

Bohti Devi Vs. Karma

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Court : Punjab and Haryana

Decided On : Jan-09-1995

Reported in : II(1996)DMC574

Judge : Sarojnei Saksena, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13 and 27

Appeal No. : First Appeal From Order No. 98-M of 1991

Appellant : Bohti Devi

Respondent : Karma

Advocate for Def. : R.S. Kundi and; Raj Bassi, Advs.

Advocate for Pet/Ap. : V.K. Jain, Sr. Adv. and; J.L. Malhotra, Adv.

Judgement :

Sarojnei Saksena, J.

1. Appellant/petitioner had filed these two appeals i.e. F.O.A. Nos. 98-M of 1991 and 99-M of 1991 titled as 'Bhoti Devi v. Karma' against the judgments and decrees passed by the Lower Court in HMA Case No. 15 of 1991 (Petition under Section 13 of the Hindu Marriage Act for the dissolution of marriage by way of divorce) and HMA Case No. 16 of 1991 [Petition under Section 27 of the Hindu

Marriage Act (hereinafter referred to as the Act) for the return of dowry articles given at the time of marriage].

2. Admittedly, the appellant-petitioner was married to respondent on 19.6.1982 at village Barwa, Tehsil Thaneswar, District Kurukshetra according to Hindu rites and ceremonies. Respondent resides in village Nand Karan Majra, Tehsil and District Kaithal. It is also an uncontroverted fact that there is no issue of this wedlock.

3. Appellant/petitioner's contention is that the respondent is a drunkard by habit and under its influence he used to beat the appellant. On the very first night, he beat her. He tried to commit unnatural offence with the petitioner, to which she declined that is the main reason for the cruel behaviour of the respondent. In the past eight years of her married life, whenever she went to her matrimonial home, she was beaten by the respondent and was turned out of the house. For the last time, the petitioner was turned out from the matrimonial home by the respondent in the month of the December, 1989 and since then, the petitioner is residing in the parental home. Her father tried for their reconciliation, through a Panchayat, but in vain. At the time of marriage and afterwards also certain articles were given to her in dowry (which are detailed in the petition filed under Section 27 of the Act). The petitioner is deprived of the enjoyment of these Articles and she was turned out of the house. Hence these petitions are filed under Section 13 of the Act on the ground of cruelty with a prayer for decree of dissolution of marriage and under Section 27 of the Act, she has prayed that these articles be returned to her.

4. The respondent repudiated all these allegations about the consumption of liquor, cruel behaviour, attempt to commit unnatural offence with the petitioner and retention of dowry articles. He averred that petitioner's behaviour was not cordial with the members of his family, though he always behaved nicely with her. He never beat her but she levelled false allegations against him to lower down his reputation in society. She was not turned out of the matrimonial home but on 2.1.1990 she went with her brother to her parental home on the pretext of meeting her parents. At that time, she took away her jewellery and costly clothes alongwith some cash. After few days, when she did not turn up, he went to the parental home to bring her back, but she refused to accompany him. Her mother and

brother misbehaved with him and also threatened him. After some time, he took a Panchayat to her parental home to arrive at a compromise but the petitioner repeated her conditions that she will not live at village Nand Karan Majra in her matrimonial home and also she will not do any work for his parents. She will not live at Kaithal only. Again the petitioner, her mother and brother misbehaved with the members of the Panchayat and threatened that if in future any such attempt will be made, they would face dire consequences. They also threatened that they would definitely file a divorce petition on false allegations with a view to humiliate the respondent or she would put the kerosene oil on her clothes so that the respondent and members of his family may be in trouble. Thus, all the efforts to settle the matrimonial dispute failed. It is objected that the petition being belated should be dismissed on this count as well.

5. It is also denied that the articles detailed in the petition filed under Section 27 of the Act were given in dowry at the time of marriage and thereafter that he has detained those articles with him and turned out the petitioner from the matrimonial home.

6. Parties adduced evidence in support of their pleadings. The Trial Court believing the respondent's evidence and disbelieving the petitioner's evidence came to the conclusion that¹ she has levelled false allegations against her husband. She has failed to prove the ground of cruelty. Hence, petition under Section 13 of the Act was dismissed on this count alone. Another petition filed under Section 27 of the Act was also dismissed by the impugned judgment and decree.

7. Appellant's learned Counsel vehemently contended that the Trial Court has failed to minutely scan the respondent's evidence. He has believed the petitioner's evidence on flimsy and imaginary grounds. Respondent has stated that he is Radha Swami and does not drink liquor, but this is denied by his father as well as his witness-RMS Dhari Ram. He further pointed out that in his written statement, the respondent has categorically averred that on 2.1.1990, the petitioner was taken away from the house by the brother and mother. After few days of 2.1.1990 as the petitioner did not come back, he went to her in-laws house to bring her back

but she refused and at that time her brother and mother misbehaved with him. He was abused and threatened and then Panchayat made efforts to settle the matrimonial affairs but the petitioner repeated her conditions that she will live at Kaithal. She will not go to matrimonial home and will not do any work for her parent-in-laws. At that time, she, her mother and brother threatened them, that if in future, such an attempt will be made, she will file a petition for divorce on false allegations with a view to humiliate him. But the respondent has adduced evidence which is quite in variance to his pleading. The respondent has stated that the Panchayat was taken on 16.9.1990. He and all his witnesses have stated in similar tone that in this Panchayat, petitioner's mother assured that she will withdraw the divorce petition and will send her to matrimonial home. He commented that the Trial Court has not considered this variance in the pleadings and evidence adduced by the respondent.

8. The appellant's learned Counsel relying on *Ms. Jordan Diengdeh v. S.S. Chopra*, AIR 1985 SC 935 and *Rajinder Singh Bajwa v. Manjit Kaur Bajwa*, 1990 (1) HLR 693 Contended that from the parties evidence on record it is evident that there is a total break down of marriage. There is no hope of reconciliation. The petitioner has developed psychological repulsion and apprehension. As the marriage appears to have broken down irretrievably, therefore, in the interest of justice marriage should be dissolved by a decree of divorce.

9. Respondent's learned Counsel relying on *Gurmel Singh v. Smt. Ajit Kaur*, (1979)81 The Punjab Law Reporter 122 and *Jia Lal Abrol v. Sarla Devi*, AIR 1978 J&K; 69 contended that the petitioner has failed to prove the ground of cruelty. On the contrary from her evidence it is evident that she has deserted the respondent without any just cause or excuse and without the consent of the respondent. He supported the Trial Courts judgment and stressed that the petitioner has levelled false allegations against the respondent. She has pleaded that he father took a Panchayat but on oath she had denied this plea as no such attempt was made by her father. He elder sister is living happily with the elder brother of the respondent, as his wife. If the respondent's family would have been of the type as mentioned by the petitioner, her elder sister would not have agreed to her marriage with the respondent (her brother-in-law).

10. So far as Gurmail Singh's case (supra), is concerned, that is based on the ground of desertion but this petition is filed on the ground of cruelty.

11. In Jia Lal Abrol's case (supra), it is directed that cruelty is to be determined with regard to the culture, temperament and status in life of the parties and many other things.

12. In Rajinder Singh Bajwa's case (supra), it is held that if the marriage has broken down and there is no hope of reconciliation, marriage should be dissolved to do substantial justice.

13. In Ms. Jordan Diengdesh's case (supra), their Lordships of the Supreme Court have held that if the marriage is broken down irretrievably, relief of divorce be given.

14. The lower Court has failed to scan the respondent's evidence minutely. He has given evidence against his own pleadings. His statement is belied by the sworn testimony of his other witnesses. The whole of the evidence about the taking of Panchayat and what happened therein is not believable as these facts are not pleaded at all and what he pleaded in para No. 4 of his written statement, he has failed to prove. The petitioner has stated on oath that the respondent is addicted to alcohol and under the influence of intoxication, he used to beat her for no rhyme or reason. He tried to commit unnatural offence also but she declined. During the eight years of her marriage life. She had been to matrimonial home on eight occasions. Whenever she went there, she was beaten by the respondent. No doubt, she was wrongly pleaded that a Panchayat was taken by her father also to effect reconciliation but on oath she has emphatically denied this fact. Her mother has tried to say so and has exonerated to the extent that once an attempt was made to assault her, but she has not stated so. The petitioner and her witnesses have categorically stated that in the Panchayat it was settled that marriage will be dissolved and dowry articles will be returned. The Trial Court had commented that the petitioner has stated that once she was beaten by the respondent in the presence of her neighbours but she has neither named them nor has examined any such neighbour. While commenting on her above statement, the Trial Court lost sight of this fact that she went to her matrimonial home only on eight

occasions. It was natural for her not to know the neighbourer of her matrimonial home. In this context, her above statement cannot be branded as a bundle of lies. No woman would level such allegations as that of committing unnatural offence with her by the husband unless it is a fact. The Trial Court has also not scanned evidence minutely to see that the petitioner's elder sister is living with her husband separately and not in this matrimonial home. The petitioner is not to be disbelieved that whenever she went to her matrimonial home she was beaten by her husband. His cruel behaviour has created such a psychological apprehension that she does not consider it safe and proper to come back to her matrimonial home and all attempts of reconciliation proved abortive. The marriage has broken down irretrievably. There is no use of keeping these two persons tied by the matrimonial relationship when they cannot live peacefully. Justice is required to be done. Parties should not be penalised and try to entangle them in legal squabbles, in order to deny the appropriate relief.

15. Accordingly, I hereby allow first appeal and petition for divorce is allowed with no order as to costs.

16. So far as the other appeal is concerned, the petitioner has adduced evidence to prove what articles were given in dowry at the time of marriage and thereafter. Her witnesses have corroborated her. The respondent has admitted that furniture and utensils given in dowry are still lying in his house in broken condition. Though, according to him, the petitioner has taken away all the jewellery and costly clothes with her when she left his house on 2.1.1990. Had it been so, immediately after taking the Panchayat, the respondent would have given notice or would have taken any other legal step to establish that she was taken and when she filed a petition under Section 27 of the Act, he has come forward with this plea. Delivery and possession of each and every item given in dowry cannot be determined with certainty. Petitioner's mother has stated that she spent Rs. 50,000/- in petitioner's marriage. Petitioner has denied that she had taken away her ornaments. Though respondent's other witnesses have denied that any jewellery was given at the time of marriage by respondent has admitted in cross-examination that few jewellery items were given at the time of marriage. Considering the evidence of the parties, in my view order of return of specific articles of dowry cannot be passed because

of lapse of so many years. Hence, the petition under Section 27 of the Act fails to this extent and the Second Appeal 99- M of 1991 is partly allowed and in lieu of dowry articles, the respondent is hereby directed to pay Rs. 20,000/- in cash to the petitioner within one month from today. No order as to costs.

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