW1 Dharshan Kumar stated that he had instituted this previous petition for divorce which was dismissed. In that case the wife had filed the written statement and she had also made her own statement. Her case was that his would

get whole of her family arrested. He further referred to the allegations levelled by his wife in the previous statement as reproduced above. He further stated that on account of the aforesaid wild allegations he was mentally disturbed. The allegations amounted to cruelty towards him. It is from the aforesaid sentence describing the allegations to be wild, it is now alleged that the husband had refuted the allegations. PW 2 Tara Chand is the father of Darshan Kumar. His evidence does not prove that the allegations made by Manju Rani in the previous written statement were false. He referred to certain new facts which need not be discussed for want of pleadings. His evidence that the cruel behaviour of Manju Rani had affected the mind of Darshan Kumar, cannot be accepted when Darshan Kumar himself had not stated that his life was rendered miserable. While referring to the allegation of Manju Rani of giving her beating and insulting her, he stated that he treated her as daughter and they never intended to kill her nor instigated his younger son to kill her. This evidence hardly disproves the allegations levelled by Manju Rani in her previous statement. PW3 is Ram Sarup. He only stated that he had seen Manju Rani abusing Darshan Kumar. PW4 is Anant Ram. His evidence is also vague and in line with the evidence of Ram Sarup. From the evidence aforesaid produced by Darshan Kumar, as already stated above, it is not established that those allegations were false. Furthermore it was not pleaded by the husband that such allegations were false.

8. Referring to the evidence produced by Manju Rani, she appeared as RW1 and deposed that her husband had informed her that he had tempered with the date of his birth in the service record. He was born in 1950 but in his service record his date of birth is recorded of the year 1955. In the previous petition her husband had levelled allegations against her with regard to her character that she had given birth to a child from the loins of another person. In the previous petition the aforesaid allegation was not pressed subsequently. Her husband was under the influence of his parents and under that influence he turned her out of the matrimonial house. In 1984, Jai Pal, elder brother of his husband, and father-in-law gave her severe beating and wanted to throw her into the canal. Her father-in-law gave Rs. 100 to her husband's brother to bring a taxi for throwing her in the canal. In spite of all this, she wanted to settle down with her husband unconditionally. During cross-examination she admitted that she had mentioned

the facts stated in the written statement. However, in the present proceedings she had not levelled these allegations. She had no grouse against her in-laws if they allowed her to settle down with her husband. Otherwise apprehension was still there. The judgment in the previous case of the Additional District Judge is Exhibit R.L. In para 45 of the judgment it was observed that the allegations levelled by the husband about the alleged pregnancy of the wife was not pressed. With regard to other allegations which were levelled at intervals against the wife in para 44, it was observed that the husband continued to live with her and cohabit with her resulting in the birth of two children and thus he had condoned the acts of all alleged cruelties. It is not necessary to refer to copies of the statements of the witnesses produced in the previous case, as they could not be treated as substantive, evidence. The previous statements could only be made use of under Section 145 of the Evidence Act to contradict the makers of such statements. Be that as it may, from the evidence produced by the appellant it has not been established that the allegations made in the written statement by the wife in the previous case were false. It is also not established that even if wife found to have been established they had any impact on the health of the appellant; physically or mentally. Furthermore, even if the grounds taken in the previous written statement had been proved in the previous case, the appellant would not have been allowed the relief of divorce on the short ground that these allegations were the result of outburst in anger which was in response to the false allegations of adultery levelled against her by her husband in the previous petition which was not pressed as discussed in the judgment in the previous case (Exhibit RL). If he could not be allowed the relief in the previous case, in the present case also per se on the basis of the allegations levelled in the previous written statement, the appellant is not entitled to the relief of divorce. In that sense he would be taking benefit of his own wrong as contemplated under Section 23 of the Hindu Marriage Act.

9. The element of delay is also involved in the present case, as, such allegations in the written statement were made as far back as in 1984. However, the present petition for divorce was filed in May 1986. The observations made by the High Court in the previous case is not give a fresh cause of action for filing the present petition. It was filing of the previous written statement that gave the cause of action. Either the previous petition could have been amended promptly or fresh

petition for divorce should have been filed promptly. There is no explanation for the delay. On that ground also the present petition is liable to be dismissed.

For the reasons recorded above, finding no merit in this appeal the same is dismissed.

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