

Kanta Devi Vs. Suresh

Kanta Devi Vs. Suresh

SooperKanoon Citation : sooperkanoon.com/618432

Court : Punjab and Haryana

Decided On : Aug-19-1993

Reported in : II(1993)DMC438; (1994)107PLR108

Judge : A.P. Chowdhari, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1)

Appeal No. : F.A.O. No. 53-M of 1988

Appellant : Kanta Devi

Respondent : Suresh

Advocate for Def. : Nemo

Advocate for Pet/Ap. : M.S. Rakkar, Sr. Adv. and; A.S. Syan, Adv.

Disposition : Petition allowed

Judgement :

A.P. Chowdhari, J.

1. This appeal is directed against judgment and decree dated February 15, 1988, whereby the Additional District Judge, Ambala, dismissed the Appellant's petition under Section 13 of the [Hindu Marriage Act, 1955](#), for dissolution of her marriage.

2. The petitioner, appellant herein, was married to Suresh respondent on May 9, 1985. She lived in the matrimonial house for about six months and then went to her parents' house staying there for about a couple of months. She again came back and lived for another period of about six months in the house of her husband. According to the petitioner, she was turned out of the house by the respondent and since then till the present day she has been living in the house of her parents. The cause for the break up, according to the petitioner, is that the respondent used to come late in the evening under the influence of liquor. He avoided sex with the petitioner and when the petitioner tried to get physically closer to the respondent, she was abused. During her second visit, the behaviour of the respondent worsened and when the petitioner happened to express a desire to have a new set of clothes, she was given a beating. Life for the petitioner was made fairly difficult in the matrimonial house and she was made to work like a labourer. The conduct of the respondent and other members of his family towards the petitioner was stated to be cruel. It was in these circumstances that the petitioner was forced to leave that house and take shelter in the house of her father.

3. In the written statement, all material averments were specifically denied. It was, however, not disputed that the petitioner lived with the respondent for the initial about 5/6 months and after a break of a couple of months for another period of about six months. It was also alleged that the petitioner had gone away to her parents' house along with her brother on the pretext of seeing her relations on the parental side and while doing she had taken away all her ornaments and other valuable articles.

4. On the pleadings of the parties, the Trial Court framed the following issues :

1. Whether the respondent has treated the petitioner with cruelty, if so, to what effect OPP.

2. Relief.

5. On the consideration of the evidence, it was held that the petitioner failed to prove the ground of cruelty and accordingly the petition was dismissed. Aggrieved

by the decision, the petitioner has preferred this appeal.

Notice was served on the respondent. He has, however, failed to put in appearance. He is, therefore, proceeded ex-parte.

6. I have heard Mr. M.S. Rakkar, Senior Advocate, learned Counsel for the petitioner and have carefully perused the record with his assistance.

Mr. Rakkar has assailed the material observations of the learned Trial Court on which the conclusion was reached that the petitioner failed to prove the ground of cruelty. In support of the above conclusion, the learned Trial Court gave the following reasoning :

(i) The story of taking liquor by the husband was introduced at the stage of evidence and the same being beyond the pleadings could not be accepted.

(ii) Admittedly the petitioner did not lodge any complaint regarding mal-treatment either to the police or any other higher authorities or respectables of the village.

(iii) The petitioner expressly admitted that her parents-in-law had been treating her properly.

(iv) Even if the petitioner was asked to help in the household work and in addition to the work in the field, it did not constitute cruelty on the part of the husband and his parents.

(v) The plea that the husband avoided sex with the wife did not impress the Trial Court, especially because there was no material on record to show that the respondent was impotent. In fact, the husband underwent a medical examination and the result of the examination was that there was no indication that the petitioner was not sexually normal.

7. Mr. Rakkar has contended that the above reasoning is based on misreading of the record or Disappreciation of the facts and circumstances of the case. In order to deal with this contention, it is necessary to refer to the evidence on record.

8. PW-1 Kanta Devi, aged 20, is petitioner herself. She stated about the material averments in the petition, adding that the respondent used to work in a factory. He used to come home after taking liquor. She further stated that he had been giving beating to her. The evidence has been prepared in double record i.e. taken down in English from dictation given by the Presiding Judge as well as by the reader of the Court in Hindi simultaneously. In the English version, the word 'liquor' is missing. This is evidently a typing error, as in the Hindi version there is a clear mention of liquor in the context. It may be noted here that the observation of the learned Trial Court that the story of the husband coming home drunk was introduced at the stage of evidence and was beyond pleadings, is based on a misreading of the record. In paragraph 6 of the petition, it was stated that 'the respondent used to come daily late in the evening after consuming lot of liquor.' Coming back to the statement of the petitioner as PW-1, she further stated that in the matrimonial home they used to sleep in separate rooms and the respondent did not have any sexual relations with the petitioner during her stay in the matrimonial home. She added that she was not willing to go and live with the respondent, as the apprehended danger to her life. She had disclosed the facts regarding maltreatment etc. to her parents. She admitted that her parents-in-law had been treating her properly and it was the respondent who was maltreating her. She admitted that she did not lodge any complaint regarding maltreatment meted out to her to the police, nor she complained to any authority that the respondent was taking liquor. The Trial Court has attached significance to the above circumstance. In my opinion, no undue importance can be given to the fact that the petitioner did not report the matter regarding maltreatment to the police, not complained to any authority regarding the respondent taking liquor, it is at once understandable that in maltreatment matters the police can hardly play any role as far as alleged maltreatment of one spouse by the other is concerned. I am not aware of any authority who can take any effective action against a person who is taking liquor. Technically speaking, consuming liquor does not by itself violate any law where there is no prohibition.

9. The petitioner examined her father Inder Ram PW 2. He corroborated the petitioner that the respondent used to come home after taking liquor and had been giving beating to her. He further stated that the petitioner was illiterate. He also

admitted that he did not complain to police or any other authority about the maltreatment meted out to his daughter. In cross-examination, he admitted that the respondent never came to take his daughter away but her father-in-law had come when the petitioner declined to accompany him.

10. PW-3 Kishna Ram is a neighbour of the petitioner's father. He had also attended the Panchayat which was convoked in order to sort out the differences between the parties. He enquired from the petitioner as to the reason why she was not going to her husband's house and she told the panchayat that the respondent was not a normal person, implying that he was impotent, and a drunkard and had been assaulting her after consuming liquor. In fact, the Sarpanch of their village told the respondent's father that his son was impotent and why they were bent on spoiling the life of the petitioner. The suggestion made by the Panchayat was that the respondent should be medically examined and treated.

11. A perusal of the statements of the three witnesses referred to above shows that they inspire confidence. Their testimony has ring of truth, in that they have admitted facts which are generally denied by a set of witnesses appearing for one side. These facts include the visit of respectables on behalf of the respondent to the house of the petitioner's father in an effort to sort out the differences between the parties. Being father and a close neighbour of the father, who had taken part in the Panchayat, the witnesses were in a position to know the material facts and they provide valuable corroboration to the statement of the petitioner. It may also be pointed out that generally one comes across a petition for divorce filed by the husband. At least in this part of the country, it is rather rare that the wife should come forward for divorce on the ground of cruelty.

12. On behalf of the respondent, Suresh respondent appeared as RW-1 and stated that they used to sleep in the same room and on the same bed, adding that the petitioner never complained that he had not been discharging his matrimonial obligations towards her. If things were normal, one fails to understand why the petitioner should have made these accusations against the husband and why she should have been residing at the house of her parents and why she should have failed the present petition for divorce. The respondent's statement that he never

took liquor is equally unconvincing. RW-2 Badam is a neighbour of the respondent's father. He also accompanied the Panchayat, which went to the petitioner's father, in order to bring about reapproachment between the parties. RW-3 Mehar Dass is father of the respondent. He stated that his son, meaning the respondent, was a simpleton. Significantly, he admitted that the petitioner had complained to his wife i.e. petitioner's mother-in-law, that the respondent is impotent. On coming to know about the above, he had his son Suresh treated from Dr. Waryam Singh at Yamunanagar, besides some other doctors. He was in possession of certificate and other documents relating to the treatment etc. but the same were not produced in the Court. Counsel for the respondent, however, tendered in evidence one medico-legal report Exhibit R-1. The production of the medico-legal report in evidence without examining the doctor was objected to. It is plain that the doctor who examined the respondent should have been produced so that he could be cross-examined. The medico-legal examination cannot, therefore, be attached much value. In any case, there is a clear distinction between total impotency and a, grey area in which a person may not be completely impotent but in a stage in which he avoids discharging his material obligations. It deserves to be highlighted that none other than the father of the respondent admitted that the petitioner complained to her mother-in-law about the impotency of the husband and this resulted the treatment having been undertaken from Dr. Waryam Singh and others. The non-production of the documents relating to diagnosis of Dr. Waryam Singh and the investigations carried out further goes to show that if produced, that record would not have supported the stand of the respondent.

13. While dealing with the evidence, necessary reference has been made to the relevant reasoning of the Trial Court. In my considered view, the reasoning adopted by the learned Trial Court is based either on misreading of evidence or misappreciation of the facts and circumstances of the case. The averment of the respondent-husband coming home drunk was duly mentioned in the petition. It was reiterated in examination-in-chief by the petitioner. She complained about it to her father and other relations. She also mentioned this fact in the Panchayat. It was, therefore, a misreading of evidence to say that the allegation was beyond pleadings.

14. No doubt, the petitioner did not lodge any complaint regarding mal-treatment other with the police or to any other authority or respectable of the village. It is plain to see that the police could not give any relief as this was a matrimonial matter and the facts did not constitute any cognizable offence. There is no other authority to whom one can turn for any effective redress. It was, therefore, not a correct reasoning to say that the petitioner failed to lodge a report with the police or other authorities or the respectables of the village. No doubt, the facts and circumstances did not justify recording a positive finding that the respondent-husband was impotent, avoiding normal sex life with the spouse and adopting inascible attitude when the spouse tried to come closer with normal conjugal expectations, in the facts and circumstances of the case, amounted to treating the marriage partner with cruelty. For these reasons, I am of the considered view that the petitioner had established the ground of cruelty and was entitled to succeed. The finding of the Trial Court is, therefore, set aside and it is held that the respondent treated the petitioner with cruelty. As a result, the petition is allowed and the marriage between the parties is dissolved. A decree sheet in terms of this judgment be prepared and a copy of the order be given free of cost to both the parties.