

Kamlesh Vs. Sewa

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Court : Punjab and Haryana

Decided On : Jan-06-1997

Reported in : II(1998)DMC216

Judge : V.K. Jhanji, J.

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

Appeal No. : First Appeal from Order No. 14-M of 1989

Appellant : Kamlesh

Respondent : Sewa

Advocate for Def. : None

Advocate for Pet/Ap. : Raj Mohan Singh, Adv.

Disposition : Appeal dismissed

Judgement :

V.K. Jhanji, J.

1. This appeal is by the wife directed against the judgment of learned District Judge, Karnal, dismissing her petition under Section 13 of the Hindu Marriage Act for dissolution of marriage by decree of divorce.

2. Appellant was married to respondent at Karnal on 10.2.1981 according to Hindu rites. It is the case of the appellant that after marriage, she stayed at the house of respondent for two days as is customary in the community and went back to her parents' house and then the Muklawa ceremony took place after five years. Thereafter, she came to the house of respondent and stayed as his wife. One female child, namely, Rekha was born out of the wed-lock. It is further her case that during her stay with the respondent, the respondent used to maltreat and misbehave with her. Immediately after the marriage, he started complaining that dowry brought by her is less than his and his family's expectations. He demanded Rs. 5,000/- in cash, but when she has told that her parents are poor, he started maltreating her. When she brought this fact to the notice of her parents, they had no other alternative but to give Rs. 2,000/- to the respondent. Respondent was not satisfied even on receipt of Rs. 2,000/- and he again demanded money and articles from her parents. She alleged that respondent after giving severe beating turned her out of the house in May, 1987 with the threat that if she dared to come again, she would be done to death. She in her petition has stated that the acts of the respondent have caused reasonable apprehension in her mind that it would be harmful and injurious for her to live with the respondent under the same roof. The respondent in his written statement has not only denied the averments made in the petition, but stated that it is the appellant who left the house with the pretext that she had to attend the marriage of daughter of her maternal uncle in Village Habatpur, but she did not turn up to the house thereafter inspite of repeated requests and persuasions by him and his other relations. He has stated that her father wants to send her with some other person and for that he is to take Rs. 10,000/- from that person. He has denied that he ever demanded any dowry in cash or in kind, nor anything in cash and kind was given to him at the time of marriage. It is also his case that he is handicapped by one leg and during his stay with her, appellant had been cursing him why she had been married with a man with one leg.

3. Appellant in support of her case gave her statement as PW 1 and also examined her father as PW 2. Respondent-Sewa, gave his statement as RW 1; his brother, Risal Singh, as RW 2; his relative, Ram Kishan, as RW 3; his neighbourer, Bela Ram, as RW 4; and appellant's father's real brother, Bira, as

RW 5.

4. Trial Court on the basis of pleadings and evidence on record dismissed the petition on finding that the appellant has failed to prove that behaviour of her husband was cruel so as to endanger her life, limb or health. Trial Court also found that appellant has failed to lead any corroborative evidence to her allegations of cruelty. It further found that as compared to appellant's evidence, the evidence led by the respondent is more convincing and worthy of credence.

5. In this appeal, Counsel for the appellant has contended that the learned Trial Court has not correctly appreciated the evidence on record. He contended that the appellant was always ready and willing to live with her husband, but it was because of his cruel treatment she had to live with her parents.

6. After hearing the learned Counsel and going through the record, I am of the view that there is no merit in this appeal. RW 5, Bira son of Telu Ram, who has been examined by the respondent as one of his witnesses is none else but the real brother of appellant's father. He in his statement as RW 5 has stated that appellant was married to Sewa, respondent, and in exchange respondent's sister was married to him. He stated that no dowry was taken or given either in his marriage or in the marriage of appellant. He had gone on to state that his house adjoins the house of appellant's father. He never heard or saw the respondent maltreating the appellant or demanding any dowry from appellant's father. He further stated that neither the appellant nor her parents ever complained to him about the respondent's behaviour. According to him, a marriage took place in the in-laws house of his brother, Nathi Ram, i.e. father of the appellant, and the appellant had come in that marriage and thereafter, she did not return to her husband. A Panchayat came from the village of the respondent twice or thrice in which he also joined, but the father of the appellant put off the matter. He had also stated that he never saw the respondent taking liquor. The other witnesses examined by the respondent are also consistent in saying that the behaviour of the respondent was never cruel towards the appellant. Appellant while appearing as PW 1 admitted that her marriage took place in exchange and according to the custom, sister of the husband is married to the male member of girl's wife. She

conceded that in exchange of her marriage, respondent's sister was married to her uncle, namely, Bira. Though she has denied the suggestion that in her marriage, no dowry was given by her father and similarly, no dowry was given by respondent's sister's parents, but on record she has failed to bring any cogent material to show that any dowry was given in marriage or respondent ever demanded any dowry after her marriage with him. She in her statement admitted that parents of the respondent have died and his brothers are also living separate from him. She, however, has given no reason for not going to her husband. The plea that the respondent used to beat her after bolting the door of the house and therefore, no neighbour came to know of that beating is not acceptable. It is improbable that respondent would give beatings to the appellant and the neighbours would not come to know about it. It is highly improbable to believe that appellant would take beatings, without any resistance, from the respondent who is a lame person. Trial Court, in my view, has rightly held that the appellant has failed to prove that the behaviour of respondent towards her was cruel.

7. Respondent has stated that he has all along been willing to keep the appellant with him. He made such an offer in the Trial Court, but the appellant declined the offer. Respondent has led evidence to show that he made efforts to bring back the appellant from her house, but could not succeed. No such attempt was made by the appellant. If it was a fact that respondent had turned out the appellant from the house, the efforts would have been made from appellant's side to persuade the respondent to keep her. In absence of any such attempt, it is more probable that respondent did not turn out the appellant. It appears that it is the appellant who is trying to break the marriage for the reasons best known to her.

8. Consequently, the appeal being without any merit shall stand dismissed.