

Harpal Sharma Vs. Tripta Rani

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Court : Punjab and Haryana

Decided On : Jul-12-1993

Reported in : I(1994)DMC18

Judge : Amarjeet Chaudhary, J.

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

Appeal No. : First Appeal From Order No. 111-M of 1989 (O and M) C.M. 6301--C 11/1992

Appellant : Harpal Sharma

Respondent : Tripta Rani

Advocate for Def. : V.K. Vishitha, Adv.

Advocate for Pet/Ap. : S.K. Mittal and; B.S. Rana, Adv.

Disposition : Appeal dismissed

Judgement :

Amarjeet Chaudhary, J.

1. Harpal Sharma appellant has filed this appeal against the judgment of the Matrimonial Court, Kurukshetra. dated April 21 1989 vide which the divorce petition under Section 13 of the Hindu Marriage Act filed by him was dismissed.

The divorce was sought on the ground of cruelty.

2. The issue before the learned Trial Judge was whether after the solemnization of the marriage the respondent had treated the petitioner with cruelty. The learned Trial Court returned a finding against the petitioner and dismissed the petition.

3. Mr. S.K. Mittal learned Counsel for the appellant has argued that the learned Trial Court has not appreciated the evidence led by the petitioner. As such the finding arrived at deserved to be set aside.

4 In the divorce petition the petitioner had given instances of cruelty. The allegations are that out of the wedlock no child was born, the behaviour of the respondent towards the petitioner was cruel and he was never treated with affection by the respondent. The respondent suffered from some ailment and wanted herself to be treated by a Tantrik whereas the appellant wanted her to be treated by some qualified Doctor and he got her medically examined in Post Graduate Institute, Chandigarh. She was advised some surgery but the respondent alleged that the petitioner wanted to get her killed during the course of operation.

5. In July 1986, the parties had adopted a six months' child who was treated with cruelty by the respondent. The child was given frequent beatings and was not given feeding. The respondent had no love for the child and was not willing to take care of him. As a result, the appellant himself is to look after the child. The appellant could not pursue his literary work being a member of State Executive of Democratic Writers' Association, Kurukshetra. The respondent's behaviour towards him as well as the child remained inhuman. All these allegations were denied by the respondent.

6. The petitioner in order to prove his case examined as many as five witnesses.

7. The learned Counsel for the appellant has read the entire evidence.

8. I have scanned the evidence produced by the petitioner. From the perusal of the evidence, I am convinced that the petitioner has failed to substantiate allegations of cruelty against the respondent. There is no cogent and reliable evidence which

would warrant any interference in the judgment of the Trial Court.

9. Dr. Y.K. Mangal, PW. 2, had nowhere stated that the petitioner was ill-treated by the respondent. Dr. Y.K. Mangal had simply stated that the respondent was suffering from tuberculosis and he had treated her. This witness nowhere stated that the respondent had any fear that she will be killed. If the respondent had any danger to her life, she would not have undergone any surgery. In this view of the matter the allegation against her to this effect appears to be false.

10. Ajaib Singh PW-3 had stated that the respondent used to beat the child and there used to be quarrels between the parties. The respondent in her statement had stated that the child was brought up by her. The beating of the child and the quarrel between the couple cannot in any manner be termed as an act of cruelty on the part of the respondent.

11. Similarly, the statement of Dharam Pal (PW-4) is of no help to the petitioner. He has simply stated that the parties were not on speaking terms and the petitioner used to prepare his meals.

12. Tara Panchal PW-5 who is the President of the Democratic Writers' Association, Kurukshetra, deposed that the petitioner used to write poems, but during the last 1 1/2 years, he had not given any attention to this activity. This witness in his examination stated that he did not know about the relations between the parties. This witness is stated to be a close associate of the petitioner but he has no knowledge about the relations between the parties. The petitioner has not produced any printed material, muchless journal, to show that he used to subscribe to some journal as a poet.

13. It is also seen that after 1987, the petitioner had not alleged any cruelty against his wife whereafter they had been residing together. The alleged acts of cruelty pertain to the period prior to 1985. The alleged sets of cruelty are prior to 1987 and have no significance.

14. Cruelty as contemplated under Section 13(1)(ia) of the Hindu Marriage Act is conducted of such a type that the petitioner cannot reasonably be expected to live

with the respondent. The petitioner has not been able to show that his relationship with the respondent has gone to such an extent that it has become impossible for him to live with the respondent.

For the foregoing reasons, this appeal is dismissed. No order as to costs.

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