

Om Pati Vs. Raj Bir

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Court : Punjab and Haryana

Decided On : Apr-30-2003

Reported in : AIR2004P& H171; (2003)134PLR754

Judge : Viney Mittal, J.

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

Appeal No. : First Appeal from Order No. 42-M of 2001

Appellant : Om Pati

Respondent : Raj Bir

Advocate for Def. : Ajay Chaudhary, Adv.

Advocate for Pet/Ap. : R.A. Sheoran, Adv.

Disposition : Appeal dismissed

Judgement :

Viney Mittal, J.

1. The present appeal has been filed by Shrimati Om Pati-appellant challenging the judgment dated December 23, 2000 passed by the learned Additional District Judge, Hisar whereby the marriage between the parties, namely, the present appellant Om Pati and respondent Rajbir has been ordered to be dissolved by a

decree of divorce.

2. A petition under Section 13 of the Hindu Marriage Act had been filed by respondent Rajbir for dissolution of their marriage. It was stated in the petition that parties were married on May 12, 1987 and the Muklawar ceremony was performed after one year of the marriage. The parties cohabited and lived together and out of the wedlock, a daughter, namely, Sonia was born. The husband claimed that the wife was an arrogant lady and had short temperaments and right from the inception of the marriage, she started hating the husband. She refused to perform the house-hold chores and used to pick up quarrel on petty matters and insulted the husband in the presence of his relatives and friends. She even used to hurl filthy abuses upon the husband. The husband claimed that she 'used to go to the extent of leveling false and frivolous allegations against the husband.

3. On December 20, 1995 she went to the house of one Randhir and levelled false allegations against the husband of having illicit relations with Sudesh daughter of Randhir. The aforesaid Randhir convened a baradari panchayat and in the presence of the panchayat, the husband had tendered apology for the false allegation made by the appellant-wife. The husband also claimed that the wife had alleged that he was having illicit relation with his brother's wife. Ultimately, the wife left the matrimonial home 2-1/2 years ago and since then she was residing separately. The husband claimed that she had initiated proceedings under Section 107/151 of the Code of Criminal Procedure but he was discharged by the Sub Divisional Magistrate, Hansi.

4. The divorce was claimed by the husband-respondent on the ground of cruelty and desertion.

5. Upon notice of the divorce petition, the wife appeared and filed a written statement. She denied all the allegations levelled against her in the divorce petition. She specifically denied that she had never levelled any kind of allegations against the husband and in fact it was the husband who was mal-treating her. She also denied the factum of deserting the husband. On the other hand, she claimed that it was the husband who had turned her out of the house after giving her beatings.

6. The learned trial court on appreciation of the entire evidence allowed the divorce petition filed by the husband and ordered the dissolution of the marriage between the parties.

7. The wife has felt aggrieved and approached this court through the present petition.

8. Sh. R.A. Sheoran, the learned counsel appearing for the appellant has submitted that in fact there was no evidence on the record to show that the wife had ever levelled any allegations against the character of the husband or that he was having any illicit relations with his sister-in-law. Sh. Sheoran has referred to Ex.P1 which is a copy of the FIR receded at the instance of the appellant-wife to submit that in fact a perusal of the aforesaid document would show that no such allegations as have been noticed by the trial Judge have been levelled in the aforesaid FIR.

9. I have perused the said document Ex.P1 in which the wife had made a complaint to the police and had stated as follows:

'The cause of dispute is that since the time my sister-in-law Indrawati has got married, my husband has developed a liking towards her and desired her..'

10. Sh. Ajay Chaudhary, the learned counsel appearing for the respondent-husband during the course of arguments has produced a statement dated March 21, 2003 made by Smt. Om Pati-appellant before the Judicial Magistrate I Class, Hansi in criminal case No. 120 of 1998 (State v. Rajbir and others). It was pointed out by the learned counsel that in fact in the said statement also the wife had specifically reiterated the allegations with regard to the character of the husband. The appellant- Om Pati was also present in court today, The said statement was specifically put to her and she admitted that the said statement had been made by her. On the aforesaid admission of the appellant, the said statement has been taken on record as Ex.CX, vide a separate order. A perusal of the statement Ex.CX also shows that during the course of the trial, the wife Om Pati had appeared as PW5 and had stated as follows:

'The character of my husband is not proper. From the day Indrawati has been married, my husband has got attached with her. I have seen my husband with aforesaid Indrawati in compromising position.'

11. In view of the specific stand taken by the wife Om Pati in the said document Ex.CX, it is apparent the appellant had adopted a soft stand in her plea only with a view to counter the claim of the husband. However, the allegations levelled in Ex.P1 as well as Ex.CX clearly proved that the wife had been levelling allegations that the husband was having illicit relations with his brother's wife-Indrawati.

12. Nothing has been brought on the record that such a state of affairs existed between the husband-Rajbir and the aforesaid Indrawati. The fact that any such allegations were ever levelled were even denied by the appellant-wife in the written statement and even during the course of her statement. However, the documents Ex.P1 was relied upon by the appellant. The statement Ex.CX made by the appellant-wife in a criminal case proves the case of the husband beyond doubt. In some what similar situation, this court in FAO 84-M of 2002 decided on February 19, 2003 (Saroj v. Vinod Kumar Tanwar), had observed as follows:

'It is not in dispute that the appellant wife while filing the written statement had levelled very serious allegations against the respondent-husband to the effect that he was having illicit relations with his own Bhabhi i.e. widow of his deceased brother. Not only the aforesaid allegations have been levelled in the written statement but there is absolutely no evidence led by the appellant-wife in support thereof. Such serious allegations without any basis and proof would actually amount to a cruelty in itself. The allegations of the kind noticed above and the allegations that the husband was living in an adultery with his own Bhabhi are very serious allegations. A bald statement made by the appellant wife to support the above allegations cannot be treated to be a sufficient proof. It has been held in the case of Tapan Kumar Chakarborty v. Smt. Jyotsna Chakraborty, 1997(2) Hindu Law Reporter 19 that levelling of reckless and baseless allegations like adultery amount to cruelty qua the spouse against whom such allegations are levelled. In a similar situation even this court had taken an identical view in the case of Manjit Kaur v. Avtar Singh, 2000(2) Marriage & Divorce Judicial Reports 351. A similar

view was taken by the Bombay High Court in the cases *Rajan Vasant Revankar v. Mrs. Shubha Rajan Revankar*, A.I.R. 1995 Bombay 246.'

13. In view of the aforesaid law laid down in *Saroj's case* (supra) and other authorities, enumerated in the aforesaid judgment I have no hesitation in holding that the acts of levelling false allegations by the appellant wife have cast a justification to seek divorce from the appellant-wife.

14. In view of the above discussion, I do not find that any interference is required in the judgment passed by the learned Additional District Judge. Thus finding, no merit in the present appeal, the same is hereby dismissed. No costs.

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